

# SENATE BILL NO. 1128

June 30, 2022, Introduced by Senator RUNESTAD 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  
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 person under 16 years of age.

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

7 (iii) A vulnerable adult.

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

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

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

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

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

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

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

1 in close proximity to, the witness during his or her testimony.

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

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

24 (7) A custodian of the videorecorded statement may take a  
25 witness's videorecorded statement before the normally scheduled  
26 date for the defendant's preliminary examination. The videorecorded  
27 statement must state the date and time that the statement was  
28 taken; must identify the persons present in the room and state  
29 whether they were present for the entire videorecording or only a

1 portion of the videorecording; and must show a time clock that is  
2 running during the taking of the videorecorded statement.

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

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

12 (b) ~~It may be admitted~~ **Admission** for impeachment purposes. **If**  
13 **any part of a videorecorded statement is admitted for impeachment**  
14 **purposes, the entire statement is admissible.**

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

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

19 (e) **Consideration by a hearing officer in a hearing held under**  
20 **section 7j of the child protection law, 1975 PA 238, MCL 722.627j.**

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

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

29 (10) In a videorecorded statement, the questioning of the

1 witness should be full and complete; must be in accordance with the  
2 forensic interview protocol implemented as required by section 8 of  
3 the child protection law, 1975 PA 238, MCL 722.628, or as otherwise  
4 provided by law; and, if appropriate for the witness's  
5 developmental level or mental acuity, must include, but is not  
6 limited to, all of the following areas:

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

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

9 (c) The relationship, if any, between the witness and the  
10 accused.

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

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

14 (11) A custodian of the videorecorded statement may release or  
15 consent to the release or use of a videorecorded statement or  
16 copies of a videorecorded statement to a law enforcement agency, an  
17 agency authorized to prosecute the criminal case to which the  
18 videorecorded statement relates, or an entity that is part of  
19 county protocols established under section 8 of the child  
20 protection law, 1975 PA 238, MCL 722.628, or as otherwise provided  
21 by law. The defendant and, if represented, his or her attorney has  
22 the right to view and hear a videorecorded statement before the  
23 defendant's preliminary examination. Upon request, the prosecuting  
24 attorney shall provide the defendant and, if represented, his or  
25 her attorney with reasonable access and means to view and hear the  
26 videorecorded statement at a reasonable time **but in no event less**  
27 **than 10 days** before the defendant's pretrial or trial of the case,  
28 **or hearing held under section 7j of the child protection law, 1975**  
29 **PA 238, MCL 722.627j.** In preparation for a court proceeding and

1 under protective conditions, including, but not limited to, a  
2 prohibition on the copying, release, display, or circulation of the  
3 videorecorded statement, the court may order that a copy of the  
4 videorecorded statement be given to the defense. **The protective**  
5 **conditions may include a prohibition on defense counsel providing a**  
6 **defendant with his or her own copy of the videorecorded statement**  
7 **or a prohibition on a defendant who is proceeding pro se from**  
8 **receiving or retaining his or her own copy of the videorecorded**  
9 **statement. The order must specify who may view the videorecorded**  
10 **statement, indicate the time by which the videorecorded statement**  
11 **is required to be returned, and state a reason for the release of**  
12 **the videorecorded statement. The order may include any other**  
13 **protective conditions the court considers necessary.**

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

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

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

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

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

24           (a) The age of the witness.

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

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

29           (d) The physical condition of the witness.



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

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

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

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

24           (a) The age of the witness.

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

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

29           (d) The physical condition of the witness.

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

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

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

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

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

29 (21) For purposes of the videorecorded deposition under

1 subsection (20), the witness's examination and cross-examination  
2 must proceed in the same manner as if the witness testified at the  
3 court proceeding for which the videorecorded deposition is to be  
4 used. The court ~~must~~**shall** permit the defendant to hear the  
5 testimony of the witness and to consult with his or her attorney.

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

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

15 (24) A videorecorded statement made under this section must  
16 adhere to the forensic interviewing protocol implemented as  
17 required under section 8 of the child protection law, 1975 PA 238,  
18 MCL 722.628, and must be retained under the county protocols  
19 established under section 8 of the child protection law, 1975 PA  
20 238, MCL 722.628.

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

24 (26) Failure to make a videorecording of an interview under  
25 this section, including failure to record the interview in its  
26 entirety, does not prevent a forensic interviewer, the person being  
27 interviewed, or other witness present during the taking of the  
28 videorecorded statement from testifying in court as to the  
29 circumstances and content of the individual's statement if the

1 **court determines that the testimony is otherwise admissible.**

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

4 Enacting section 2. This amendatory act does not take effect  
5 unless all of the following bills of the 101st Legislature are  
6 enacted into law:

7 (a) Senate Bill No. 1129.

8

9 (b) Senate Bill No. 1130.

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