

REPRINT

SUBSTITUTE FOR

SENATE BILL NO. 1356

(As passed the Senate November 12, 2002)

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2163a (MCL 600.2163a), as amended by 1998
PA 324.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (A) "CUSTODIAN OF THE VIDEORECORDED STATEMENT" MEANS THE
3 FAMILY INDEPENDENCE AGENCY, INVESTIGATING LAW ENFORCEMENT AGENCY,
4 PROSECUTING ATTORNEY, OR DEPARTMENT OF ATTORNEY GENERAL OR
5 ANOTHER PERSON DESIGNATED UNDER THE COUNTY PROTOCOLS ESTABLISHED
6 AS REQUIRED BY SECTION 8 OF THE CHILD PROTECTION LAW, 1975
7 PA 238, MCL 722.628.

8 (B) ~~(a)~~ "Developmental disability" means that term as
9 defined in section 100a of the mental health code, 1974 PA 258,
10 MCL 330.1100a, except that, for the purposes of implementing this

SB1356, As Passed House, December 12, 2002

Senate Bill No. 1356

2

1 section, developmental disability includes only a condition that
2 is attributable to a mental impairment or to a combination of
3 mental and physical impairments ~~—~~ and does not include a condi-
4 tion attributable to a physical impairment unaccompanied by a
5 mental impairment.

6 (C) "VIDEORECORDED STATEMENT" MEANS A WITNESS'S STATEMENT
7 TAKEN BY A CUSTODIAN OF THE VIDEORECORDED STATEMENT AS PROVIDED
8 IN SUBSECTION (5). VIDEORECORDED STATEMENT DOES NOT INCLUDE A
9 VIDEORECORDED DEPOSITION TAKEN AS PROVIDED IN SUBSECTIONS (17)
10 AND (18).

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

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

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

16 (2) This section only applies to prosecutions and proceed-
17 ings under section 136b, 145c, 520b to 520e, or 520g of the
18 Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
19 750.520b to 750.520e, and 750.520g, or under former section 136
20 or 136a of the Michigan penal code, 1931 PA 328.

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

SB1356, As Passed House, December 12, 2002

Senate Bill No. 1356

3

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 give notice to all parties to the proceeding that the
4 witness may request that the named support person sit with the
5 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
9 ~~any~~ A motion objecting to the use of a named support person
10 ~~prior to~~ BEFORE the date at which the witness desires to use
11 the support person.

12 (5) ~~In order to avoid excessive questioning of a witness, a~~
13 ~~videotape statement of a witness may be taken by the investigat-~~
14 ~~ing law enforcement agency prior to~~ A CUSTODIAN OF THE VIDEOR-
15 ECORDED STATEMENT MAY TAKE A WITNESS'S VIDEORECORDED STATEMENT
16 BEFORE the normally scheduled date for the defendant's prelimi-
17 nary examination. The ~~videotape of a videotape~~ VIDEORECORDED
18 statement shall state the date and time that the statement was
19 taken; shall identify the persons present in the room and state
20 whether they were present for the entire ~~videotaping~~
21 VIDEORECORDING or only a portion of the ~~videotaping~~
22 VIDEORECORDING; and shall show a time clock that is running
23 during the taking of the VIDEORECORDED statement.

24 (6) A ~~videotape~~ VIDEORECORDED statement ~~of a witness~~
25 ~~taken as provided in subsection (5)~~ may be considered in court
26 proceedings only for 1 or more of the following:

SB1356, As Passed House, December 12, 2002

Senate Bill No. 1356

4

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

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

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

8 (D) IT MAY BE USED AS A FACTUAL BASIS FOR A NO CONTEST PLEA
9 OR TO SUPPLEMENT A GUILTY PLEA.

10 (7) In a ~~videotape~~ VIDEORECORDED statement, ~~taken as pro-~~
11 ~~vided in subsection (5),~~ the questioning of the witness should
12 be full and complete; ~~and~~ SHALL BE IN ACCORDANCE WITH THE
13 FORENSIC INTERVIEW PROTOCOL IMPLEMENTED AS REQUIRED BY SECTION 8
14 OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.628; AND, IF
15 APPROPRIATE FOR THE WITNESS'S DEVELOPMENTAL LEVEL, shall include,
16 but IS not ~~be~~ limited to, all of the following areas:

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

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

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

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

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

25 (8) A CUSTODIAN OF THE VIDEORECORDED STATEMENT MAY RELEASE
26 OR CONSENT TO THE RELEASE OR USE OF A VIDEORECORDED STATEMENT OR
27 COPIES OF A VIDEORECORDED STATEMENT TO A LAW ENFORCEMENT AGENCY,

SB1356, As Passed House, December 12, 2002

Senate Bill No. 1356

5

1 AN AGENCY AUTHORIZED TO PROSECUTE THE CRIMINAL CASE TO WHICH THE
2 VIDEORECORDED STATEMENT RELATES, OR AN ENTITY THAT IS PART OF
3 COUNTY PROTOCOLS ESTABLISHED UNDER SECTION 8 OF THE CHILD PROTEC-
4 TION LAW, 1975 PA 238, MCL 722.628. The defendant and, if repre-
5 sented, his or her attorney has the right to view and hear ~~the~~
6 ~~videotape taken as provided in subsection (5) not less than 48~~
7 ~~hours before the normally scheduled date for~~ A VIDEORECORDED
8 STATEMENT BEFORE the defendant's preliminary examination. UPON
9 REQUEST, THE PROSECUTING ATTORNEY SHALL PROVIDE THE DEFENDANT
10 AND, IF REPRESENTED, HIS OR HER ATTORNEY WITH REASONABLE ACCESS
11 AND MEANS TO VIEW AND HEAR THE VIDEORECORDED STATEMENT AT A REA-
12 SONABLE TIME BEFORE THE DEFENDANT'S PRETRIAL OR TRIAL OF THE
13 CASE. IN PREPARATION FOR A COURT PROCEEDING AND UNDER PROTECTIVE
14 CONDITIONS, INCLUDING, BUT NOT LIMITED TO, A PROHIBITION ON THE
15 COPYING, RELEASE, DISPLAY, OR CIRCULATION OF THE VIDEORECORDED STATEMENT,
16 THE COURT MAY ORDER THAT
17 A COPY OF THE VIDEORECORDED STATEMENT BE GIVEN TO THE DEFENSE.

