

HOUSE BILL No. 6569

October 15, 2008, Introduced by Rep. Sheen and referred to the Committee on Families and Children's Services.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 2163a (MCL 600.2163a), as amended by 2002 PA 604.

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 family independence agency, 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 (17) and
12 (18).

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

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

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

18 (2) This section only applies to prosecutions and proceedings
19 under section 136b, 145c, 520b to 520e, or 520g of the Michigan
20 penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to
21 750.520e, and 750.520g, or under former section 136 or 136a of the
22 Michigan penal code, 1931 PA 328.

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

27 (4) A witness who is called upon to testify shall be permitted

1 to have a support person sit with, accompany, or be in close
2 proximity to the witness during his or her testimony. A notice of
3 intent to use a support person shall name the support person,
4 identify the relationship the support person has with the witness,
5 and give notice to all parties to the proceeding that the witness
6 may request that the named support person sit with the witness when
7 the witness is called upon to testify during any stage of the
8 proceeding. The notice of intent to use a named support person
9 shall be filed with the court and shall be served upon all parties
10 to the proceeding. The court shall rule on a motion objecting to
11 the use of a named support person before the date at which the
12 witness desires to use the support person.

13 (5) A custodian of the videorecorded statement may take a
14 witness's videorecorded statement before the normally scheduled
15 date for the defendant's preliminary examination. The videorecorded
16 statement shall state the date and time that the statement was
17 taken; shall identify the persons present in the room and state
18 whether they were present for the entire ~~videorecording~~**VIDEO**
19 **RECORDING** or only a portion of the ~~videorecording~~**VIDEO RECORDING**;
20 and shall show a time clock that is running during the taking of
21 the videorecorded statement.

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

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

1 (b) It may be admitted for impeachment purposes.

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

4 (d) It may be used as a factual basis for a no contest plea or
5 to supplement a guilty plea.

6 **(E) IT MAY BE CONSIDERED BY THE COURT IN A PROBATION VIOLATION**
7 **HEARING.**

8 **(F) IT MAY BE CONSIDERED BY A HEARING OFFICER IN A HEARING**
9 **HELD UNDER SECTION 7(6) OF THE CHILD PROTECTION LAW, 1975 PA 238,**
10 **MCL 722.627.**

11 (7) In a videorecorded statement, the questioning of the
12 witness should be full and complete; shall be in accordance with
13 the forensic interview protocol implemented as required by section
14 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if
15 appropriate for the witness's developmental level, shall include,
16 but is not limited to, all of the following areas:

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

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

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

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

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

24 (8) A custodian of the videorecorded statement may release or
25 consent to the release or use of a videorecorded statement or
26 copies of a videorecorded statement to a law enforcement agency, an
27 agency authorized to prosecute the criminal case to which the

1 videorecorded statement relates, or an entity that is part of
2 county protocols established under section 8 of the child
3 protection law, 1975 PA 238, MCL 722.628. The defendant and, if
4 represented, his or her attorney has the right to view and hear a
5 videorecorded statement before the defendant's preliminary
6 examination. Upon request, the prosecuting attorney shall provide
7 the defendant and, if represented, his or her attorney with
8 reasonable access and means to view and hear the videorecorded
9 statement at a reasonable time before the defendant's pretrial or
10 trial of the case **OR HEARING HELD UNDER SECTION 7(6) OF THE CHILD**
11 **PROTECTION LAW, 1975 PA 238, MCL 722.627.** In preparation for a
12 court proceeding and under protective conditions, including, but
13 not limited to, a prohibition on the copying, release, display, or
14 circulation of the videorecorded statement, the court may order
15 that a copy of the videorecorded statement be given to the defense.
16 **THE ORDER SHALL SPECIFY WHO MAY VIEW THE VIDEORECORDED STATEMENT,**
17 **INDICATE THE TIME BY WHICH THE VIDEORECORDED STATEMENT IS REQUIRED**
18 **TO BE RETURNED, AND STATE A REASON FOR THE RELEASE OF THE**
19 **VIDEORECORDED STATEMENT.**

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

26 (10) Except as provided in this section, an individual,
27 including, but not limited to, a custodian of the videorecorded

1 statement, the witness, or the witness's parent, guardian, guardian
2 ad litem, or attorney, shall not release or consent to release a
3 videorecorded statement or a copy of a videorecorded statement.

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

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

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

22 (a) The age of the witness.

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

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

27 (14) If the court determines on the record that it is

1 necessary to protect the welfare of the witness and grants the
2 motion made under subsection (13), the court shall order both of
3 the following:

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

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

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

21 (a) The age of the witness.

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

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

26 (16) If the court determines on the record that it is
27 necessary to protect the welfare of the witness and grants the

1 motion made under subsection (15), the court shall order 1 or more
2 of the following:

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

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

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

18 (17) If, upon the motion of a party or in the court's
19 discretion, the court finds on the record that the witness is or
20 will be psychologically or emotionally unable to testify at a court
21 proceeding even with the benefit of the protections afforded the
22 witness in subsections (3), (4), (14), and (16), the court shall
23 order that a videorecorded deposition of a witness shall be taken
24 to be admitted at a court proceeding instead of the witness's live
25 testimony.

26 (18) For purposes of the videorecorded deposition under
27 subsection (17), the witness's examination and cross-examination

1 shall proceed in the same manner as if the witness testified at the
2 court proceeding for which the videorecorded deposition is to be
3 used, and the court shall order that the witness, during his or her
4 testimony, shall not be confronted by the defendant but shall
5 permit the defendant to hear the testimony of the witness and to
6 consult with his or her attorney.

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

9 (20) A person who intentionally releases a videorecorded
10 statement in violation of this section is guilty of a misdemeanor
11 punishable by imprisonment for not more than ~~93 days~~ **1 YEAR** or a
12 fine of not more than ~~\$500.00~~ **\$1,000.00**, or both.

13 **(21) THE COURT SHALL RETAIN A VIDEORECORDED STATEMENT MADE**
14 **UNDER THIS SECTION FOR NOT LESS THAN 1 YEAR AFTER FINAL RESOLUTION**
15 **OF THE CASE, INCLUDING, BUT NOT LIMITED TO, ALL APPELLATE**
16 **PROCEEDINGS, AND SHALL STORE THE VIDEORECORDED STATEMENT IN**
17 **COMPLIANCE WITH COUNTY PROTOCOLS ESTABLISHED UNDER SECTION 8(6) OF**
18 **THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.628.**

19 Enacting section 1. This amendatory act does not take effect
20 unless all of the following bills of the 94th Legislature are
21 enacted into law:

22 (a) Senate Bill No. ____ or House Bill No. 6566 (request no.
23 00186'07 *).

24 (b) Senate Bill No. ____ or House Bill No. 6568 (request no.
25 06536'08).