

# HOUSE BILL No. 4325

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 17b of chapter XIIA of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

as added by Act No. 45 of the Public Acts of 1987, being section 712A.17b of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 17b of chapter XIIA of Act No. 288 of  
2 the Public Acts of 1939, as added by Act No. 45 of the Public  
3 Acts of 1987, being section 712A.17b of the Michigan Compiled  
4 Laws, is amended to read as follows:

## 5 CHAPTER XIIA

6 Sec. 17b. (1) As used in this section:

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

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

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

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

15 (iv) It is attributable to mental retardation, autism, or  
16 any other condition of a person related to mental retardation  
17 because it produces a similar impairment or requires treatment  
18 and services similar to those required for a person who is men-  
19 tally retarded.

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

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

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

25 (2) This section only applies to either of the following:

1 (a) A proceeding brought pursuant to section 2(a)(1) of this  
2 chapter where the alleged offense, if committed by an adult,  
3 would be a felony under section ~~136, 136a,~~ 136B, 145c, 520b to  
4 520e, or 520g of the Michigan penal code, Act No. 328 of the  
5 Public Acts of 1931, being sections ~~750.136, 750.136a,~~  
6 750.136B, 750.145c, 750.520b to 750.520e, and 750.520g of the  
7 Michigan Compiled Laws.

8 (b) A proceeding brought pursuant to section 2(b) of this  
9 chapter.

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

14 (4) A witness who is called upon to testify shall be permit-  
15 ted to have a support person sit with, accompany, or be in close  
16 proximity to the witness during his or her testimony. A notice  
17 of intent to use a support person shall name the support person,  
18 identify the relationship the support person has with the wit-  
19 ness, and shall give notice to all parties to the proceeding that  
20 the witness may request that the named support person sit with  
21 the witness when the witness is called upon to testify during any  
22 stage of the proceeding. The notice of intent to use a named  
23 support person shall be filed with the court and shall be served  
24 upon all parties to the proceeding. The court shall rule on any  
25 motion objecting to the use of a named support person prior to  
26 the date at which the witness desires to use the support person.

1       (5) In order to avoid excessive questioning of a witness, a  
2 videotape statement of a witness may be taken by the  
3 investigating agency and shall be admitted at all proceedings  
4 except the adjudication stage instead of the live testimony of  
5 the witness. The videotape of a videotape statement shall state  
6 the date and time that the statement was taken; the persons  
7 present in the room, their identities, and whether they were  
8 present for the entire videotaping or only a portion of the vid-  
9 eotaping; and shall show a time clock that shall be running  
10 during the taking of the statement.

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

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

15       (ii) The location and area of the alleged offense or  
16 offenses.

17       (iii) The relationship, if any, between the witness and the  
18 respondent.

19       (iv) The details of the offense or offenses.

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

22       (7) Each respondent and, if represented, his or her attorney  
23 shall have the right to view and hear the videotape taken pursu-  
24 ant to subsection (5) not less than 48 hours before it is offered  
25 into evidence.

26       (8) Except as otherwise provided in subsection (11), if,  
27 upon the motion of any party or in the court's discretion, the

1 court finds on the record that psychological harm to the witness  
2 would occur if the witness were to testify in the presence of the  
3 respondent at a court proceeding or in a videotape deposition  
4 taken pursuant to subsection (9), the court shall order that the  
5 witness during his or her testimony be shielded from viewing the  
6 respondent in such a manner as to enable the respondent to con-  
7 sult with his or her attorney and to see and hear the testimony  
8 of the witness without the witness being able to see the  
9 respondent.

10 (9) In a proceeding brought pursuant to section 2(b) of this  
11 chapter, if, upon the motion of any party or in the court's dis-  
12 cretion, the court finds on the record that psychological harm to  
13 the witness would occur if the witness were to testify at the  
14 adjudication stage, the court shall order to be taken a videotape  
15 deposition of a witness which shall be admitted into evidence at  
16 the adjudication stage instead of the live testimony of the  
17 witness. The examination and cross-examination of the witness in  
18 the videotape deposition shall proceed in the same manner as per-  
19 mitted at the adjudication stage.

20 (10) In a proceeding brought pursuant to section 2(a)(1) of  
21 this chapter where the alleged offense, if committed by an adult,  
22 would be a felony under section ~~136, 136a,~~ 136B, 145c, 520b to  
23 520e, or 520g of Act No. 328 of the Public Acts of 1931, if, upon  
24 the motion of any party made before the adjudication stage, the  
25 court finds on the record that the special arrangements specified  
26 in subsection (11) are necessary to protect the welfare of the  
27 witness, the court shall order 1 or both of those special

1 arrangements. In determining whether it is necessary to protect  
2 the welfare of the witness, the court shall consider the  
3 following:

4 (a) The age of the witness.

5 (b) The psychological maturity of the witness.

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

7 (11) If the court determines on the record that it is neces-  
8 sary to protect the welfare of the witness and grants the motion  
9 made under subsection (10), the court shall order 1 or both of  
10 the following:

11 (a) In order to protect the witness from directly viewing  
12 the respondent, the courtroom shall be arranged so that the  
13 respondent is seated as far from the witness stand as is reason-  
14 able and not directly in front of the witness stand. The  
15 respondent's position shall be located so as to allow the respon-  
16 dent to hear and see all witnesses and be able to communicate  
17 with his or her attorney.

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

21 (12) In a proceeding brought pursuant to section 2(a)(1) of  
22 this chapter where the alleged offense, if committed by an adult,  
23 would be a felony under section ~~+36, +36a,~~ 136B, 145c, 520b to  
24 520e, or 520g of Act No. 328 of the Public Acts of 1931, if, upon  
25 the motion of any party or in the court's discretion, the court  
26 finds on the record that the witness is or will be  
27 psychologically or emotionally unable to testify at a court

1 proceeding even with the benefit of the protections afforded the  
2 witness in subsections (3), (4), and (11), the court shall order  
3 that a videotape deposition of a witness shall be taken to be  
4 admitted at the adjudication stage instead of the live testimony  
5 of the witness.

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

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

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

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