

HOUSE BILL No. 5403

January 11, 2018, Introduced by Reps. Gay-Dagnogo, Yancey, Chang, Wittenberg, Pagan, Sabo, Liberati, Elder, Hertel, Green, Chirkun, Frederick, Hoadley, Yanez, Hammoud, Farrington, Garrett and Guerra and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 17b of chapter XIIA (MCL 712A.17b), as amended
by 2002 PA 625.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 17b. (1) As used in this section:

(a) "Custodian of the videorecorded statement" means the
~~family independence agency,~~ **DEPARTMENT**, investigating law
enforcement agency, prosecuting attorney, or department of attorney
general or another person designated under the county protocols

1 established as required by section 8 of the child protection law,
2 1975 PA 238, MCL 722.628.

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

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

17 (D) ~~(c)~~ "Videorecorded statement" means a witness's statement
18 taken by a custodian of the videorecorded statement as provided in
19 subsection (5). Videorecorded statement does not include a
20 videorecorded deposition taken as provided in subsections (16) and
21 (17).

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

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

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

27 (2) This section only applies to either of the following:

1 (a) A proceeding brought under section 2(a)(1) of this chapter
2 in which the alleged offense, if committed by an adult, would be a
3 felony under section 136b, 145c, 520b to 520e, or 520g of the
4 Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b
5 to 750.520e, and 750.520g. ~~7 or under former section 136 or 136a of~~
6 ~~the Michigan penal code, 1931 PA 328.~~

7 (b) A proceeding brought under section 2(b) of this chapter.

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

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

25 (5) A custodian of the videorecorded statement may take a
26 witness's videorecorded statement. The videorecorded statement
27 shall be admitted at all proceedings except the adjudication stage

1 instead of the live testimony of the witness. 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~~ **VIDEO**
5 **RECORDING** or only a portion of the ~~videorecording~~; **VIDEO RECORDING**;
6 and shall show a time clock that is running during the taking of
7 the statement.

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

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

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

16 (c) The relationship, if any, between the witness and the
17 respondent.

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

19 (e) The names of other persons known to the witness who may
20 have personal knowledge of the offense or offenses.

21 (7) A custodian of the videorecorded statement may release or
22 consent to the release or use of a videorecorded statement or
23 copies of a videorecorded statement to a law enforcement agency, an
24 agency authorized to prosecute the criminal case to which the
25 videorecorded statement relates, or an entity that is part of
26 county protocols established under section 8 of the child
27 protection law, 1975 PA 238, MCL 722.628. Each respondent and, if

1 represented, his or her attorney has the right to view and hear the
2 videorecorded statement at a reasonable time before it is offered
3 into evidence. In preparation for a court proceeding and under
4 protective conditions, including, but not limited to, a prohibition
5 on the copying, release, display, or circulation of the
6 videorecorded statement, the court may order that a copy of the
7 videorecorded statement be given to the defense.

8 (8) If authorized by the prosecuting attorney in the county in
9 which the videorecorded statement was taken **AND WITH THE CONSENT OF**
10 **A MINOR WITNESS'S NONOFFENDING PARENT OR LEGAL GUARDIAN IF THE**
11 **MINOR WITNESS IS LESS THAN 12 YEARS OF AGE, OR WITH THE CONSENT OF**
12 **THE WITNESS IF HE OR SHE IS MORE THAN 12 YEARS OF AGE,** a
13 videorecorded statement may be used for purposes of training the
14 custodians of the videorecorded statement in that county, **OR FOR**
15 **PURPOSES OF TRAINING PERSONS IN ANOTHER COUNTY THAT WOULD MEET THE**
16 **DEFINITION OF CUSTODIAN OF THE VIDEORECORDED STATEMENT HAD THE**
17 **VIDEORECORDED STATEMENT BEEN TAKEN IN THAT OTHER COUNTY,** on the
18 forensic interview protocol implemented as required by section 8 of
19 the child protection law, 1975 PA 238, MCL 722.628.

