

Act No. 343  
Public Acts of 2018  
Approved by the Governor  
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**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

**Introduced by Reps. Farrington, Frederick, Marino, Gay-Dagnogo, Garrett and Guerra**

# **ENROLLED HOUSE BILL No. 5402**

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending section 2163a (MCL 600.2163a), as amended by 2018 PA 282.

*The People of the State of Michigan enact:*

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

(a) “Courtroom support dog” means a dog that has been trained and evaluated as a support dog pursuant to the Assistance Dogs International Standards for guide or service work and that is repurposed and appropriate for providing emotional support to children and adults within the court or legal system or that has performed the duties of a courtroom support dog prior to September 27, 2018.

(b) “Custodian of the videorecorded statement” means the department of health and human services, 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.

(c) “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.

(d) “Nonoffending parent or legal guardian” means a natural parent, stepparent, adoptive parent, or legally appointed or designated guardian of a witness who is not alleged to have committed a violation of the laws of this state, another state, the United States, or a court order that is connected in any manner to a witness’s videorecorded statement.

(e) “Videorecorded statement” means a witness’s statement taken by a custodian of the videorecorded statement as provided in subsection (7). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (20) and (21).

(f) “Vulnerable adult” means that term as defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

(g) “Witness” means an alleged victim of an offense listed under subsection (2) who is 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)(g)(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.

(b) For purposes of subsection (1)(g)(iii), 1 or more of the following matters:

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

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

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

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

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

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

(7) A custodian of the videorecorded statement may take a witness's videorecorded statement before the normally scheduled date for the defendant's preliminary examination. The videorecorded statement must state the date and time that the statement was taken; must identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and must show a time clock that is running during the taking of the videorecorded statement.

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

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

(b) It may be admitted for impeachment purposes.

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

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

(9) A videorecorded deposition may be considered in court proceedings only as provided by law.

(10) In a videorecorded statement, the questioning of the witness should be full and complete; must be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628, or as otherwise provided by law; and, if appropriate for the witness's developmental level or mental acuity, must include, but is not limited to, all of the following areas:

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

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

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

(d) The details of the offense or offenses.

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

(11) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628, or as otherwise provided by law. The defendant

and, if represented, his or her attorney has the right to view and hear a videorecorded statement before the defendant's preliminary examination. Upon request, the prosecuting attorney shall provide the defendant and, if represented, his or her attorney with reasonable access and means to view and hear the videorecorded statement at a reasonable time before the defendant's pretrial or trial of the case. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(12) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, and with the consent of a minor witness's nonoffending parent or legal guardian, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county, or for purposes of training persons in another county who would meet the definition of custodian of the videorecorded statement had the videorecorded statement been taken in that other county, on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628, or as otherwise provided by law. The consent required under this subsection must be obtained through the execution of a written, fully informed, time-limited, and revocable release of information. An individual participating in training under this subsection is also required to execute a nondisclosure agreement to protect witness confidentiality.

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

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

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

(16) If, upon the motion of a party made before the preliminary examination, the court finds on the record that the special arrangements specified in subsection (17) 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 factors:

- (a) The age of the witness.
- (b) The nature of the offense or offenses.
- (c) The desire of the witness or the witness's family or guardian to have the testimony taken in a room closed to the public.
- (d) The physical condition of the witness.

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

- (a) That all persons not necessary to the proceeding must be excluded during the witness's testimony from the courtroom where the preliminary examination is held. Upon request by any person and the payment of the appropriate fees, a transcript of the witness's testimony must be made available.
- (b) That the courtroom be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand in order to protect the witness from directly viewing the defendant. The defendant's position must be located so as to allow the defendant to hear and see the witness and be able to communicate with his or her attorney.

(18) If upon the motion of a party made before trial the court finds on the record that the special arrangements specified in subsection (19) 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 factors:

- (a) The age of the witness.
- (b) The nature of the offense or offenses.
- (c) The desire of the witness or the witness's family or guardian to have the testimony taken in a room closed to the public.
- (d) The physical condition of the witness.

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

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

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

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

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

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

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

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

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

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor