

Act No. 324
Public Acts of 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators Bennett, North, Gougeon, Steil and Hart

ENROLLED SENATE BILL No. 882

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," by amending section 2163a (MCL 600.2163a), as amended by 1989 PA 253.

The People of the State of Michigan enact:

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

(a) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(b) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

(i) A person under 16 years of age.

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

(2) This section only applies to prosecutions and proceedings under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

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

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. The court shall rule on any motion objecting to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In order to avoid excessive questioning of a witness, a videotape statement of a witness may be taken by the investigating law enforcement agency prior to the normally scheduled date for the defendant's preliminary examination. The videotape of a videotape statement shall state the date and time that the statement was taken; shall identify the

persons present in the room and state whether they were present for the entire videotaping or only a portion of the videotaping; and shall show a time clock that is running during the taking of the statement.

(6) A videotape statement of a witness taken as provided in subsection (5) may be considered in court proceedings only for 1 or more of the following:

(a) It may be admitted as evidence at all pretrial proceedings, except that it may not be introduced at the preliminary examination instead of the live testimony of the witness.

(b) It may be admitted for impeachment purposes.

(c) It may be considered by the court in determining the sentence.

(7) In a videotape statement taken as provided in subsection (5), the questioning of the witness should be full and complete and shall include, but not be limited to, all of the following areas:

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

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

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

(d) The details of the offense or offenses.

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

(8) The defendant and, if represented, his or her attorney has the right to view and hear the videotape taken as provided in subsection (5) not less than 48 hours before the normally scheduled date for the defendant's preliminary examination.

(9) If, upon the motion of a party made before the preliminary examination, the court finds on the record that the special arrangements specified in subsection (10) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

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

(10) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (9), the court shall order both of the following:

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

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

(11) If upon the motion of any party made before trial the court finds on the record that the special arrangements specified in subsection (12) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

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

(12) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (11), the court shall order 1 or more of the following:

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

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

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

(13) If, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), (10), and (12), the court shall order that a videotape deposition of a witness shall be taken to be admitted at a court proceeding instead of the witness's live testimony.

(14) For purposes of the videotape deposition under subsection (13), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the court proceeding for which the videotape deposition is to be used, and the court shall order that the witness, during his or her testimony, shall not be confronted by the defendant but shall permit the defendant to hear the testimony of the witness and to consult with his or her attorney.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Harry R. Sullivan

Clerk of the House of Representatives.

Approved _____

Governor.