

SENATE BILL NO. 883

February 12, 1998, Introduced by Senators NORTH, HART and BENNETT and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1939 PA 288, entitled

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

by amending sections 17 and 17b of chapter XIIA (MCL 712A.17 and 712A.17b), section 17 as amended by 1997 PA 169 and section 17b as amended by 1989 PA 254.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIIA

2 Sec. 17. (1) The court may conduct a hearing other than a
3 criminal hearing in an informal manner. The court shall require
4 stenographic notes or another transcript to be taken of the
5 hearing. The court shall adjourn a hearing or grant a continu-
6 ance regarding a case under section 2(b) of this chapter only for
7 good cause with factual findings on the record and not solely
8 upon stipulation of counsel or for the convenience of a party.
9 In addition to a factual finding of good cause, the court shall
10 not adjourn the hearing or grant a continuance unless 1 of the
11 following is also true:

12 (a) The motion for the adjournment or continuance is made in
13 writing not less than 14 days before the hearing.

14 (b) The court grants the adjournment or continuance upon its
15 own motion after taking into consideration the child's best
16 interests. An adjournment or continuance granted under this sub-
17 division shall not last more than 28 days unless the court states
18 on the record the specific reasons why a longer adjournment or
19 continuance is necessary.

20 (2) In a hearing other than a criminal trial under this
21 chapter, ~~any~~ A person interested in the hearing may demand a
22 jury of 6 individuals, or the court, on its own motion, may order
23 a jury of 6 individuals to try the case. In a criminal trial, a
24 jury may be demanded as provided by law. The jury shall be sum-
25 moned and impaneled in accordance with chapter 13 of the revised
26 judicature act of 1961, 1961 PA 236, MCL 600.1300 to 600.1376,

1 and, in the case of a criminal trial, as provided in chapter VIII
2 of the code of criminal procedure, 1927 PA 175, MCL 768.1 to
3 768.36.

4 (3) A parent, guardian, or other custodian of a juvenile
5 held under this chapter has the right to give bond or other
6 security for the appearance of the juvenile at the hearing of the
7 case.

8 (4) The prosecuting attorney shall appear for the people
9 when requested by the court, and in a proceeding under section
10 2(a)(1) of this chapter, the prosecuting attorney shall appear if
11 the proceeding requires a hearing and the taking of testimony.

12 (5) In a proceeding under section 2(b) of this chapter, upon
13 request of the family independence agency or an agent of the
14 family independence agency under contract with the family inde-
15 pendence agency, the prosecuting attorney shall serve as a legal
16 consultant to the family independence agency or its agent at all
17 stages of the proceeding. If in a proceeding under section 2(b)
18 of this chapter the prosecuting attorney does not appear on
19 behalf of the family independence agency or its agent, the family
20 independence agency may contract with an attorney of its choice
21 for legal representation.

22 (6) A member of a local foster care review board established
23 under 1984 PA 422, MCL 722.131 to 722.139a, shall be admitted to
24 a hearing under subsection (1).

25 (7) Upon motion of ~~any~~ A party or a victim, the court may
26 close the hearing of a case brought under this chapter to members
27 of the general public during the testimony of a juvenile witness

1 or the victim if the court finds that closing the hearing is
 2 necessary to protect the welfare of the juvenile witness or the
 3 victim. In determining whether closing the hearing is necessary
 4 to protect the welfare of the juvenile witness or the victim, the
 5 court shall consider the following:

6 (a) The age of the juvenile witness or the victim.

7 ~~(b) The psychological maturity of the juvenile witness or~~
 8 ~~the victim.~~

9 (B) ~~(c)~~ The nature of the proceeding.

10 (C) ~~(d)~~ The desire of the juvenile witness, ~~or his or~~
 11 ~~her~~ OF THE WITNESS'S family or guardian, or ~~the desire~~ of the
 12 victim to have the testimony taken in a room closed to the
 13 public.

14 (8) As used in subsection (7), "juvenile witness" does not
 15 include a juvenile against whom a proceeding is brought under
 16 section 2(a)(1) of this chapter.

