

SENATE BILL NO. 248

April 11, 2023, Introduced by Senators LAUWERS, SANTANA, MCDONALD RIVET, WOJNO and CHANG and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1961 PA 236, entitled "Revised judiciary 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
5 repurposed and appropriate for providing emotional support to

1 children and adults within the court or legal system or that has
2 performed the duties of a courtroom support dog ~~prior to~~**before**
3 September 27, 2018.

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

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

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

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

29 (f) "Vulnerable adult" means that term as defined in section

1 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

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

4 (i) ~~A~~**For the purpose of being eligible for a support person or**
5 **other considerations under this section, an individual** under 16
6 years of age **or 16 years of age or older with a developmental**
7 **disability.**

8 (ii) ~~A person 16~~**For the purpose of being eligible for a**
9 **support dog under this section, an individual under 18 years of age**
10 **or 18** years of age or older with a developmental disability.

11 (iii) A vulnerable adult.

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

13 (a) For purposes of subsection (1) (g) (i) and (ii), prosecutions
14 and proceedings under section 136b, 145c, 520b to 520e, or 520g of
15 the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
16 750.520b to 750.520e, and 750.520g.

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

19 (i) Prosecutions and proceedings under section 110a, 145n,
20 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,
21 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

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

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

29 (4) The court ~~must~~**shall** permit a witness who is called upon

1 to testify to have a support person sit with, accompany, or be in
2 close proximity to the witness during ~~his or her~~ **the witness's**
3 testimony. The court ~~must~~ **shall** also permit a witness who is called
4 upon to testify to have a courtroom support dog and **its** handler sit
5 with, or be in close proximity to, the witness during ~~his or her~~
6 **the witness's** testimony.

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

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

29 (7) A custodian of the videorecorded statement may take a

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

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

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

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

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

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

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

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

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

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

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

24 (12) If authorized by the prosecuting attorney in the county
25 in which the videorecorded statement was taken, and with the
26 consent of a minor witness's nonoffending parent or legal guardian,
27 a videorecorded statement may be used for purposes of training the
28 custodians of the videorecorded statement in that county, or for
29 purposes of training persons in another county who would meet the

1 definition of custodian of the videorecorded statement had the
2 videorecorded statement been taken in that other county, on the
3 forensic interview protocol implemented as required by section 8 of
4 the child protection law, 1975 PA 238, MCL 722.628, or as otherwise
5 provided by law. The consent required under this subsection must be
6 obtained through the execution of a written, fully informed, time-
7 limited, and revocable release of information. An individual
8 participating in training under this subsection is also required to
9 execute a nondisclosure agreement to protect witness
10 confidentiality.

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

28 (16) If, upon the motion of a party made before the
29 preliminary examination, the court finds on the record that the

1 special arrangements specified in subsection (17) are necessary to
2 protect the welfare of the witness, the court ~~must~~**shall** order
3 those special arrangements. In determining whether it is necessary
4 to protect the welfare of the witness, the court ~~must~~**shall**
5 consider all of the following factors:

6 (a) The age of the witness.

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

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

11 (d) The physical condition of the witness.

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

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

21 (b) That the courtroom be arranged so that the defendant is
22 seated as far from the witness stand as is reasonable and not
23 directly in front of the witness stand in order to protect the
24 witness from directly viewing the defendant. The defendant's
25 position must be located so as to allow the defendant to hear and
26 see the witness and be able to communicate with ~~his or her~~**the**
27 **defendant's** attorney.

28 (18) If upon the motion of a party made before trial the court
29 finds on the record that the special arrangements specified in

1 subsection (19) are necessary to protect the welfare of the
2 witness, the court ~~must~~**shall** order those special arrangements. In
3 determining whether it is necessary to protect the welfare of the
4 witness, the court ~~must~~**shall** consider all of the following
5 factors:

6 (a) The age of the witness.

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

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

11 (d) The physical condition of the witness.

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

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

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

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

1 front of the witness stand.

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

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

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

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

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