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BILL



ANALYSIS

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Senate Bill 454 (as enacted)
Sponsor: Senator Mike Nofs
Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors

PUBLIC ACT 170 of 2012

Date Completed: 7-24-13

CONTENT

The bill amended the Revised Judicature Act (RJA) to extend to vulnerable adults special accommodations in certain court proceedings for witnesses who are victims of certain offenses.

neglect, or exploitation because of a mental or physical impairment or advanced age.)

The bill took effect on June 19, 2012.

Special Accommodations

"Vulnerable adult" means that term as defined in Section 145m of the Michigan Penal Code. (Under that section, "vulnerable adult" means one or more of the following:

Section 2163a of the RJA allows special accommodations, such as using a videorecording of a witness statement and excluding the public from the courtroom, for a "witness", which means a person who is under 16 years of age or is 16 or older and has a developmental disability, and who is the alleged victim of an offense listed in the Act.

- An individual who is at least 18 years old who requires supervision or personal care or lacks the personal and social skills required to live independently due to age, developmental disability, mental illness, or physical disability.
- An adult, as defined in Section 3(1)(b) of the Adult Foster Care Facility Licensing Act.
- An adult, as defined in Section 11(b) of the Social Welfare Act.

The bill amended the definition of "witness" in Section 2163a to include a vulnerable adult who is the alleged victim of any of the following offenses:

Section 3(1)(b) of the Adult Foster Care Facility Licensing Act includes in the definition of "adult" a child placed in an adult foster care family home or small group home as authorized by the Department of Human Services.

- Home invasion (MCL 750.110a).
- Vulnerable adult abuse (MCL 750.145n).
- Violation of the Adult Foster Care Facility Licensing Act, rules promulgated under that Act, or related provisions of the Public Health Code, by an operator of an unlicensed facility or an employee or individual acting on behalf of an unlicensed facility, if the violation is a proximate cause of the death of a vulnerable adult (MCL 750.145o).
- Certain conduct by a caregiver or other person with authority over a vulnerable adult (MCL 750.145p).
- Embezzlement by an agent, servant or employee, or trustee, bailee, or custodian (MCL 750.174).

Under Section 11(b) of the Social Welfare Act, "adult" means a vulnerable person who is at least 18 years old who is suspected of being or believed to be abused, neglected, or exploited. "Vulnerable" means a condition in which an adult is unable to protect himself or herself from abuse,

- Obtaining or using a vulnerable adult's money or property, through fraud, deceit, misrepresentation, coercion, or unjust enrichment, to benefit the offender, knowing or having reason to know the vulnerable adult's status (750.174a).
- An assaultive crime, as that term is defined in Chapter X of the Code of Criminal Procedure (MCL 770.9a).

Excluding People from the Courtroom

Under the RJA, if, upon the motion of a party made before the preliminary examination or the trial, the court finds that excluding people not necessary to the proceedings from the courtroom and preventing the witness from directly viewing the defendant are necessary to protect the welfare of the witness, the court must order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court must consider all of the following:

- The age of the witness.
- The nature of the offense or offenses.
- The desire of the witness or his or her family or guardian to have the testimony taken in a room closed to the public.

Under the bill, the court also must consider the physical condition of the witness.

Testimony by Closed Circuit TV

If, upon a motion of a party or in the court's discretion, the court finds on the record that a witness is or will be psychologically or emotionally unable to testify in a court proceeding even with the benefit of the other special accommodations, the bill requires the court to order that the witness may testify outside of the physical presence of the defendant by closed circuit television or other electronic means that allows the trier of fact and the defendant to observe the witness when he or she is questioned by parties to the proceeding. Previously, in such an instance, the court was required to order that a videorecorded deposition of a witness be taken to be admitted at a court proceeding instead of the witness's live testimony. The bill deleted that requirement.

The bill also specifies that a videorecorded deposition may be considered in court proceedings only as provided by law.

MCL 600.2163a

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have an indeterminate, but likely negligible, fiscal impact on State and local government. To the extent that the bill increases the administrative workload of various courts, local jurisdictions may incur additional costs.

Fiscal Analyst: Dan O'Connor

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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.