

**SUBSTITUTE FOR
SENATE BILL NO. 813**

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 or that has
7 performed the duties of a courtroom support dog ~~prior to~~ **before**
8 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) "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) "Vulnerable adult" means that term as defined in section
27 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

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

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

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

4 (iii) A vulnerable adult.

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

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

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

12 (i) Prosecutions and proceedings under section 110a, 145n,
13 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,
14 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

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

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

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

29 (5) A notice of intent to use a support person or courtroom

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

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

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

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

3 (a) It may be admitted as evidence at all pretrial
4 proceedings. ~~, except that it cannot be introduced at the~~
5 ~~preliminary examination instead of the live testimony of the~~
6 ~~witness.~~

7 (b) It may be admitted **at trial** for impeachment purposes.

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

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

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

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

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

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

23 (c) The relationship, if any, between the witness and the
24 accused.

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

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

28 (11) A custodian of the videorecorded statement may release or
29 consent to the release or use of a videorecorded statement or

1 copies of a videorecorded statement to a law enforcement agency, an
2 agency authorized to prosecute the criminal case to which the
3 videorecorded statement relates, or an entity that is part of
4 county protocols established under section 8 of the child
5 protection law, 1975 PA 238, MCL 722.628, or as otherwise provided
6 by law. The defendant and, if represented, ~~his or her~~ **the**
7 **defendant's** attorney has the right to view and hear a videorecorded
8 statement before the defendant's preliminary examination. **Subject**
9 **to any protective conditions the court determines necessary, a**
10 **defendant who is proceeding pro se must be provided a transcript of**
11 **the videorecorded statement at a reasonable time before the**
12 **defendant's pretrial proceedings.** ~~Upon~~ **On** request, the prosecuting
13 attorney shall provide the defendant and, if represented, ~~his or~~
14 ~~her~~ **the defendant's** attorney with reasonable access and means to
15 view and hear the videorecorded statement at a reasonable time
16 before the defendant's pretrial ~~or trial of the case.~~ **proceedings.**
17 In preparation for a **pretrial or trial** court proceeding and under
18 protective conditions, including, but not limited to, a prohibition
19 on the copying, release, display, or circulation of the
20 videorecorded statement, ~~the court may order that~~ a copy of the
21 videorecorded statement **shall** be given to the ~~defense.~~ **defendant's**
22 **attorney, if represented. A copy of the videorecorded statement**
23 **must be returned to the custody of the prosecuting attorney upon**
24 **completion of the defendant's court proceedings. The protective**
25 **conditions must include a prohibition on defense counsel providing**
26 **a defendant with access to the copy or providing the defendant with**
27 **the defendant's own copy of the videorecorded statement, or if the**
28 **defendant is proceeding pro se, a prohibition on the defendant**
29 **receiving or retaining the defendant's own copy of the**

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

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

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

28 (14) A videorecorded statement that becomes part of the court
29 record is subject to a protective order of the court for the

1 purpose of protecting the privacy of the witness.

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

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

18 (a) The age of the witness.

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

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

23 (d) The physical condition of the witness.

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

28 (a) That all persons not necessary to the proceeding must be
29 excluded during the witness's testimony from the courtroom where

1 the preliminary examination is held. ~~Upon~~**On** request by any person
2 and the payment of the appropriate fees, a transcript of the
3 witness's testimony must be made available.

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

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

18 (a) The age of the witness.

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

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

23 (d) The physical condition of the witness.

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

28 (a) That all persons not necessary to the proceeding be
29 excluded during the witness's testimony from the courtroom where

1 the trial is held. The witness's testimony must be broadcast by
2 closed-circuit television to the public in another location out of
3 sight of the witness.

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

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

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

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

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

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

10 (24) A videorecorded statement made under this section must
11 adhere to the forensic interviewing protocol implemented as
12 required under section 8 of the child protection law, 1975 PA 238,
13 MCL 722.628, and must be retained under the county protocols
14 established under section 8 of the child protection law, 1975 PA
15 238, MCL 722.628.

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

19 (26) If a videorecording of an interview under this section is
20 unavailable or fails to play in its entirety, a forensic
21 interviewer present during the taking of the videorecorded
22 statement may testify in court as to the circumstances and content
23 of the individual's statement if the court determines that the
24 testimony is otherwise admissible.

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