

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 248

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
6 children and adults within the court or legal system, **a dog that is**
7 **trained and certified as a therapy dog by a therapy dog**
8 **organization in this state that is recognized by the American**

1 **Kennel Club**, or a **dog** that has performed the duties of a courtroom
2 support dog ~~prior to~~ **before** September 27, 2018.

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

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

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

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

28 (f) "Vulnerable adult" means that term as defined in section
29 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

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

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

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

10 (iii) A vulnerable adult.

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

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

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

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

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

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

28 (4) The court ~~must~~**shall** permit a witness who is called upon
29 to testify to have a support person sit with, accompany, or be in

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

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

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

28 (7) A custodian of the videorecorded statement may take a
29 witness's videorecorded statement before the normally scheduled

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

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

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

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

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

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

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

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

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

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

28 (c) The relationship, if any, between the witness and the
29 accused.

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

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

4 (11) A custodian of the videorecorded statement may release or
5 consent to the release or use of a videorecorded statement or
6 copies of a videorecorded statement to a law enforcement agency, an
7 agency authorized to prosecute the criminal case to which the
8 videorecorded statement relates, or an entity that is part of
9 county protocols established under section 8 of the child
10 protection law, 1975 PA 238, MCL 722.628, or as otherwise provided
11 by law. The defendant, and ~~if represented, his or her~~ **the**
12 **defendant's** attorney, has the right to view and hear a
13 videorecorded statement before the defendant's preliminary
14 examination. Upon request, the prosecuting attorney shall provide
15 the defendant, and ~~if represented, his or her~~ **the defendant's**
16 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
28 purposes of training persons in another county who would meet the
29 definition of custodian of the videorecorded statement had the

1 videorecorded statement been taken in that other county, on 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. The consent required under this subsection must be
5 obtained through the execution of a written, fully informed, time-
6 limited, and revocable release of information. An individual
7 participating in training under this subsection is also required to
8 execute a nondisclosure agreement to protect witness
9 confidentiality.

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

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

19 (15) A videorecorded statement must not be copied or
20 reproduced in any manner except as provided in this section. A
21 videorecorded statement is exempt from disclosure under the freedom
22 of information act, 1976 PA 442, MCL 15.231 to 15.246, is not
23 subject to release under another statute, and is not subject to
24 disclosure under the Michigan court rules governing discovery. This
25 section does not prohibit the production or release of a transcript
26 of a videorecorded statement.

27 (16) If, upon the motion of a party made before the
28 preliminary examination, the court finds on the record that the
29 special arrangements specified in subsection (17) are necessary to

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

5 (a) The age of the witness.

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

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

10 (d) The physical condition of the witness.

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

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

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

27 (18) If upon the motion of a party made before trial the court
28 finds on the record that the special arrangements specified in
29 subsection (19) are necessary to protect the welfare of the

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

5 (a) The age of the witness.

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

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

10 (d) The physical condition of the witness.

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

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

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

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

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

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

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

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

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