

HOUSE BILL No. 5645

February 27, 2018, Introduced by Rep. Barrett and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 2163a (MCL 600.2163a), as amended by 2012 PA 170.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (A) "COURTROOM SUPPORT DOG" MEANS A DOG THAT HAS BEEN TRAINED
3 AND EVALUATED AS A SUPPORT DOG PURSUANT TO THE ASSISTANCE DOGS
4 INTERNATIONAL STANDARDS FOR GUIDE OR SERVICE WORK AND THAT IS
5 REPURPOSED AND APPROPRIATE FOR PROVIDING EMOTIONAL SUPPORT TO
6 CHILDREN AND ADULTS WITHIN THE COURT OR LEGAL SYSTEM OR THAT HAS
7 PERFORMED THE DUTIES OF A COURTROOM SUPPORT DOG PRIOR TO THE
8 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS DEFINITION.

9 (B) ~~(a)~~—"Custodian of the videorecorded statement" means the

1 department of **HEALTH AND** human services, investigating law
2 enforcement agency, prosecuting attorney, or department of attorney
3 general or another person designated under the county protocols
4 established as required by section 8 of the child protection law,
5 1975 PA 238, MCL 722.628.

6 (C) ~~(b)~~—"Developmental disability" means that term as defined
7 in section 100a of the mental health code, 1974 PA 258, MCL
8 330.1100a, except that, for the purposes of implementing this
9 section, developmental disability includes only a condition that is
10 attributable to a mental impairment or to a combination of mental
11 and physical impairments and does not include a condition
12 attributable to a physical impairment unaccompanied by a mental
13 impairment.

14 (D) ~~(e)~~—"Videorecorded statement" means a witness's statement
15 taken by a custodian of the videorecorded statement as provided in
16 subsection ~~(5)~~—(7). Videorecorded statement does not include a
17 videorecorded deposition taken as provided in subsections ~~(18)~~—(20)
18 and ~~(19)~~—(21).

19 (E) ~~(d)~~—"Vulnerable adult" means that term as defined in
20 section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

21 (F) ~~(e)~~—"Witness" means an alleged victim of an offense listed
22 under subsection (2) who is any of the following:

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

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

26 (iii) A vulnerable adult.

27 (2) This section only applies to the following:

1 (a) For purposes of subsection ~~(1)(e)(i)~~ **(1)(F)(i)** and (ii),
2 prosecutions and proceedings under section 136b, 145c, 520b to
3 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL
4 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g. ~~or under~~
5 ~~former section 136 or 136a of the Michigan penal code, 1931 PA 328.~~

6 (b) For purposes of subsection ~~(1)(e)(iii)~~, **(1)(F)(iii)**, 1 or
7 more of the following **MATTERS**:

8 (i) Prosecutions and proceedings under section 110a, 145n,
9 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,
10 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

11 (ii) Prosecutions and proceedings for an assaultive crime as
12 that term is defined in section 9a of chapter X of the code of
13 criminal procedure, 1927 PA 175, MCL 770.9a.

14 (3) If pertinent, **THE COURT MUST PERMIT** the witness ~~shall be~~
15 ~~permitted the~~ **TO** use ~~of~~ dolls or mannequins, including, but not
16 limited to, anatomically correct dolls or mannequins, to assist the
17 witness in testifying on direct and cross-examination.

18 (4) ~~A~~ **THE COURT MUST PERMIT A** witness who is called upon to
19 testify ~~shall be permitted to~~ have a support person sit with,
20 accompany, or be in close proximity to the witness during his or
21 her testimony. ~~A notice of intent to use a support person shall~~
22 ~~name the support person, identify the relationship the support~~
23 ~~person has with the witness, and give notice to all parties to the~~
24 ~~proceeding that the witness may request that the named support~~
25 ~~person sit with the witness when the witness is called upon to~~
26 ~~testify during any stage of the proceeding. The notice of intent to~~
27 ~~use a named support person shall be filed with the court and shall~~

1 ~~be served upon all parties to the proceeding. The court shall rule~~
2 ~~on a motion objecting to the use of a named support person before~~
3 ~~the date at which the witness desires to use the support person.~~**THE**
4 **COURT MUST ALSO PERMIT A WITNESS WHO IS CALLED UPON TO TESTIFY TO**
5 **HAVE A COURTROOM SUPPORT DOG AND HANDLER SIT WITH, OR BE IN CLOSE**
6 **PROXIMITY TO, THE WITNESS DURING HIS OR HER TESTIMONY.**