17 Sec. 17b. (1) As used in this section:

18 (a) "Developmental disability" means ~~an impairment of gen-~~
 19 ~~eral intellectual functioning or adaptive behavior which meets~~
 20 ~~the following criteria:~~ ~~(i) It originated before the person~~
 21 ~~became 18 years of age.~~ ~~(ii) It has continued since its origina-~~
 22 ~~tion or can be expected to continue indefinitely.~~ ~~(iii) It con-~~
 23 ~~stitutes a substantial burden to the impaired person's ability to~~
 24 ~~perform normally in society.~~ ~~(iv) It is attributable to mental~~
 25 ~~retardation, autism, or any other condition of a person related~~
 26 ~~to mental retardation because it produces a similar impairment or~~
 27 ~~requires treatment and services similar to those required for a~~

1 ~~person who is mentally retarded.~~ THAT TERM AS DEFINED IN SECTION
2 100A OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 300.1100A.

3 (b) "Witness" means an alleged victim of ~~any of the~~
4 ~~offenses~~ AN OFFENSE listed under subsection (2) who is either of
5 the following:

6 (i) A person under ~~15~~ 16 years of age.

7 (ii) A person ~~15~~ 16 years of age or older with a develop-
8 mental disability.

9 (2) This section only applies to either of the following:

10 (a) A proceeding brought ~~pursuant to~~ UNDER section 2(a)(1)
11 of this chapter ~~where~~ IN WHICH the alleged offense, if commit-
12 ted by an adult, would be a felony under section 136b, 145c, 520b
13 to 520e, or 520g of the Michigan penal code, ~~Act No. 328 of the~~
14 ~~Public Acts of 1931, being sections 750.136b, 750.145c, 750.520b~~
15 ~~to 750.520e, and 750.520g of the Michigan Compiled Laws~~ 1931 PA
16 328, MCL 750.136B, 750.145C, 750.520B TO 750.520E, AND 750.520G,
17 or under former section 136 or 136a of ~~Act No. 328 of the Public~~
18 ~~Acts of 1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328.

19 (b) A proceeding brought ~~pursuant to~~ UNDER section 2(b) of
20 this chapter.

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

25 (4) A witness who is called upon to testify shall be permit-
26 ted to have a support person sit with, accompany, or be in close
27 proximity to the witness during his or her testimony. A notice

1 of intent to use a support person shall name the support person,
2 identify the relationship the support person has with the wit-
3 ness, and ~~shall~~ give notice to all parties to the proceeding
4 that the witness may request that the named support person sit
5 with the witness when the witness is called upon to testify
6 during any stage of the proceeding. The notice of intent to use
7 a named support person shall be filed with the court and shall be
8 served upon all parties to the proceeding. The court shall rule
9 on any motion objecting to the use of a named support person
10 prior to the date at which the witness desires to use the support
11 person.

12 (5) In order to avoid excessive questioning of a witness, a
13 videotape statement of a witness may be taken by the investigat-
14 ing agency and shall be admitted at all proceedings except the
15 adjudication stage instead of the live testimony of the witness.
16 The videotape of a videotape statement shall state the date and
17 time that the statement was taken; SHALL IDENTIFY the persons
18 present in the room, ~~their identities,~~ and STATE whether they
19 were present for the entire videotaping or only a portion of the
20 videotaping; and shall show a time clock that ~~shall be~~ IS run-
21 ning during the taking of the statement.

22 (6) In a videotape statement taken ~~pursuant to~~ AS PROVIDED
23 IN subsection (5), the questioning of the witness should be full
24 and complete and shall include, but not be limited to, ALL OF the
25 following areas:

26 (i) The time and date of the alleged offense or offenses.

1 (ii) The location and area of the alleged offense or
2 offenses.

3 (iii) The relationship, if any, between the witness and the
4 respondent.

5 (iv) The details of the offense or offenses.

6 (v) The names of any other persons known to the witness who
7 may have personal knowledge of the offense or offenses.

8 (7) Each respondent and, if represented, his or her attorney
9 ~~shall have~~ HAS the right to view and hear the videotape taken
10 ~~pursuant to~~ AS PROVIDED IN subsection (5) not less than 48
11 hours before it is offered into evidence.

12 (8) Except as otherwise provided in subsection (11), if,
13 upon the motion of any party or in the court's discretion, the
14 court finds on the record that psychological harm to the witness
15 would occur if the witness were to testify in the presence of the
16 respondent at a court proceeding or in a videotape deposition
17 taken ~~pursuant to~~ AS PROVIDED IN subsection (9), the court
18 shall order that the witness during his or her testimony be
19 shielded from viewing the respondent in such a manner as to
20 enable the respondent to consult with his or her attorney and to
21 see and hear the testimony of the witness without the witness
22 being able to see the respondent.

23 (9) In a proceeding brought ~~pursuant to~~ UNDER section 2(b)
24 of this chapter, if, upon the motion of ~~any~~ A party or in the
25 court's discretion, the court finds on the record that psycholog-
26 ical harm to the witness would occur if the witness were to
27 testify at the adjudication stage, the court shall order to be

1 taken a videotape deposition of a witness which shall be admitted
2 into evidence at the adjudication stage instead of the live tes-
3 timony of the witness. The examination and cross-examination of
4 the witness in the videotape deposition shall proceed in the same
5 manner as permitted at the adjudication stage.

6 (10) In a proceeding brought ~~pursuant to~~ UNDER section
7 2(a)(1) of this chapter ~~where~~ IN WHICH the alleged offense, if
8 committed by an adult, would be a felony under section 136b,
9 145c, 520b to 520e, or 520g of ~~Act No. 328 of the Public Acts of~~
10 ~~1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.136B,
11 750.145C, 750.520B TO 750.520E, AND 750.520G, or under former
12 section 136 or 136a of ~~Act No. 328 of the Public Acts of 1931~~
13 THE MICHIGAN PENAL CODE, 1931 PA 328, if, upon the motion of any
14 party made before the adjudication stage, the court finds on the
15 record that the special arrangements specified in subsection (11)
16 are necessary to protect the welfare of the witness, the court
17 shall order 1 or both of those special arrangements. In deter-
18 mining whether it is necessary to protect the welfare of the wit-
19 ness, the court shall consider BOTH OF the following:

20 (a) The age of the witness.

21 ~~(b) The psychological maturity of the witness.~~

22 (B) ~~(c)~~ The nature of the offense or offenses.

23 (11) If the court determines on the record that it is neces-
24 sary to protect the welfare of the witness and grants the motion
25 made under subsection (10), the court shall order 1 or both of
26 the following:

1 (a) In order to protect the witness from directly viewing
2 the respondent, the courtroom shall be arranged so that the
3 respondent is seated as far from the witness stand as is reason-
4 able and not directly in front of the witness stand. The
5 respondent's position shall be located so as to allow the respon-
6 dent to hear and see all witnesses and be able to communicate
7 with his or her attorney.

8 (b) A questioner's stand or podium shall be used for all
9 questioning of all witnesses by all parties, and shall be located
10 in front of the witness stand.

11 (12) In a proceeding brought ~~pursuant to~~ UNDER section
12 2(a)(1) of this chapter ~~where~~ IN WHICH the alleged offense, if
13 committed by an adult, would be a felony under section 136b,
14 145c, 520b to 520e, or 520g of ~~Act No. 328 of the Public Acts of~~
15 ~~1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.136B,
16 750.145C, 750.520B TO 750.520E, AND 750.520G, or under former
17 section 136 or 136a of ~~Act No. 328 of the Public Acts of 1931~~
18 THE MICHIGAN PENAL CODE, 1931 PA 328, if, upon the motion of
19 ~~any~~ A party or in the court's discretion, the court finds on
20 the record that the witness is or will be psychologically or emo-
21 tionally unable to testify at a court proceeding even with the
22 benefit of the protections afforded the witness in subsections
23 (3), (4), and (11), the court shall order that a videotape depo-
24 sition of a witness shall be taken to be admitted at the adjudi-
25 cation stage instead of the WITNESS'S live testimony. ~~of the~~
26 ~~witness.~~

1 (13) For purposes of the videotape deposition under
2 subsection (12), the WITNESS'S examination and cross-examination
3 ~~of the witness~~ shall proceed in the same manner as if the wit-
4 ness testified at the adjudication stage, and the court shall
5 order that the witness, during his or her testimony, shall not be
6 confronted by the respondent but shall permit the respondent to
7 hear the testimony of the witness and to consult with his or her
8 attorney.

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

11 ~~(15) This section applies to cases filed on or after and~~
12 ~~proceedings held on or after January 1, 1988.~~

13 ~~(16) This section shall take effect January 1, 1988.~~