

HOUSE BILL No. 4324

March 2, 1989, Introduced by Reps. Stupak, Brown, Gubow, Watkins, Martin, DeMars, Sofio, Kosteva, Palamara and London and referred to the Committee on Judiciary.

A bill to amend section 2163a of Act No. 236 of the Public Acts of 1961, entitled as amended
"Revised judicature act of 1961,"
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:

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

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

6 (a) "Developmental disability" means an impairment of gen-
7 eral intellectual functioning or adaptive behavior which meets
8 the following criteria:

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

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

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

6 (iv) It is attributable to mental retardation, autism, or
7 any other condition of a person related to mental retardation
8 because it produces a similar impairment or requires treatment
9 and services similar to those required for a person who is men-
10 tally retarded.

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

13 (i) A person under 15 years of age.

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

16 (2) This section only applies to prosecutions and proceed-
17 ings under section ~~+36,+36a~~ 136B, 145c, or 520b to 520g of the
18 Michigan penal code, Act No. 328 of the Public Acts of 1931,
19 being sections ~~750.136, 750.136a~~ 750.136B, 750.145c, and
20 750.520b to 750.520g of the Michigan Compiled Laws.

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

25 (4) A witness who is called upon to testify shall be permit-
26 ted to have a support person sit with, accompany, or be in close
27 proximity to the witness during his or her testimony. A notice

1 of intent to use a support person shall name the support person,
2 identify the relationship the support person has with the wit-
3 ness, and shall give notice to all parties to the proceeding that
4 the witness may request that the named support person sit with
5 the witness when the witness is called upon to testify during any
6 stage of the proceeding. The notice of intent to use a named
7 support person shall be filed with the court and shall be served
8 upon all parties to the proceeding. The court shall rule on any
9 motion objecting to the use of a named support person prior to
10 the date at which the witness desires to use the support person.

11 (5) In order to avoid excessive questioning of a witness, a
12 videotape statement of a witness may be taken by the investigat-
13 ing law enforcement agency prior to the normally scheduled date
14 for the defendant's preliminary examination. The videotape of a
15 videotape statement shall state the date and time that the state-
16 ment was taken; the persons present in the room, their identi-
17 ties, and whether they were present for the entire videotaping or
18 only a portion of the videotaping; and shall show a time clock
19 that shall be running during the taking of the statement.

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

23 (a) It may be admitted as evidence at all pretrial proceed-
24 ings, except that it may not be introduced at the preliminary
25 examination instead of the live testimony of the witness.

26 (b) It may be admitted for impeachment purposes.

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

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

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

7 (b) The location and area of the alleged offense or
8 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 (8) The defendant and, if represented, his or her attorney
15 shall have the right to view and hear the videotape taken pursu-
16 ant to subsection (5) not less than 48 hours before the normally
17 scheduled date for the defendant's preliminary examination.

18 (9) If upon the motion of any party made before the prelimi-
19 nary examination, the court finds on the record that the special
20 arrangements specified in subsection (10) are necessary to pro-
21 tect the welfare of the witness, the court shall order those spe-
22 cial arrangements. In determining whether it is necessary to
23 protect the welfare of the witness, the court shall consider the
24 following:

25 (a) The age of the witness.

26 (b) The psychological maturity of the witness.

1 (c) The nature of the offense or offenses.

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

5 (10) If the court determines on the record that it is neces-
6 sary to protect the welfare of the witness and grants the motion
7 made under subsection (9), the court shall order both of the
8 following:

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

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

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

1 (a) The age of the witness.

2 (b) The psychological maturity of the witness.

3 (c) The nature of the offense or offenses.

4 (d) The desire of the witness or his or her family or guard-
5 ian to have the testimony taken in a room closed to the public.

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

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

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

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

25 (13) If, upon the motion of any party or in the court's dis-
26 cretion, the court finds on the record that the witness is or
27 will be psychologically or emotionally unable to testify at a

1 court proceeding even with the benefit of the protections
2 afforded the witness in subsections (3), (4), (10), and (12), the
3 court shall order that a videotape deposition of a witness shall
4 be taken to be admitted at a court proceeding instead of the live
5 testimony of the witness.

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

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

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

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