

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5402**

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  
282.

**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  
6 children and adults within the court or legal system or that has  
7 performed the duties of a courtroom support dog prior to ~~the~~  
8 ~~effective date of the amendatory act that added this~~  
9 ~~definition.~~ **SEPTEMBER 27, 2018.**

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

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

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

21 (E) ~~(d)~~—"Videorecorded statement" means a witness's statement  
22 taken by a custodian of the videorecorded statement as provided in  
23 subsection (7). Videorecorded statement does not include a  
24 videorecorded deposition taken as provided in subsections (20) and  
25 (21).

26 (F) ~~(e)~~—"Vulnerable adult" means that term as defined in  
27 section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

1           **(G)** ~~(F)~~—"Witness" means an alleged victim of an offense listed  
2 under subsection (2) who is any of the following:

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

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

6           (iii) A vulnerable adult.

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

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

12           (b) For purposes of subsection ~~(1)(F)(iii)~~ **(1)(G)(iii)**, 1 or  
13 more of the following matters:

14           (i) Prosecutions and proceedings under section 110a, 145n,  
15 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,  
16 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

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

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

24           (4) The court must permit a witness who is called upon to  
25 testify to have a support person sit with, accompany, or be in  
26 close proximity to the witness during his or her testimony. The  
27 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

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

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

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

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

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

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

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

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

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

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

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

23 (12) If authorized by the prosecuting attorney in the county  
24 in which the videorecorded statement was taken, **AND WITH THE**  
25 **CONSENT OF A MINOR WITNESS'S NONOFFENDING PARENT OR LEGAL GUARDIAN,**  
26 a videorecorded statement may be used for purposes of training the  
27 custodians of the videorecorded statement in that county, **OR FOR**

1 PURPOSES OF TRAINING PERSONS IN ANOTHER COUNTY WHO WOULD MEET THE  
2 DEFINITION OF CUSTODIAN OF THE VIDEORECORDED STATEMENT HAD THE  
3 VIDEORECORDED STATEMENT BEEN TAKEN IN THAT OTHER COUNTY, on the  
4 forensic interview protocol implemented as required by section 8 of  
5 the child protection law, 1975 PA 238, MCL 722.628, or as otherwise  
6 provided by law. THE CONSENT REQUIRED UNDER THIS SUBSECTION MUST BE  
7 OBTAINED THROUGH THE EXECUTION OF A WRITTEN, FULLY INFORMED, TIME-  
8 LIMITED, AND REVOCABLE RELEASE OF INFORMATION. AN INDIVIDUAL  
9 PARTICIPATING IN TRAINING UNDER THIS SUBSECTION IS ALSO REQUIRED TO  
10 EXECUTE A NONDISCLOSURE AGREEMENT TO PROTECT WITNESS  
11 CONFIDENTIALITY.

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

1           (16) If, upon the motion of a party made before the  
2 preliminary examination, the court finds on the record that the  
3 special arrangements specified in subsection (17) are necessary to  
4 protect the welfare of the witness, the court must order those  
5 special arrangements. In determining whether it is necessary to  
6 protect the welfare of the witness, the court must consider all of  
7 the following factors:

8           (a) The age of the witness.

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

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

13           (d) The physical condition of the witness.

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

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

23           (b) That the courtroom be arranged so that the defendant is  
24 seated as far from the witness stand as is reasonable and not  
25 directly in front of the witness stand in order to protect the  
26 witness from directly viewing the defendant. The defendant's  
27 position must be located so as to allow the defendant to hear and



1 see the witness and be able to communicate with his or her  
2 attorney.

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

9 (a) The age of the witness.

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

11 (c) The desire of the witness or the witness's family or  
12 guardian to have the testimony taken in a room closed to the  
13 public.

14 (d) The physical condition of the witness.

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

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

24 (b) That the courtroom be arranged so that the defendant is  
25 seated as far from the witness stand as is reasonable and not  
26 directly in front of the witness stand in order to protect the  
27 witness from directly viewing the defendant. The defendant's

1 position must be the same for all witnesses and must be located so  
2 as to allow the defendant to hear and see all witnesses and be able  
3 to communicate with his or her attorney.

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

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

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

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

24 (23) 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.