7 (5) A NOTICE OF INTENT TO USE A SUPPORT PERSON OR COURTROOM
8 SUPPORT DOG IS ONLY REQUIRED IF THE SUPPORT PERSON OR COURTROOM
9 SUPPORT DOG IS TO BE UTILIZED DURING TRIAL AND IS NOT REQUIRED FOR
10 THE USE OF A SUPPORT PERSON OR COURTROOM SUPPORT DOG DURING ANY
11 OTHER COURTROOM PROCEEDING. A NOTICE OF INTENT UNDER THIS
12 SUBSECTION MUST BE FILED WITH THE COURT AND MUST BE SERVED UPON ALL
13 PARTIES TO THE PROCEEDING. THE NOTICE MUST NAME THE SUPPORT PERSON
14 OR COURTROOM SUPPORT DOG, IDENTIFY THE RELATIONSHIP THE SUPPORT
15 PERSON HAS WITH THE WITNESS, IF APPLICABLE, AND GIVE NOTICE TO ALL
16 PARTIES THAT THE WITNESS MAY REQUEST THAT THE NAMED SUPPORT PERSON
17 OR COURTROOM SUPPORT DOG SIT WITH THE WITNESS WHEN THE WITNESS IS
18 CALLED UPON TO TESTIFY DURING TRIAL. A COURT MUST RULE ON A MOTION
19 OBJECTING TO THE USE OF A NAMED SUPPORT PERSON OR COURTROOM SUPPORT
20 DOG BEFORE THE DATE WHEN THE WITNESS DESIRES TO USE THE SUPPORT
21 PERSON OR COURTROOM SUPPORT DOG.

22 (6) AN AGENCY THAT SUPPLIES A COURTROOM SUPPORT DOG UNDER THIS
23 SECTION CONVEYS ALL RESPONSIBILITY FOR THE COURTROOM SUPPORT DOG TO
24 THE PARTICIPATING PROSECUTOR'S OFFICE OR GOVERNMENT ENTITY IN
25 CHARGE OF THE LOCAL COURTROOM SUPPORT DOG PROGRAM DURING THE PERIOD
26 OF TIME THE PARTICIPATING PROSECUTOR'S OFFICE OR GOVERNMENT ENTITY
27 IN CHARGE OF THE LOCAL PROGRAM IS UTILIZING THE COURTROOM SUPPORT

1 DOG.

2 (7) ~~(5)~~—A custodian of the videorecorded statement may take a
3 witness's videorecorded statement before the normally scheduled
4 date for the defendant's preliminary examination. The videorecorded
5 statement ~~shall~~**MUST** state the date and time that the statement was
6 taken; ~~shall~~**MUST** identify the persons present in the room and
7 state whether they were present for the entire videorecording or
8 only a portion of the videorecording; and ~~shall~~**MUST** show a time
9 clock that is running during the taking of the videorecorded
10 statement.

11 (8) ~~(6)~~—A videorecorded statement may be considered in court
12 proceedings only for 1 or more of the following **PURPOSES**:

13 (a) It may be admitted as evidence at all pretrial
14 proceedings, except that it ~~may not~~**CANNOT** be introduced at the
15 preliminary examination instead of the live testimony of the
16 witness.

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

18 (c) It may be considered by the court in determining the
19 sentence.

20 (d) It may be used as a factual basis for a no contest plea or
21 to supplement a guilty plea.

22 (9) ~~(7)~~—A videorecorded deposition may be considered in court
23 proceedings only as provided by law.

24 (10) ~~(8)~~—In a videorecorded statement, the questioning of the
25 witness should be full and complete; ~~shall~~**MUST** be in accordance
26 with the forensic interview protocol implemented as required by
27 section 8 of the child protection law, 1975 PA 238, MCL 722.628, or

1 as otherwise provided by law; and, if appropriate for the witness's
2 developmental level or mental acuity, ~~shall~~**MUST** include, but is
3 not limited to, all of the following areas:

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

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

6 (c) The relationship, if any, between the witness and the
7 accused.

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

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

11 **(11)** ~~(9)~~—A custodian of the videorecorded statement may
12 release or consent to the release or use of a videorecorded
13 statement or copies of a videorecorded statement to a law
14 enforcement agency, an agency authorized to prosecute the criminal
15 case to which the videorecorded statement relates, or an entity
16 that is part of county protocols established under section 8 of the
17 child protection law, 1975 PA 238, MCL 722.628, or as otherwise
18 provided by law. The defendant and, if represented, his or her
19 attorney has the right to view and hear a videorecorded statement
20 before the defendant's preliminary examination. Upon request, the
21 prosecuting attorney shall provide the defendant and, if
22 represented, his or her attorney with reasonable access and means
23 to view and hear the videorecorded statement at a reasonable time
24 before the defendant's pretrial or trial of the case. In
25 preparation for a court proceeding and under protective conditions,
26 including, but not limited to, a prohibition on the copying,
27 release, display, or circulation of the videorecorded statement,

1 the court may order that a copy of the videorecorded statement be
2 given to the defense.

