

SENATE BILL NO. 620

October 31, 2019, Introduced by Senators THEIS, RUNESTAD and IRWIN and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 17b of chapter XIIA (MCL 712A.17b), as amended by 2018 PA 344.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 CHAPTER XIIA
2 Sec. 17b. (1) As used in this section:
3 (a) "Custodian of the videorecorded statement" means the

1 investigating law enforcement agency, prosecuting attorney, or
2 department of attorney general or another person designated under
3 the county protocols established as required by section 8 of the
4 child protection law, 1975 PA 238, MCL 722.628.

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

13 (c) "Nonoffending parent or legal guardian" means a natural
14 parent, stepparent, adoptive parent, or legally appointed or
15 designated guardian of a witness who is not alleged to have
16 committed a violation of the laws of this state, another state, the
17 United States, or a court order that is connected in any manner to
18 a witness's videorecorded statement.

19 (d) "Videorecorded statement" means a witness's statement
20 taken by a custodian of the videorecorded statement as provided in
21 subsection (5). Videorecorded statement does not include a
22 videorecorded deposition taken as provided in subsections (16) and
23 (17).

24 (e) "Witness" means an alleged victim of an offense listed
25 under subsection (2) who is either of the following:

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

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

29 (2) This section only applies to ~~either~~ **1 or more** of the

1 following:

2 (a) A proceeding brought under section 2(a)(1) of this chapter
3 in which the alleged offense, if committed by an adult, would be a
4 felony under section 136b, 145c, 520b to 520e, or 520g of the
5 Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b
6 to 750.520e, and 750.520g.

7 (b) A proceeding brought under section 2(b) of this chapter.

8 **(c) A proceeding brought under section 7(6) of the child**
9 **protection law, 1975 PA 238, MCL 722.627.**

10 (3) If pertinent, the witness ~~shall~~**must** be permitted the use
11 of dolls or mannequins, including, but not limited to, anatomically
12 correct dolls or mannequins, to assist the witness in testifying on
13 direct and cross-examination.

14 (4) A witness who is called upon to testify ~~shall be permitted~~
15 ~~to~~**may** have a support person sit with, accompany, or be in close
16 proximity to the witness during his or her testimony. A notice of
17 intent to use a support person ~~shall~~**must** name the support person,
18 identify the relationship the support person has with the witness,
19 and give notice to all parties to the proceeding that the witness
20 may request that the named support person sit with the witness when
21 the witness is called upon to testify during any stage of the
22 proceeding. The notice of intent to use a named support person
23 ~~shall~~**must** be filed with the court and ~~shall be served upon~~**on** all
24 parties to the proceeding. The court shall rule on a motion
25 objecting to the use of a named support person before the date at
26 which the witness desires to use the support person.

27 (5) A custodian of the videorecorded statement may take a
28 witness's videorecorded statement. The videorecorded statement
29 shall be admitted at all proceedings except the adjudication stage

1 instead of the live testimony of the witness. The videorecorded
2 statement ~~shall~~**must** state the date and time that the statement was
3 taken; ~~shall~~**must** identify the persons present in the room and
4 state whether they were present for the entire video recording or
5 only a portion of the video recording; and ~~shall~~**must** show a time
6 clock that is running during the taking of the statement.

7 (6) In a videorecorded statement, the questioning of the
8 witness ~~should~~**must** be full and complete; ~~shall~~**must** be in
9 accordance with the forensic interview protocol implemented as
10 required by section 8 of the child protection law, 1975 PA 238, MCL
11 722.628; and, if appropriate for the witness's developmental level,
12 ~~shall~~**must** include, but ~~need~~**is** not ~~be~~ limited to, all of the
13 following areas:

- 14 (a) The time and date of the alleged offense or offenses.
15 (b) The location and area of the alleged offense or offenses.
16 (c) The relationship, if any, between the witness and the
17 respondent.
18 (d) The details of the offense or offenses.
19 (e) The names of other persons known to the witness who may
20 have personal knowledge of the offense or offenses.

