

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 454

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,~~ **DEPARTMENT OF HUMAN SERVICES,**
4 investigating law enforcement agency, prosecuting attorney, or
5 department of attorney general or another person designated under
6 the county protocols established as required by section 8 of the
7 child protection law, 1975 PA 238, MCL 722.628.

8 (b) "Developmental disability" means that term as defined in
9 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a,

1 except that, for the purposes of implementing this section,
2 developmental disability includes only a condition that is
3 attributable to a mental impairment or to a combination of mental
4 and physical impairments and does not include a condition
5 attributable to a physical impairment unaccompanied by a mental
6 impairment.

7 (c) "Videorecorded statement" means a witness's statement
8 taken by a custodian of the videorecorded statement as provided in
9 subsection (5). Videorecorded statement does not include a
10 videorecorded deposition taken as provided in subsections ~~(17)~~-(18)
11 and ~~(18)~~-(19).

12 (D) "VULNERABLE ADULT" MEANS THAT TERM AS DEFINED IN SECTION
13 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M.

14 (E) ~~(d)~~-"Witness" means an alleged victim of an offense listed
15 under subsection (2) who is ~~either~~ **ANY** of the following:

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

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

19 (iii) **A VULNERABLE ADULT.**

20 (2) This section only applies to **THE FOLLOWING:**

21 (A) **FOR PURPOSES OF SUBSECTION (1) (E) (i) AND (ii),** prosecutions
22 and proceedings under section 136b, 145c, 520b to 520e, or 520g of
23 the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
24 750.520b to 750.520e, and 750.520g, or under former section 136 or
25 136a of the Michigan penal code, 1931 PA 328.

26 (B) **FOR PURPOSES OF SUBSECTION (1) (E) (iii), 1 OR MORE OF THE**
27 **FOLLOWING:**

1 (i) PROSECUTIONS AND PROCEEDINGS UNDER SECTION 110A, 145N,
2 145O, 145P, 174, OR 174A OF THE MICHIGAN PENAL CODE, 1931 PA 328,
3 MCL 750.110A, 750.145N, 750.145O, 750.145P, 750.174, AND 750.174A.

4 (ii) PROSECUTIONS AND PROCEEDINGS FOR AN ASSAULTIVE CRIME AS
5 THAT TERM IS DEFINED IN SECTION 9A OF CHAPTER X OF THE CODE OF
6 CRIMINAL PROCEDURE, 1927 PA 175, MCL 770.9A.

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

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

24 (5) A custodian of the videorecorded statement may take a
25 witness's videorecorded statement before the normally scheduled
26 date for the defendant's preliminary examination. The videorecorded
27 statement shall state the date and time that the statement was

1 taken; shall identify the persons present in the room and state
2 whether they were present for the entire videorecording or only a
3 portion of the videorecording; and shall show a time clock that is
4 running during the taking of the videorecorded statement.

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

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

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

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

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

16 **(7) A VIDEORECORDED DEPOSITION MAY BE CONSIDERED IN COURT**
17 **PROCEEDINGS ONLY AS PROVIDED BY LAW.**

18 **(8) ~~(7)~~**—In a videorecorded statement, the questioning of the
19 witness should be full and complete; shall be in accordance with
20 the forensic interview protocol implemented as required by section
21 8 of the child protection law, 1975 PA 238, MCL 722.628, **OR AS**
22 **OTHERWISE PROVIDED BY LAW**; and, if appropriate for the witness's
23 developmental level **OR MENTAL ACUITY**, shall include, but is not
24 limited to, all of the following areas:

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

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

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

1 accused.

