

Act No. 253  
Public Acts of 1989  
Approved by the Governor  
December 24, 1989  
Filed with the Secretary of State  
December 26, 1989

**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1989**

Introduced by Reps. Stupak, Brown, Gubow, Watkins, Martin, DeMars, Sofio, Kosteva, Palamara and London

# **ENROLLED HOUSE BILL No. 4324**

AN ACT to amend section 2163a of Act No. 236 of the Public Acts of 1961, entitled as amended "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," as added by Act No. 44 of the Public Acts of 1987, being section 600.2163a of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Section 2163a of Act No. 236 of the Public Acts of 1961, as added by Act No. 44 of the Public Acts of 1987, being section 600.2163a of the Michigan Compiled Laws, is amended to read as follows:

Sec. 2163a. (1) As used in this section:

(a) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:

(i) It originated before the person became 18 years of age.

(ii) It has continued since its origination or can be expected to continue indefinitely.

(iii) It constitutes a substantial burden to the impaired person's ability to perform normally in society.

(iv) It is attributable to mental retardation, autism, or any other condition of a person related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.

(b) "Witness" means an alleged victim of any of the offenses listed under subsection (2) who is either of the following:

(i) A person under 15 years of age.

(ii) A person 15 years of age or older with a developmental disability.

(2) This section only applies to prosecutions and proceedings under section 136b, 145c, or 520b to 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.136b, 750.145c, and 750.520b to 750.520g of the Michigan Compiled Laws, or under former section 136 or 136a of Act No. 328 of the Public Acts of 1931.

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

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and shall give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. The court shall rule on any motion objecting to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In order to avoid excessive questioning of a witness, a videotape statement of a witness may be taken by the investigating law enforcement agency prior to the normally scheduled date for the defendant's preliminary examination. The videotape of a videotape statement shall state the date and time that the statement was taken; the persons present in the room, their identities, and whether they were present for the entire videotaping or only a portion of the videotaping; and shall show a time clock that shall be running during the taking of the statement.

(6) A videotape statement of a witness taken pursuant to subsection (5) may be considered in court proceedings only as follows:

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

(b) It may be admitted for impeachment purposes.

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

(7) In a videotape statement taken pursuant to subsection (5), the questioning of the witness should be full and complete and shall include, but not be limited to, the following areas:

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

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

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

(d) The details of the offense or offenses.

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

(8) The defendant and, if represented, his or her attorney shall have the right to view and hear the videotape taken pursuant to subsection (5) not less than 48 hours before the normally scheduled date for the defendant's preliminary examination.

(9) If upon the motion of any party made before the preliminary examination, the court finds on the record that the special arrangements specified in subsection (10) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider the following:

(a) The age of the witness.

(b) The psychological maturity of the witness.

(c) The nature of the offense or offenses.

(d) The desire of the witness or his or her family or guardian to have the testimony taken in a room closed to the public.

(10) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (9), the court shall order both of the following:

(a) All persons not necessary to the proceeding shall be excluded during the witness's testimony from the courtroom where the preliminary examination is held. Upon request by any person and the payment of the appropriate fees, a transcript of the witness's testimony shall be made available.

(b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The defendant's position shall be located so as to allow the defendant to hear and see the witness and be able to communicate with his or her attorney.

(11) If upon the motion of any party made before trial the court finds on the record that the special arrangements specified in subsection (12) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider the following:

- (a) The age of the witness.
- (b) The psychological maturity of the witness.
- (c) The nature of the offense or offenses.
- (d) The desire of the witness or his or her family or guardian to have the testimony taken in a room closed to the public.

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

(a) All persons not necessary to the proceeding shall be excluded during the witness's testimony from the courtroom where the trial is held. The witness's testimony shall be broadcast by closed circuit television to the public in another location out of sight of the witness.

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

(c) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties, and shall be located in front of the witness stand.

(13) If, upon the motion of any party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), (10), and (12), the court shall order that a videotape deposition of a witness shall be taken to be admitted at a court proceeding instead of the live testimony of the witness.

(14) For purposes of the videotape deposition under subsection (13), the examination and cross-examination of the witness shall proceed in the same manner as if the witness testified at the court proceeding for which the videotape deposition is to be used and the court shall order that the witness, during his or her testimony, shall not be confronted by the defendant but shall permit the defendant to hear the testimony of the witness and to consult with his or her attorney.

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

(16) This section applies to cases filed on or after and proceedings held on or after January 1, 1988.

(17) This section shall take effect January 1, 1988.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.