

SENATE BILL No. 1447

September 24, 2002, Introduced by Senator HAMMERSTROM and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 17b of chapter XIIA (MCL 712A.17b), as amended by 1998 PA 325.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XIIA

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

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

9 (B) ~~(a)~~ "Developmental disability" means that term as
10 defined in section 100a of the mental health code, 1974 PA 258,

1 MCL ~~300.1100a~~ 330.1100A, except that, for the purposes of
2 implementing this section, developmental disability includes only
3 a condition that is attributable to a mental impairment or to a
4 combination of mental and physical impairments, and does not
5 include a condition attributable to a physical impairment unac-
6 companied by a mental impairment.

7 (C) "VIDEORECORDED STATEMENT" MEANS A WITNESS'S STATEMENT
8 TAKEN BY A CUSTODIAN OF THE VIDEORECORDED STATEMENT AS PROVIDED
9 IN SUBSECTION (5). VIDEORECORDED STATEMENT DOES NOT INCLUDE A
10 VIDEORECORDED DEPOSITION TAKEN AS PROVIDED IN SUBSECTIONS (16)
11 AND (17).

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

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

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

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

18 (a) A proceeding brought under section 2(a)(1) of this chap-
19 ter in which the alleged offense, if committed by an adult, would
20 be a felony under section 136b, 145c, 520b to 520e, or 520g of
21 the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
22 750.520b to 750.520e, and 750.520g, or under former section 136
23 or 136a of the Michigan penal code, 1931 PA 328.

24 (b) A proceeding brought under section 2(b) of this
25 chapter.

26 (3) If pertinent, the witness shall be permitted the use of
27 dolls or mannequins, including, but not limited to, anatomically

1 correct dolls or mannequins, to assist the witness in testifying
2 on direct and cross-examination.

3 (4) A witness who is called upon to testify shall be permit-
4 ted to have a support person sit with, accompany, or be in close
5 proximity to the witness during his or her testimony. A notice
6 of intent to use a support person shall name the support person,
7 identify the relationship the support person has with the wit-
8 ness, and give notice to all parties to the proceeding that the
9 witness may request that the named support person sit with the
10 witness when the witness is called upon to testify during any
11 stage of the proceeding. The notice of intent to use a named
12 support person shall be filed with the court and shall be served
13 upon all parties to the proceeding. The court shall rule on
14 ~~any~~ A motion objecting to the use of a named support person
15 ~~prior to~~ BEFORE the date at which the witness desires to use
16 the support person.

17 (5) ~~In order to avoid excessive questioning of a witness, a~~
18 ~~videotape statement of a witness may be taken by the investigat-~~
19 ~~ing agency and~~ A CUSTODIAN OF THE VIDEORECORDED STATEMENT MAY
20 TAKE A WITNESS'S VIDEORECORDED STATEMENT. THE VIDEORECORDED
21 STATEMENT shall be admitted at all proceedings except the adjudi-
22 cation stage instead of the live testimony of the witness. The
23 ~~videotape of a videotape~~ VIDEORECORDED statement shall state
24 the date and time that the statement was taken; shall identify
25 the persons present in the room and state whether they were
26 present for the entire ~~videotaping~~ VIDEORECORDING or only a

1 portion of the ~~videotaping~~ VIDEORECORDING; and shall show a
2 time clock that is running during the taking of the statement.

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

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

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

13 (c) The relationship, if any, between the witness and the
14 respondent.

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

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

18 (7) A CUSTODIAN OF THE VIDEORECORDED STATEMENT MAY RELEASE
19 OR CONSENT TO THE RELEASE OR USE OF A VIDEORECORDED STATEMENT OR
20 COPIES OF A VIDEORECORDED STATEMENT TO A LAW ENFORCEMENT AGENCY,
21 AN AGENCY AUTHORIZED TO PROSECUTE THE CRIMINAL CASE TO WHICH THE
22 VIDEORECORDED STATEMENT RELATES, OR AN ENTITY THAT IS PART OF
23 COUNTY PROTOCOLS ESTABLISHED UNDER SECTION 8 OF THE CHILD PROTEC-
24 TION LAW, 1975 PA 238, MCL 722.628. Each respondent and, if rep-
25 resented, his or her attorney has the right to view and hear the
26 ~~videotape taken as provided in subsection (5)~~ VIDEORECORDED
27 STATEMENT not less than 48 hours before it is offered into

1 evidence. ON GOOD CAUSE SHOWN, THE COURT MAY ORDER THAT A COPY
2 OF THE VIDEORECORDED STATEMENT MAY BE GIVEN TO A RESPONDENT TO
3 USE FOR PURPOSES OF A COURT PROCEEDING AND RETURNED WITHOUT
4 COPYING.

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

11 (9) EXCEPT AS PROVIDED IN THIS SECTION, AN INDIVIDUAL,
12 INCLUDING, BUT NOT LIMITED TO, A CUSTODIAN OF THE VIDEORECORDED
13 STATEMENT, THE WITNESS, OR THE WITNESS'S PARENT, GUARDIAN, GUARD-
14 IAN AD LITEM, OR ATTORNEY, SHALL NOT RELEASE OR CONSENT TO
15 RELEASE A VIDEORECORDED STATEMENT OR A COPY OF A VIDEORECORDED
16 STATEMENT.

