

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5402

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2163a (MCL 600.2163a), as amended by 2018 PA
282.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (a) "Courtroom support dog" means a dog that has been trained
3 and evaluated as a support dog pursuant to the Assistance Dogs
4 International Standards for guide or service work and that is
5 repurposed and appropriate for providing emotional support to
6 children and adults within the court or legal system or that has
7 performed the duties of a courtroom support dog prior to ~~the~~
8 ~~effective date of the amendatory act that added this~~
9 ~~definition.~~ **SEPTEMBER 27, 2018.**

1 (b) "Custodian of the videorecorded statement" means the
2 department of health and human services, investigating law
3 enforcement agency, prosecuting attorney, or department of attorney
4 general or another person designated under the county protocols
5 established as required by section 8 of the child protection law,
6 1975 PA 238, MCL 722.628.

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

15 (D) "NONOFFENDING PARENT OR LEGAL GUARDIAN" MEANS A NATURAL
16 PARENT, STEPPARENT, ADOPTIVE PARENT, OR LEGALLY APPOINTED OR
17 DESIGNATED GUARDIAN OF A WITNESS WHO IS NOT ALLEGED TO HAVE
18 COMMITTED A VIOLATION OF THE LAWS OF THIS STATE, ANOTHER STATE, THE
19 UNITED STATES, OR A COURT ORDER THAT IS CONNECTED IN ANY MANNER TO
20 A WITNESS'S VIDEORECORDED STATEMENT.

21 (E) ~~(d)~~—"Videorecorded statement" means a witness's statement
22 taken by a custodian of the videorecorded statement as provided in
23 subsection (7). Videorecorded statement does not include a
24 videorecorded deposition taken as provided in subsections (20) and
25 (21).

26 (F) ~~(e)~~—"Vulnerable adult" means that term as defined in
27 section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

1 **(G)** ~~(f)~~—"Witness" means an alleged victim of an offense listed
2 under subsection (2) who is any of the following:

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

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

6 (iii) A vulnerable adult.

7 (2) This section only applies to the following:

8 (a) For purposes of subsection ~~(1)(f)(i)~~ **(1)(G)(i)** and (ii),
9 prosecutions and proceedings under section 136b, 145c, 520b to
10 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL
11 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g.

12 (b) For purposes of subsection ~~(1)(f)(iii)~~ **(1)(G)(iii)**, 1 or
13 more of the following matters:

14 (i) Prosecutions and proceedings under section 110a, 145n,
15 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,
16 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

17 (ii) Prosecutions and proceedings for an assaultive crime as
18 that term is defined in section 9a of chapter X of the code of
19 criminal procedure, 1927 PA 175, MCL 770.9a.

20 (3) If pertinent, the court must permit the witness to use
21 dolls or mannequins, including, but not limited to, anatomically
22 correct dolls or mannequins, to assist the witness in testifying on
23 direct and cross-examination.

24 (4) The court must permit a witness who is called upon to
25 testify to have a support person sit with, accompany, or be in
26 close proximity to the witness during his or her testimony. The
27 court must also permit a witness who is called upon to testify to

1 have a courtroom support dog and handler sit with, or be in close
2 proximity to, the witness during his or her testimony.

3 (5) A notice of intent to use a support person or courtroom
4 support dog is only required if the support person or courtroom
5 support dog is to be utilized during trial and is not required for
6 the use of a support person or courtroom support dog during any
7 other courtroom proceeding. A notice of intent under this
8 subsection must be filed with the court and must be served upon all
9 parties to the proceeding. The notice must name the support person
10 or courtroom support dog, identify the relationship the support
11 person has with the witness, if applicable, and give notice to all
12 parties that the witness may request that the named support person
13 or courtroom support dog sit with the witness when the witness is
14 called upon to testify during trial. A court must rule on a motion
15 objecting to the use of a named support person or courtroom support
16 dog before the date when the witness desires to use the support
17 person or courtroom support dog.

18 (6) An agency that supplies a courtroom support dog under this
19 section conveys all responsibility for the courtroom support dog to
20 the participating prosecutor's office or government entity in
21 charge of the local courtroom support dog program during the period
22 of time the participating prosecutor's office or government entity
23 in charge of the local program is utilizing the courtroom support
24 dog.

25 (7) A custodian of the videorecorded statement may take a
26 witness's videorecorded statement before the normally scheduled
27 date for the defendant's preliminary examination. The videorecorded

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

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

8 (a) It may be admitted as evidence at all pretrial
9 proceedings, except that it cannot be introduced at the preliminary
10 examination instead of the live testimony of the 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 (9) A videorecorded deposition may be considered in court
17 proceedings only as provided by law.

18 (10) In a videorecorded statement, the questioning of the
19 witness should be full and complete; must be in accordance with the
20 forensic interview protocol implemented as required by section 8 of
21 the child protection law, 1975 PA 238, MCL 722.628, or as otherwise
22 provided by law; and, if appropriate for the witness's
23 developmental level or mental acuity, must 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 (11) A custodian of the videorecorded statement may release or
6 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 (12) If authorized by the prosecuting attorney in the county
24 in which the videorecorded statement was taken, **AND WITH THE**
25 **CONSENT OF A MINOR WITNESS'S NONOFFENDING PARENT OR LEGAL GUARDIAN,**
26 a videorecorded statement may be used for purposes of training the
27 custodians of the videorecorded statement in that county, **OR FOR**

1 PURPOSES OF TRAINING PERSONS IN ANOTHER COUNTY WHO WOULD MEET THE
2 DEFINITION OF CUSTODIAN OF THE VIDEORECORDED STATEMENT HAD THE
3 VIDEORECORDED STATEMENT BEEN TAKEN IN THAT OTHER COUNTY, on the
4 forensic interview protocol implemented as required by section 8 of
5 the child protection law, 1975 PA 238, MCL 722.628, or as otherwise
6 provided by law. THE CONSENT REQUIRED UNDER THIS SUBSECTION MUST BE
7 OBTAINED THROUGH THE EXECUTION OF A WRITTEN, FULLY INFORMED, TIME-
8 LIMITED, AND REVOCABLE RELEASE OF INFORMATION. AN INDIVIDUAL
9 PARTICIPATING IN TRAINING UNDER THIS SUBSECTION IS ALSO REQUIRED TO
10 EXECUTE A NONDISCLOSURE AGREEMENT TO PROTECT WITNESS
11 CONFIDENTIALITY.

12 (13) Except as provided in this section, an individual,
13 including, but not limited to, a custodian of the videorecorded
14 statement, the witness, or the witness's parent, guardian, guardian
15 ad litem, or attorney, shall not release or consent to release a
16 videorecorded statement or a copy of a videorecorded statement.

17 (14) A videorecorded statement that becomes part of the court
18 record is subject to a protective order of the court for the
19 purpose of protecting the privacy of the witness.

20 (15) A videorecorded statement must not be copied or
21 reproduced in any manner except as provided in this section. A
22 videorecorded statement is exempt from disclosure under the freedom
23 of information act, 1976 PA 442, MCL 15.231 to 15.246, is not
24 subject to release under another statute, and is not subject to
25 disclosure under the Michigan court rules governing discovery. This
26 section does not prohibit the production or release of a transcript
27 of a videorecorded statement.

1 (16) If, upon the motion of a party made before the
2 preliminary examination, the court finds on the record that the
3 special arrangements specified in subsection (17) are necessary to
4 protect the welfare of the witness, the court must order those
5 special arrangements. In determining whether it is necessary to
6 protect the welfare of the witness, the court must consider all of
7 the following factors:

8 (a) The age of the witness.

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

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

13 (d) The physical condition of the witness.

14 (17) If the court determines on the record that it is
15 necessary to protect the welfare of the witness and grants the
16 motion made under subsection (16), the court must order both of the
17 following:

18 (a) That all persons not necessary to the proceeding must be
19 excluded during the witness's testimony from the courtroom where
20 the preliminary examination is held. Upon request by any person and
21 the payment of the appropriate fees, a transcript of the witness's
22 testimony must be made available.

23 (b) That the courtroom be arranged so that the defendant is
24 seated as far from the witness stand as is reasonable and not
25 directly in front of the witness stand in order to protect the
26 witness from directly viewing the defendant. The defendant's
27 position must be located so as to allow the defendant to hear and

1 see the witness and be able to communicate with his or her
2 attorney.

3 (18) If upon the motion of a party made before trial the court
4 finds on the record that the special arrangements specified in
5 subsection (19) are necessary to protect the welfare of the
6 witness, the court must order those special arrangements. In
7 determining whether it is necessary to protect the welfare of the
8 witness, the court must consider all of the following factors:

9 (a) The age of the witness.

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

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

14 (d) The physical condition of the witness.

15 (19) If the court determines on the record that it is
16 necessary to protect the welfare of the witness and grants the
17 motion made under subsection (18), the court must order 1 or more
18 of the following:

19 (a) That all persons not necessary to the proceeding be
20 excluded during the witness's testimony from the courtroom where
21 the trial is held. The witness's testimony must be broadcast by
22 closed-circuit television to the public in another location out of
23 sight of the witness.

24 (b) That the courtroom be arranged so that the defendant is
25 seated as far from the witness stand as is reasonable and not
26 directly in front of the witness stand in order to protect the
27 witness from directly viewing the defendant. The defendant's

1 position must be the same for all witnesses and must be located so
2 as to allow the defendant to hear and see all witnesses and be able
3 to communicate with his or her attorney.

4 (c) That a questioner's stand or podium be used for all
5 questioning of all witnesses by all parties and must be located in
6 front of the witness stand.

7 (20) If, upon the motion of a party or in the court's
8 discretion, the court finds on the record that the witness is or
9 will be psychologically or emotionally unable to testify at a court
10 proceeding even with the benefit of the protections afforded the
11 witness in subsections (3), (4), (17), and (19), the court must
12 order that the witness may testify outside the physical presence of
13 the defendant by closed circuit television or other electronic
14 means that allows the witness to be observed by the trier of fact
15 and the defendant when questioned by the parties.

16 (21) For purposes of the videorecorded deposition under
17 subsection (20), the witness's examination and cross-examination
18 must proceed in the same manner as if the witness testified at the
19 court proceeding for which the videorecorded deposition is to be
20 used. The court must permit the defendant to hear the testimony of
21 the witness and to consult with his or her attorney.

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

24 (23) A person who intentionally releases a videorecorded
25 statement in violation of this section is guilty of a misdemeanor
26 punishable by imprisonment for not more than 93 days or a fine of
27 not more than \$500.00, or both.

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.