21 (7) A custodian of the videorecorded statement may release or
22 consent to the release or use of a videorecorded statement or
23 copies of a videorecorded statement to a law enforcement agency, an
24 agency authorized to prosecute the criminal case to which the
25 videorecorded statement relates, or an entity that is part of
26 county protocols established under section 8 of the child
27 protection law, 1975 PA 238, MCL 722.628. Each respondent and, if
28 represented, his or her attorney has the right to view and hear the
29 videorecorded statement at a reasonable time before it is offered

1 into evidence. In preparation for a court proceeding and under
2 protective conditions, including, but not limited to, a prohibition
3 on the copying, release, display, or circulation of the
4 videorecorded statement, the court may order that a copy of the
5 videorecorded statement be given to the defense. **The order shall**
6 **specify who shall view the videorecorded statement, indicate the**
7 **time by which the videorecorded statement is required to be**
8 **returned, and state a reason for the release of the videorecorded**
9 **statement.**

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

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

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

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

12 (12) Except as otherwise provided in subsection (15), if, upon
13 the motion of a party or in the court's discretion, the court finds
14 on the record that psychological harm to the witness would occur if
15 the witness were to testify in the presence of the respondent at a
16 court proceeding or in a videorecorded deposition taken as provided
17 in subsection (13), the court shall order that the witness during
18 his or her testimony be shielded from viewing the respondent in
19 ~~such a manner as to enable~~ **that enables** the respondent to consult
20 with his or her attorney and to see and hear the testimony of the
21 witness without the witness being able to see the respondent.

22 (13) In a proceeding brought under section 2(b) of this
23 chapter, if, upon the motion of a party or in the court's
24 discretion, the court finds on the record that psychological harm
25 to the witness would occur if the witness were to testify at the
26 adjudication stage, the court shall order to be taken a
27 videorecorded deposition of a witness that ~~shall~~ **must** be admitted
28 into evidence at the adjudication stage instead of the live
29 testimony of the witness. The examination and cross-examination of

1 the witness in the videorecorded deposition shall proceed in the
2 same manner as permitted at the adjudication stage.

3 (14) In a proceeding brought under section 2(a)(1) of this
4 chapter in which the alleged offense, if committed by an adult,
5 would be a felony under section 136b, 145c, 520b to 520e, or 520g
6 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
7 750.520b to 750.520e, and 750.520g, if, upon the motion of a party
8 made before the adjudication stage, the court finds on the record
9 that the special arrangements specified in subsection (15) are
10 necessary to protect the welfare of the witness, the court shall
11 order 1 or both of those special arrangements. In determining
12 whether it is necessary to protect the welfare of the witness, the
13 court shall consider both of the following:

14 (a) The age of the witness.

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

16 (15) If the court determines on the record that it is
17 necessary to protect the welfare of the witness and grants the
18 motion made under subsection (14), the court shall order 1 or both
19 of the following:

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

27 (b) A questioner's stand or podium ~~shall~~**must** be used for all
28 questioning of all witnesses by all parties, and ~~shall~~**must** be
29 located in front of the witness stand.

1 (16) In a proceeding brought under section 2(a)(1) of this
2 chapter in which the alleged offense, if committed by an adult,
3 would be a felony under section 136b, 145c, 520b to 520e, or 520g
4 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
5 750.520b to 750.520e, and 750.520g, if, upon the motion of a party
6 or in the court's discretion, the court finds on the record that
7 the witness is or will be psychologically or emotionally unable to
8 testify at a court proceeding even with the benefit of the
9 protections afforded the witness in subsections (3), (4), and (15),
10 the court shall order that a videorecorded deposition of a witness
11 shall be taken to be admitted at the adjudication stage instead of
12 the witness's live testimony.

13 (17) For purposes of the videorecorded deposition under
14 subsection (16), the witness's examination and cross-examination
15 ~~shall~~**must** proceed in the same manner as if the witness testified
16 at the adjudication stage, and the court shall order that the
17 witness, during his or her testimony, ~~shall~~**must** not be confronted
18 by the respondent but shall permit the respondent to hear the
19 testimony of the witness and to consult with his or her attorney.

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

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

29 (20) A videorecorded statement made under this section must be

1 retained under the protocols established by the county under
2 section 8(6) of the child protection law, 1975 PA 238, MCL 722.628.

3 (21) The department is not responsible for storing or
4 retaining a videorecorded statement under this section.

5 (22) Failure to make a video recording of an interview under
6 this section, including failure to record the interview in its
7 entirety, does not prevent a forensic interviewer, the person being
8 interviewed, or other witness present during the taking of the
9 videorecorded statement from testifying in court as to the
10 circumstances and content of the individual's statement if the
11 court determines that the testimony is otherwise admissible.

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

14 Enacting section 2. This amendatory act does not take effect
15 unless all of the following bills of the 100th Legislature are
16 enacted into law:

17 (a) Senate Bill No. 621.

18

19 (b) Senate Bill No. 619.

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