20 (9) Except as provided in this section, an individual,
21 including, but not limited to, a custodian of the videorecorded
22 statement, the witness, or the witness's parent, guardian, guardian
23 ad litem, or attorney, shall not release or consent to release a
24 videorecorded statement or a copy of a videorecorded statement.

25 (10) A videorecorded statement that becomes part of the court
26 record is subject to a protective order of the court for the
27 purpose of protecting the privacy of the witness.

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

9 (12) Except as otherwise provided in subsection (15), if, upon
10 the motion of a party or in the court's discretion, the court finds
11 on the record that psychological harm to the witness would occur if
12 the witness were to testify in the presence of the respondent at a
13 court proceeding or in a videorecorded deposition taken as provided
14 in subsection (13), the court shall order that the witness during
15 his or her testimony be shielded from viewing the respondent in
16 such a manner as to enable the respondent to consult with his or
17 her attorney and to see and hear the testimony of the witness
18 without the witness being able to see the respondent.

19 (13) In a proceeding brought under section 2(b) of this
20 chapter, if, upon the motion of a party or in the court's
21 discretion, the court finds on the record that psychological harm
22 to the witness would occur if the witness were to testify at the
23 adjudication stage, the court shall order to be taken a
24 videorecorded deposition of a witness that shall be admitted into
25 evidence at the adjudication stage instead of the live testimony of
26 the witness. The examination and cross-examination of the witness
27 in the videorecorded deposition shall proceed in the same manner as

1 permitted at the adjudication stage.

2 (14) In a proceeding brought under section 2(a)(1) of this
3 chapter in which the alleged offense, if committed by an adult,
4 would be a felony under section 136b, 145c, 520b to 520e, or 520g
5 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
6 750.520b to 750.520e, and 750.520g, ~~or under former section 136 or~~
7 ~~136a of the Michigan penal code, 1931 PA 328,~~ if, upon the motion
8 of a party made before the adjudication stage, the court finds on
9 the record that the special arrangements specified in subsection
10 (15) are necessary to protect the welfare of the witness, the court
11 shall order 1 or both of those special arrangements. In determining
12 whether it is necessary to protect the welfare of the witness, the
13 court shall consider both of the following:

14 (a) The age of the witness.

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

16 (15) If the court determines on the record that it is
17 necessary to protect the welfare of the witness and grants the
18 motion made under subsection (14), the court shall order 1 or both
19 of the following:

20 (a) In order to protect the witness from directly viewing the
21 respondent, the courtroom shall be arranged so that the respondent
22 is seated as far from the witness stand as is reasonable and not
23 directly in front of the witness stand. The respondent's position
24 shall be located so as to allow the respondent to hear and see all
25 witnesses and be able to communicate with his or her attorney.

26 (b) A questioner's stand or podium shall be used for all
27 questioning of all witnesses by all parties, and shall be located

1 in front of the witness stand.

2 (16) In a proceeding brought under section 2(a)(1) of this
3 chapter in which the alleged offense, if committed by an adult,
4 would be a felony under section 136b, 145c, 520b to 520e, or 520g
5 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
6 750.520b to 750.520e, and 750.520g, ~~or under former section 136 or~~
7 ~~136a of the Michigan penal code, 1931 PA 328,~~ if, upon the motion
8 of a party or in the court's discretion, the court finds on the
9 record that the witness is or will be psychologically or
10 emotionally unable to testify at a court proceeding even with the
11 benefit of the protections afforded the witness in subsections (3),
12 (4), and (15), the court shall order that a videorecorded
13 deposition of a witness shall be taken to be admitted at the
14 adjudication stage instead of the witness's live testimony.

15 (17) For purposes of the videorecorded deposition under
16 subsection (16), the witness's examination and cross-examination
17 shall proceed in the same manner as if the witness testified at the
18 adjudication stage, and the court shall order that the witness,
19 during his or her testimony, shall not be confronted by the
20 respondent but shall permit the respondent to hear the testimony of
21 the witness and to consult with his or her attorney.

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

24 (19) 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.