

SENATE BILL NO. 451

May 18, 2021, Introduced by Senators STAMAS, SCHMIDT, HORN, LASATA and JOHNSON
and referred to the Committee on Judiciary and Public Safety.

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
343.

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

1 repurposed and appropriate for providing emotional support to
2 children and adults within the court or legal system or that has
3 performed the duties of a courtroom support dog prior to September
4 27, 2018.

5 (b) "Custodian of the videorecorded statement" means the
6 ~~department of health and human services,~~ investigating law
7 enforcement agency, prosecuting attorney, or department of attorney
8 general or another person designated under the county protocols
9 established as required by section 8 of the child protection law,
10 1975 PA 238, MCL 722.628.

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

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

25 (e) "Videorecorded statement" means a witness's statement
26 taken by a custodian of the videorecorded statement as provided in
27 subsection (7). Videorecorded statement does not include a
28 videorecorded deposition taken as provided in subsections (20) and
29 (21).

1 (f) "Vulnerable adult" means that term as defined in section
2 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

3 (g) "Witness" means an alleged victim of an offense listed
4 under subsection (2) who is any of the following:

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

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

8 (iii) A vulnerable adult.

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

10 (a) For purposes of subsection (1) (g) (i) and (ii), prosecutions
11 and proceedings under section 136b, 145c, 520b to 520e, or 520g of
12 the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
13 750.520b to 750.520e, and 750.520g.

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

16 (i) Prosecutions and proceedings under section 110a, 145n,
17 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,
18 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

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

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

26 (4) The court must permit a witness who is called upon to
27 testify to have a support person sit with, accompany, or be in
28 close proximity to the witness during his or her testimony. The
29 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
28 statement must state the date and time that the statement was taken
29 ~~; must identify the persons present in the room and state whether~~

1 ~~they were present for the entire videorecording or only a portion~~
 2 ~~of the videorecording;~~ and must show a time clock that is running
 3 during the taking of the videorecorded statement.

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

6 (a) ~~It may be admitted~~ **If the statement was taken according to**
 7 **the forensic interviewing protocol implemented as required under**
 8 **section 8 of the child protection law, 1975 PA 238, MCL 722.628, it**
 9 **may be admitted** as evidence at all pretrial proceedings. ~~except~~
 10 ~~that it cannot be introduced at the preliminary examination instead~~
 11 ~~of the live testimony of the witness.~~

12 ~~(b) It may be admitted for impeachment purposes.~~

13 (b) ~~(c) It may be considered~~ **Consideration** by the court in
 14 determining the sentence.

15 (c) ~~(d) It may be used~~ **Use** as a factual basis for a no contest
 16 plea or to supplement a guilty plea.

17 (d) **Consideration by a hearing officer in a hearing held under**
 18 **section 7(6) of the child protection law, 1975 PA 238, MCL 722.627.**

19 (e) **Admission as evidence at trial, so long as the admission**
 20 **is consistent with any requirements of the confrontation clause of**
 21 **Amendment VI to the Constitution of the United States and if the**
 22 **statement was taken according to the forensic interviewing protocol**
 23 **implemented as required under section 8 of the child protection**
 24 **law, 1975 PA 238, MCL 722.628.**

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

27 (10) In a videorecorded statement, the questioning of the
 28 witness should be full and complete; must be in accordance with the
 29 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; and, if appropriate for the witness's
3 developmental level or mental acuity, must include, but is not
4 limited to, all of the following areas:

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

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

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

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

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

12 (11) A custodian of the videorecorded statement may release or
13 consent to the release or use of a videorecorded statement or
14 copies of a videorecorded statement to a law enforcement agency, an
15 agency authorized to prosecute the criminal case to which the
16 videorecorded statement relates, or an entity that is part of
17 county protocols established under section 8 of the child
18 protection law, 1975 PA 238, MCL 722.628, or as otherwise provided
19 by law. The defendant and, if represented, his or her attorney has
20 the right to view and hear a videorecorded statement before the
21 defendant's preliminary examination. Upon request, the prosecuting
22 attorney shall provide the defendant and, if represented, his or
23 her attorney with reasonable access and means to view and hear the
24 videorecorded statement at a reasonable time **but in no event less**
25 **than 10 days** before the defendant's pretrial or trial of the case,
26 **or hearing held under section 7(6) of the child protection law,**
27 **1975 PA 238, MCL 722.627.** In preparation for a court proceeding and
28 under protective conditions, including, but not limited to, a
29 prohibition on the copying, release, display, or circulation of the