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

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

5 (9) ~~(8)~~—A custodian of the videorecorded statement may release
6 or consent to the release or use of a videorecorded statement or
7 copies of a videorecorded statement to a law enforcement agency, an
8 agency authorized to prosecute the criminal case to which the
9 videorecorded statement relates, or an entity that is part of
10 county protocols established under section 8 of the child
11 protection law, 1975 PA 238, MCL 722.628, **OR AS OTHERWISE PROVIDED**
12 **BY LAW**. The defendant and, if represented, his or her attorney has
13 the right to view and hear a videorecorded statement before the
14 defendant's preliminary examination. Upon request, the prosecuting
15 attorney shall provide the defendant and, if represented, his or
16 her attorney with reasonable access and means to view and hear the
17 videorecorded statement at a reasonable time before the defendant's
18 pretrial or trial of the case. In preparation for a court
19 proceeding and under protective conditions, including, but not
20 limited to, a prohibition on the copying, release, display, or
21 circulation of the videorecorded statement, the court may order
22 that a copy of the videorecorded statement be given to the defense.

23 (10) ~~(9)~~—If authorized by the prosecuting attorney in the
24 county in which the videorecorded statement was taken, a
25 videorecorded statement may be used for purposes of training the
26 custodians of the videorecorded statement in that county on the
27 forensic interview protocol implemented as required by section 8 of

1 the child protection law, 1975 PA 238, MCL 722.628, **OR AS OTHERWISE**
2 **PROVIDED BY LAW.**

3 (11) ~~(10)~~—Except as provided in this section, an individual,
4 including, but not limited to, a custodian of the videorecorded
5 statement, the witness, or the witness's parent, guardian, guardian
6 ad litem, or attorney, shall not release or consent to release a
7 videorecorded statement or a copy of a videorecorded statement.

8 (12) ~~(11)~~—A videorecorded statement that becomes part of the
9 court record is subject to a protective order of the court for the
10 purpose of protecting the privacy of the witness.

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

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

26 (a) The age of the witness.

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

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

4 (D) THE PHYSICAL CONDITION OF THE WITNESS.

5 (15) ~~(14)~~—If the court determines on the record that it is
6 necessary to protect the welfare of the witness and grants the
7 motion made under subsection ~~(13)~~, **(14)**, the court shall order both
8 of the following:

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

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

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

26 (a) The age of the witness.

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

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

4 (D) THE PHYSICAL CONDITION OF THE WITNESS.

5 (17) ~~(16)~~—If the court determines on the record that it is
6 necessary to protect the welfare of the witness and grants the
7 motion made under subsection ~~(15)~~, **(16)**, the court shall order 1 or
8 more of the following:

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

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

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

24 (18) ~~(17)~~—If, upon the motion of a party or in the court's
25 discretion, the court finds on the record that the witness is or
26 will be psychologically or emotionally unable to testify at a court
27 proceeding even with the benefit of the protections afforded the

1 witness in subsections (3), (4), ~~(14)~~, **(15)**, and ~~(16)~~, **(17)**, the
2 court shall order that a ~~videorecorded deposition of a witness~~
3 ~~shall be taken to be admitted at a court proceeding instead of the~~
4 ~~witness's live testimony.~~ **THE WITNESS MAY TESTIFY OUTSIDE THE**
5 **PHYSICAL PRESENCE OF THE DEFENDANT BY CLOSED CIRCUIT TELEVISION OR**
6 **OTHER ELECTRONIC MEANS THAT ALLOWS THE WITNESS TO BE OBSERVED BY**
7 **THE TRIER OF FACT AND THE DEFENDANT WHEN QUESTIONED BY THE PARTIES.**

8 **(19)** ~~(18)~~ For purposes of the videorecorded deposition under
9 subsection ~~(17)~~, **(18)**, the witness's examination and cross-
10 examination shall proceed in the same manner as if the witness
11 testified at the court proceeding for which the videorecorded
12 deposition is to be used. ~~, and the court shall order that the~~
13 ~~witness, during his or her testimony, shall not be confronted by~~
14 ~~the defendant but~~ **THE COURT** shall permit the defendant to hear the
15 testimony of the witness and to consult with his or her attorney.

16 **(20)** ~~(19)~~ This section is in addition to other protections or
17 procedures afforded to a witness by law or court rule.

18 **(21)** ~~(20)~~ A person who intentionally releases a videorecorded
19 statement in violation of this section is guilty of a misdemeanor
20 punishable by imprisonment for not more than 93 days or a fine of
21 not more than \$500.00, or both.