

SENATE BILL NO. 813

April 10, 2024, Introduced by Senator CHERRY and referred to the Committee on Civil Rights, 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~~**shall** permit the witness to
23 use dolls or mannequins, including, but not limited to,
24 anatomically correct dolls or mannequins, to assist the witness in
25 testifying on direct and cross-examination.

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

1 upon to testify to have a courtroom support dog and handler sit
2 with, or be in close proximity to, the witness during ~~his or her~~
3 **the witness's** testimony.

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

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

26 (7) A custodian of the videorecorded statement may take a
27 witness's videorecorded statement before the normally scheduled
28 date for the defendant's preliminary examination. The videorecorded
29 statement must state the date and time that the statement was taken

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

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

7 (a) It may be admitted as evidence at all pretrial
8 proceedings. ~~;~~ ~~except that it cannot be introduced at the~~
9 ~~preliminary examination instead of the live testimony of the~~
10 ~~witness.~~

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

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

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

16 (d) **Admission as evidence at trial, so long as the admission**
17 **is consistent with any requirements of the confrontation clause of**
18 **Amendment VI to the Constitution of the United States.**

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

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

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

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

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

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

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

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

1 may view the videorecorded statement, indicate the time by which
2 the videorecorded statement is required to be returned, and state a
3 reason for the release of the videorecorded statement. The order
4 may include any other protective conditions the court considers
5 necessary.

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

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

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

1 (15) A videorecorded statement must 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 (16) If, upon the motion of a party made before the
10 preliminary examination, the court finds on the record that the
11 special arrangements specified in subsection (17) are necessary to
12 protect the welfare of the witness, the court ~~must~~**shall** order
13 those special arrangements. In determining whether it is necessary
14 to protect the welfare of the witness, the court ~~must~~**shall**
15 consider all of the following factors:

16 (a) The age of the witness.

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

18 (c) The desire of the witness or the witness's family or
19 guardian to have the testimony taken in a room closed to the
20 public.

21 (d) The physical condition of the witness.

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

26 (a) That all persons not necessary to the proceeding must be
27 excluded during the witness's testimony from the courtroom where
28 the preliminary examination is held. Upon request by any person and
29 the payment of the appropriate fees, a transcript of the witness's

1 testimony must be made available.

2 (b) That the courtroom be arranged so that the defendant is
3 seated as far from the witness stand as is reasonable and not
4 directly in front of the witness stand in order to protect the
5 witness from directly viewing the defendant. The defendant's
6 position must be located so as to allow the defendant to hear and
7 see the witness and be able to communicate with ~~his or her~~ **the**
8 **defendant's** attorney.

9 (18) If upon the motion of a party made before trial the court
10 finds on the record that the special arrangements specified in
11 subsection (19) are necessary to protect the welfare of the
12 witness, the court ~~must~~ **shall** order those special arrangements. In
13 determining whether it is necessary to protect the welfare of the
14 witness, the court ~~must~~ **shall** consider all of the following
15 factors:

16 (a) The age of the witness.

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

18 (c) The desire of the witness or the witness's family or
19 guardian to have the testimony taken in a room closed to the
20 public.

21 (d) The physical condition of the witness.

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

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

1 sight of the witness.

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

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

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

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

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

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

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

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

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

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