1 videorecorded statement, the court may order that a copy of the
2 videorecorded statement be given to the defense. **The protective**
3 **conditions must include a prohibition on defense counsel providing**
4 **a defendant with his or her own copy of the videorecorded statement**
5 **or a prohibition on a defendant who is proceeding pro se from**
6 **receiving or retaining his or her own copy of the videorecorded**
7 **statement. The order shall specify who may view the videorecorded**
8 **statement, indicate the time by which the videorecorded statement**
9 **is required to be returned, and state a reason for the release of**
10 **the videorecorded statement. The order may include any other**
11 **protective conditions the court considers necessary.**

12 (12) If authorized by the prosecuting attorney in the county
13 in which the videorecorded statement was taken, and with the
14 consent of a minor witness's nonoffending parent or legal guardian,
15 a videorecorded statement may be used for purposes of training the
16 custodians of the videorecorded statement in that county, or for
17 purposes of training persons in another county who would meet the
18 definition of custodian of the videorecorded statement had the
19 videorecorded statement been taken in that other county, on 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. The consent required under this subsection must be
23 obtained through the execution of a written, fully informed, time-
24 limited, and revocable release of information. An individual
25 participating in training under this subsection is also required to
26 execute a nondisclosure agreement to protect witness
27 confidentiality.

28 (13) Except as provided in this section, an individual,
29 including, but not limited to, a custodian of the videorecorded

1 statement, the witness, or the witness's parent, guardian, guardian
2 ad litem, or attorney, shall not release or consent to release a
3 videorecorded statement or a copy of a videorecorded statement.

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

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

15 (16) If, upon the motion of a party made before the
16 preliminary examination, the court finds on the record that the
17 special arrangements specified in subsection (17) are necessary to
18 protect the welfare of the witness, the court must order those
19 special arrangements. In determining whether it is necessary to
20 protect the welfare of the witness, the court must consider all of
21 the following factors:

22 (a) The age of the witness.

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

24 (c) The desire of the witness or the witness's family or
25 guardian to have the testimony taken in a room closed to the
26 public.

27 (d) The physical condition of the witness.

28 (17) If the court determines on the record that it is
29 necessary to protect the welfare of the witness and grants the

1 motion made under subsection (16), the court must order both of the
2 following:

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

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

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

21 (a) The age of the witness.

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

23 (c) The desire of the witness or the witness's family or
24 guardian to have the testimony taken in a room closed to the
25 public.

26 (d) The physical condition of the witness.

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

1 of the following:

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

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

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

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

26 (21) For purposes of the videorecorded deposition under
27 subsection (20), the witness's examination and cross-examination
28 must proceed in the same manner as if the witness testified at the
29 court proceeding for which the videorecorded deposition is to be

1 used. The court must permit the defendant to hear the testimony of
2 the witness and to consult with his or her attorney.

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

5 (23) A person who intentionally releases a videorecorded
6 statement in violation of this section is guilty of a misdemeanor
7 punishable by imprisonment for not more than ~~93 days~~ **1 year** or a
8 fine of not more than ~~\$500.00,~~ **\$2,500,00**, or both. **This section**
9 **does not affect the ability to investigate, arrest, prosecute, or**
10 **convict an individual for any other violation of the law of this**
11 **state.**

12 (24) A videorecorded statement made under this section must
13 adhere to the forensic interviewing protocol implemented as
14 required under section 8 of the child protection law, 1975 PA 238,
15 MCL 722.628, and must be retained under the county protocols
16 established under section 8 of the child protection law, 1975 PA
17 238, MCL 722.628.

18 (25) The department of health and human services is not
19 responsible for storing or retaining a videorecorded statement
20 under this section.

21 (26) Failure to make a videorecording of an interview under
22 this section, including failure to record the interview in its
23 entirety, does not prevent a forensic interviewer or other witness
24 present during the taking of the videorecorded statement from
25 testifying in court as to the circumstances and content of the
26 individual's statement if the court determines that the testimony
27 is otherwise admissible.

28 Enacting section 1. This amendatory act takes effect 180 days
29 after the date it is enacted into law.