

SENATE BILL No. 454

June 15, 2011, Introduced by Senators NOFS, BIEDA, EMMONS, COLBECK, ROCCA, YOUNG, SCHUITMAKER, JONES, HANSEN, HILDENBRAND, PROOS, KAHN and MARLEAU and referred to the Committee on Families, Seniors and Human 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:

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

(a) "Custodian of the videorecorded statement" means the
family independence agency, investigating law enforcement agency,
prosecuting attorney, or department of attorney general or another
person designated under the county protocols established as
required by section 8 of the child protection law, 1975 PA 238, MCL
722.628.

(b) "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.

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

(D) "VULNERABLE ADULT" MEANS 1 OR MORE OF THE FOLLOWING:

(i) AN ADULT AS DEFINED IN SECTION 11(B) OF THE SOCIAL WELFARE ACT, 1979 PA 218, MCL 400.11.

(ii) AN ADULT AS DEFINED IN SECTION 3(1)(B) OF THE ADULT FOSTER CARE FACILITY LICENSING ACT, 1979 PA 218, MCL 400.703.

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

(i) A person under 16 years of age.

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

(iii) A VULNERABLE ADULT.

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

(A) FOR PURPOSES OF SUBSECTION (1)(E)(i) AND (ii), 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.

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

3 (i) PROSECUTIONS AND PROCEEDINGS UNDER SECTION 110A, 145N,
4 145O, 145P, 174, OR 174A OF THE MICHIGAN PENAL CODE, 1931 PA 328,
5 MCL 750.110A, 750.145N, 750.145O, 750.145P, 750.174, AND 750.174A.

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

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

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

26 (5) A custodian of the videorecorded statement may take a
27 witness's videorecorded statement before the normally scheduled

1 date for the defendant's preliminary examination. The videorecorded
2 statement shall state the date and time that the statement was
3 taken; shall identify the persons present in the room and state
4 whether they were present for the entire videorecording or only a
5 portion of the videorecording; and shall show a time clock that is
6 running during the taking of the videorecorded statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (10) ~~(9)~~—If authorized by the prosecuting attorney in the
26 county in which the videorecorded statement was taken, a
27 videorecorded statement may be used for purposes of training the

1 custodians of the videorecorded statement in that county on the
2 forensic interview protocol implemented as required by section 8 of
3 the child protection law, 1975 PA 238, MCL 722.628, **OR AS OTHERWISE**
4 **PROVIDED BY LAW.**

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

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

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

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

1 (a) The age of the witness.

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

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

6 **(D) THE PHYSICAL CONDITION OF THE WITNESS.**

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

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

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

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

1 (a) The age of the witness.

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

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

6 **(D) THE PHYSICAL CONDITION OF THE WITNESS.**

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

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

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

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

26 **(18)** ~~(17)~~—If, upon the motion of a party or in the court's
27 discretion, the court finds on the record that the witness is or

1 will be psychologically or emotionally unable to testify at a court
2 proceeding even with the benefit of the protections afforded the
3 witness in subsections (3), (4), ~~(14)~~, ~~(15)~~, and ~~(16)~~, ~~(17)~~, the
4 court shall order that a videorecorded deposition of a witness
5 shall be taken to be admitted at a court proceeding instead of the
6 witness's live testimony.

7 (19) ~~(18)~~ For purposes of the videorecorded deposition under
8 subsection ~~(17)~~, ~~(18)~~, the witness's examination and cross-
9 examination shall proceed in the same manner as if the witness
10 testified at the court proceeding for which the videorecorded
11 deposition is to be used. ~~, and the court shall order that the~~
12 ~~witness, during his or her testimony, shall not be confronted by~~
13 ~~the defendant but~~ **THE COURT** shall permit the defendant to hear the
14 testimony of the witness and to consult with his or her attorney.

15 (20) ~~(19)~~ This section is in addition to other protections or
16 procedures afforded to a witness by law or court rule.

17 (21) ~~(20)~~ A person who intentionally releases a videorecorded
18 statement in violation of this section is guilty of a misdemeanor
19 punishable by imprisonment for not more than 93 days or a fine of
20 not more than \$500.00, or both.