

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 880 (as enrolled)
Sponsor: Senator Joel D. Gougeon
Senate Committee: Families, Mental Health and Human Services
House Committee: Judiciary

PUBLIC ACT 323 of 1998

Date Completed: 8-28-98

RATIONALE

The Michigan Rules of Evidence contain a presumption that every person is competent to testify. Specifically, MRE 601 states, "Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules." A witness under the age of 10, however, was subject to Section 2163 of the Revised Judicature Act. That section required a court, when a child under 10 was produced as a witness, to determine through public or private questioning whether the child had sufficient intelligence and sense of obligation to tell the truth. The section also provided that the child's testimony was to be given such credit as it appeared to deserve.

The testimony of children was the subject of several recommendations of the State Bar of Michigan's Task Force on Children's Justice (which was formed in September 1993 and existed for approximately two years). The task force reported that, according to professionals in the fields of psychology, pediatric medicine, education, and social work, there is no specific age at which children can discern truth from falsity, accurately recount facts, and appreciate the obligation to tell the truth. The task force also reported that most other states long ago abandoned the age presumption on competency, and presume that all persons are competent. According to the task force, "...the age of ten has no logical place in Michigan law".

CONTENT

The bill repealed Section 2163 of the Revised Judicature Act.

MCL 600.2163

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to the Michigan Supreme Court, the purpose of Section 2163 "...is to insure that a child under the age of ten years has sufficient intelligence and a sense of obligation to testify truthfully" (*People v Jehnson*, 183 Mich App 305 (1990)). Since children of any age, however, may be smart enough to testify, understand the difference between the truth and a falsehood, and feel an obligation to tell the truth, there is no reason not to extend the presumption of competency to children under 10. By removing the requirement that judges question all potential witnesses under 10 years old, the bill will shift the burden to the party who wants a witness declared incompetent. Since a judge may question any potential witness, and exclude someone who cannot testify truthfully, children still may be prevented from testifying if they are not sufficiently mature, coherent, or honest. Once a witness of any age is permitted to testify, he or she then may be impeached on cross examination; a subsequent showing that the witness has not testified truthfully reflects on the credibility of the witness.

By repealing Section 2163 of the Revised Judicature Act, the bill implemented one recommendation of the Task Force on Children's Justice, and eliminated an inconsistency between the statute and the Rules of Evidence.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill will have an indeterminate fiscal impact.
The effect the bill may have on the number of trials
and convictions is speculative.

Fiscal Analyst: B. Bowerman

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by the Senate in its deliberations and does not constitute an
official statement of legislative intent.