17 (10) A VIDEORECORDED STATEMENT THAT BECOMES PART OF THE
18 COURT RECORD IS SUBJECT TO A PROTECTIVE ORDER OF THE COURT FOR
19 THE PURPOSE OF PROTECTING THE PRIVACY OF THE WITNESS.

20 (11) A VIDEORECORDED STATEMENT SHALL NOT BE COPIED OR REPRO-
21 DUCED IN ANY MANNER EXCEPT AS PROVIDED IN THIS SECTION. A VIDE-
22 ORECORDED STATEMENT IS EXEMPT FROM DISCLOSURE UNDER THE FREEDOM
23 OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, IS NOT
24 SUBJECT TO RELEASE UNDER ANOTHER STATUTE, AND IS NOT SUBJECT TO
25 DISCLOSURE UNDER THE MICHIGAN COURT RULE GOVERNING DISCOVERY IN A
26 CRIMINAL PROCEEDING. THIS SECTION DOES NOT PROHIBIT THE

1 PRODUCTION OR RELEASE OF A TRANSCRIPT OF A VIDEORECORDED
2 STATEMENT.

3 (12) ~~(8)~~ Except as otherwise provided in subsection ~~(11)~~
4 (15), if, upon the motion of ~~any~~ A party or in the court's dis-
5 cretion, the court finds on the record that psychological harm to
6 the witness would occur if the witness were to testify in the
7 presence of the respondent at a court proceeding or in a
8 ~~videotape~~ VIDEORECORDED deposition taken as provided in
9 subsection ~~(9)~~ (13), the court shall order that the witness
10 during his or her testimony be shielded from viewing the respon-
11 dent in such a manner as to enable the respondent to consult with
12 his or her attorney and to see and hear the testimony of the wit-
13 ness without the witness being able to see the respondent.

14 (13) ~~(9)~~ In a proceeding brought under section 2(b) of
15 this chapter, if, upon the motion of a party or in the court's
16 discretion, the court finds on the record that psychological harm
17 to the witness would occur if the witness were to testify at the
18 adjudication stage, the court shall order to be taken a
19 ~~videotape~~ VIDEORECORDED deposition of a witness ~~which~~ THAT
20 shall be admitted into evidence at the adjudication stage instead
21 of the live testimony of the witness. The examination and
22 cross-examination of the witness in the ~~videotape~~ VIDEORECORDED
23 deposition shall proceed in the same manner as permitted at the
24 adjudication stage.

25 (14) ~~(10)~~ In a proceeding brought under section 2(a)(1) of
26 this chapter in which the alleged offense, if committed by an
27 adult, would be a felony under section 136b, 145c, 520b to 520e,

1 or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b,
2 750.145c, 750.520b to 750.520e, and 750.520g, or under former
3 section 136 or 136a of the Michigan penal code, 1931 PA 328, if,
4 upon the motion of ~~any~~ A party made before the adjudication
5 stage, the court finds on the record that the special arrange-
6 ments specified in subsection ~~(11)~~ (15) are necessary to pro-
7 tect the welfare of the witness, the court shall order 1 or both
8 of those special arrangements. In determining whether it is nec-
9 essary to protect the welfare of the witness, the court shall
10 consider both of the following:

11 (a) The age of the witness.

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

13 (15) ~~(11)~~ If the court determines on the record that it is
14 necessary to protect the welfare of the witness and grants the
15 motion made under subsection ~~(10)~~ (14), the court shall order 1
16 or both of the following:

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

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

1 (16) ~~(12)~~ In a proceeding brought under section 2(a)(1) of
2 this chapter in which the alleged offense, if committed by an
3 adult, would be a felony under section 136b, 145c, 520b to 520e,
4 or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b,
5 750.145c, 750.520b to 750.520e, and 750.520g, or under former
6 section 136 or 136a of the Michigan penal code, 1931 PA 328, if,
7 upon the motion of a party or in the court's discretion, the
8 court finds on the record that the witness is or will be psycho-
9 logically or emotionally unable to testify at a court proceeding
10 even with the benefit of the protections afforded the witness in
11 subsections (3), (4), and ~~(11)~~ (15), the court shall order that
12 a ~~videotape~~ VIDEORECORDED deposition of a witness shall be
13 taken to be admitted at the adjudication stage instead of the
14 witness's live testimony.

15 (17) ~~(13)~~ For purposes of the ~~videotape~~ VIDEORECORDED
16 deposition under subsection ~~(12)~~ (16), the witness's examina-
17 tion and cross-examination shall proceed in the same manner as if
18 the witness testified at the adjudication stage, and the court
19 shall order that the witness, during his or her testimony, shall
20 not be confronted by the respondent but shall permit the respon-
21 dent to hear the testimony of the witness and to consult with his
22 or her attorney.

23 (18) ~~(14)~~ This section is in addition to other protections
24 or procedures afforded to a witness by law or court rule.

25 (19) A PERSON WHO INTENTIONALLY RELEASES A VIDEORECORDED
26 STATEMENT IN VIOLATION OF THIS SECTION IS GUILTY OF A MISDEMEANOR

1 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF
2 NOT MORE THAN \$500.00, OR BOTH.

3 Enacting section 1. This amendatory act does not take
4 effect unless Senate Bill No. 1356 of the 91st Legislature is
5 enacted into law.