17 (9) IF AUTHORIZED BY THE PROSECUTING ATTORNEY IN THE COUNTY
18 IN WHICH THE VIDEORECORDED STATEMENT WAS TAKEN, A VIDEORECORDED
19 STATEMENT MAY BE USED FOR PURPOSES OF TRAINING THE CUSTODIANS OF
20 THE VIDEORECORDED STATEMENT IN THAT COUNTY ON THE FORENSIC INTER-
21 VIEW PROTOCOL IMPLEMENTED AS REQUIRED BY SECTION 8 OF THE CHILD
22 PROTECTION LAW, 1975 PA 238, MCL 722.628.

23 (10) 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, GUARD-
26 IAN AD LITEM, OR ATTORNEY, SHALL NOT RELEASE OR CONSENT TO

SB1356, As Passed House, December 12, 2002

Senate Bill No. 1356

6

1 RELEASE A VIDEORECORDED STATEMENT OR A COPY OF A VIDEORECORDED
2 STATEMENT.

3 (11) A VIDEORECORDED STATEMENT THAT BECOMES PART OF THE
4 COURT RECORD IS SUBJECT TO A PROTECTIVE ORDER OF THE COURT FOR
5 THE PURPOSE OF PROTECTING THE PRIVACY OF THE WITNESS.

6 (12) A VIDEORECORDED STATEMENT SHALL NOT BE COPIED OR REPRO-
7 DUCED IN ANY MANNER EXCEPT AS PROVIDED IN THIS SECTION. A VIDE-
8 ORECORDED STATEMENT IS EXEMPT FROM DISCLOSURE UNDER THE FREEDOM
9 OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, IS NOT
10 SUBJECT TO RELEASE UNDER ANOTHER STATUTE, AND IS NOT SUBJECT TO
11 DISCLOSURE UNDER THE MICHIGAN COURT RULES GOVERNING DISCOVERY.
12 THIS SECTION DOES NOT PROHIBIT THE PRODUCTION OR RELEASE OF A
13 TRANSCRIPT OF A VIDEORECORDED STATEMENT.

14 (13) ~~(9)~~ If, upon the motion of a party made before the
15 preliminary examination, the court finds on the record that the
16 special arrangements specified in subsection ~~(10)~~ (14) are nec-
17 essary to protect the welfare of the witness, the court shall
18 order those special arrangements. In determining whether it is
19 necessary to protect the welfare of the witness, the court shall
20 consider all of the following:

21 (a) The age of the witness.

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

23 (c) The desire of the witness or the witness's family or
24 guardian to have the testimony taken in a room closed to the
25 public.

26 (14) ~~(10)~~ If the court determines on the record that it is
27 necessary to protect the welfare of the witness and grants the

SB1356, As Passed House, December 12, 2002

Senate Bill No. 1356

7

1 motion made under subsection ~~-(9)-~~ (13), the court shall order
2 both of the following:

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

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

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

22 (a) The age of the witness.

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

24 (c) The desire of the witness or the witness's family or
25 guardian to have the testimony taken in a room closed to the
26 public.

SB1356, As Passed House, December 12, 2002

Senate Bill No. 1356

8

1 (16) ~~(12)~~ If the court determines on the record that it is
2 necessary to protect the welfare of the witness and grants the
3 motion made under subsection ~~(11)~~ (15), the court shall order 1
4 or more of the following:

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

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

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

20 (17) ~~(13)~~ If, upon the motion of a party or in the court's
21 discretion, the court finds on the record that the witness is or
22 will be psychologically or emotionally unable to testify at a
23 court proceeding even with the benefit of the protections
24 afforded the witness in subsections (3), (4), ~~(10)~~ (14), and
25 ~~(12)~~ (16), the court shall order that a ~~videotape~~
26 VIDEORECORDED deposition of a witness shall be taken to be

SB1356, As Passed House, December 12, 2002

Senate Bill No. 1356

9

1 admitted at a court proceeding instead of the witness's live
2 testimony.

3 (18) ~~(14)~~ For purposes of the ~~videotape~~ VIDEORECORDED
4 deposition under subsection ~~(13)~~ (17), the witness's examina-
5 tion and cross-examination shall proceed in the same manner as if
6 the witness testified at the court proceeding for which the
7 ~~videotape~~ VIDEORECORDED deposition is to be used, and the court
8 shall order that the witness, during his or her testimony, shall
9 not be confronted by the defendant but shall permit the defendant
10 to hear the testimony of the witness and to consult with his or
11 her attorney.

12 (19) ~~(15)~~ This section is in addition to other protections
13 or procedures afforded to a witness by law or court rule.

14 (20) A PERSON WHO INTENTIONALLY RELEASES A VIDEORECORDED
15 STATEMENT IN VIOLATION OF THIS SECTION IS GUILTY OF A MISDEMEANOR
16 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF
17 NOT MORE THAN \$500.00, OR BOTH.

18 Enacting section 1. This amendatory act does not take
19 effect unless Senate Bill No. 1447 of the 91st Legislature is
20 enacted into law.