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**SFA**

BILL ANALYSIS

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Senate Bills 882 through 885 (as introduced 2-12-98)  
Sponsor: Senator Loren Bennett (Senate Bill 882)  
Senator Walter H. North (Senate Bill 883)  
Senator Michael J. Bouchard (Senate Bill 884)  
Senator Robert Geake (Senate Bill 885)  
Committee: Families, Mental Health and Human Services

Date Completed: 2-18-98

### **CONTENT**

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); Senate Bill 883 would amend the juvenile code; Senate Bill 884 would amend the teachers' tenure Act; and Senate Bill 885 would amend the Administrative Procedures Act.

The 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 provide for special accommodations for a witness who was under 16 or at least 16 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 revise the factors to be considered in determining whether to close a hearing.

#### Developmental Disability

Under the RJA, juvenile code, teachers' tenure Act, and Administrative Procedures Act, "developmental disability", in the witness accommodation provisions, means an impairment of general intellectual functioning or adaptive behavior that meets the following criteria:

- It originated before the person reached 18 years of age.
- It has continued since its origination or can be expected to continue indefinitely.
- It constitutes a substantial burden to the impaired person's ability to perform normally in society.
- It is attributable to mental retardation, autism, or any other condition of a person related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.

The bills would delete that definition and define "developmental disability" as that term is defined in the Mental Health Code.

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.

#### Age Criterion and Applicable Offenses

Age. The RJA, juvenile code, teachers’ tenure Act, and Administrative Procedures Act all provide for witness accommodations for an alleged victim of specific offenses who is either under 15 years of age or who is 15 years of age or older with a developmental disability. 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.

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.

MCL 600.2163a (S.B. 882)  
712A.17 & 712A.17b (S.B. 883)  
38.104a (S.B. 884)  
24.275a (S.B. 885)

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact. The effect the bills could have on the number of dispositions is speculative.

Fiscal Analyst: B. Bowerman  
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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.