3 (12) ~~(10)~~—If authorized by the prosecuting attorney in the
4 county in which the videorecorded statement was taken, a
5 videorecorded statement may be used for purposes of training the
6 custodians of the videorecorded statement in that county on the
7 forensic interview protocol implemented as required by section 8 of
8 the child protection law, 1975 PA 238, MCL 722.628, or as otherwise
9 provided by law.

10 (13) ~~(11)~~—Except as provided in this section, an individual,
11 including, but not limited to, a custodian of the videorecorded
12 statement, the witness, or the witness's parent, guardian, guardian
13 ad litem, or attorney, shall not release or consent to release a
14 videorecorded statement or a copy of a videorecorded statement.

15 (14) ~~(12)~~—A videorecorded statement that becomes part of the
16 court record is subject to a protective order of the court for the
17 purpose of protecting the privacy of the witness.

18 (15) ~~(13)~~—A videorecorded statement ~~shall~~**MUST** not be copied
19 or reproduced in any manner except as provided in this section. A
20 videorecorded statement is exempt from disclosure under the freedom
21 of information act, 1976 PA 442, MCL 15.231 to 15.246, is not
22 subject to release under another statute, and is not subject to
23 disclosure under the Michigan court rules governing discovery. This
24 section does not prohibit the production or release of a transcript
25 of a videorecorded statement.

26 (16) ~~(14)~~—If, upon the motion of a party made before the
27 preliminary examination, the court finds on the record that the

1 special arrangements specified in subsection ~~(15)~~ **(17)** are
2 necessary to protect the welfare of the witness, the court ~~shall~~
3 **MUST** order those special arrangements. In determining whether it is
4 necessary to protect the welfare of the witness, the court ~~shall~~
5 **MUST** consider all of the following **FACTORS**:

6 (a) The age of the witness.

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

8 (c) The desire of the witness or the witness's family or
9 guardian to have the testimony taken in a room closed to the
10 public.

11 (d) The physical condition of the witness.

12 **(17)** ~~(15)~~—If the court determines on the record that it is
13 necessary to protect the welfare of the witness and grants the
14 motion made under subsection ~~(14)~~, **(16)**, the court ~~shall~~ **MUST** order
15 both of the following:

16 (a) ~~All~~ **THAT ALL** persons not necessary to the proceeding ~~shall~~
17 **MUST** be excluded during the witness's testimony from the courtroom
18 where the preliminary examination is held. Upon request by any
19 person and the payment of the appropriate fees, a transcript of the
20 witness's testimony ~~shall~~ **MUST** be made available.

21 (b) ~~In order to protect the witness from directly viewing the~~
22 ~~defendant,~~ **THAT** the courtroom ~~shall~~ be arranged so that the
23 defendant is seated as far from the witness stand as is reasonable
24 and not directly in front of the witness stand **IN ORDER TO PROTECT**
25 **THE WITNESS FROM DIRECTLY VIEWING THE DEFENDANT.** The defendant's
26 position ~~shall~~ **MUST** be located so as to allow the defendant to hear
27 and see the witness and be able to communicate with his or her

1 attorney.

2 **(18)** ~~(16)~~—If upon the motion of a party made before trial the
3 court finds on the record that the special arrangements specified
4 in subsection ~~(17)~~—**(19)** are necessary to protect the welfare of the
5 witness, the court ~~shall~~—**MUST** order those special arrangements. In
6 determining whether it is necessary to protect the welfare of the
7 witness, the court ~~shall~~—**MUST** consider all of the following

8 **FACTORS:**

9 (a) The age of the witness.

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

11 (c) The desire of the witness or the witness's family or
12 guardian to have the testimony taken in a room closed to the
13 public.

14 (d) The physical condition of the witness.

15 **(19)** ~~(17)~~—If the court determines on the record that it is
16 necessary to protect the welfare of the witness and grants the
17 motion made under subsection ~~(16)~~,—**(18)**, the court ~~shall~~—**MUST** order
18 1 or more of the following:

19 (a) ~~All~~—**THAT ALL** persons not necessary to the proceeding ~~shall~~
20 be excluded during the witness's testimony from the courtroom where
21 the trial is held. The witness's testimony ~~shall~~—**MUST** be broadcast
22 by closed-circuit television to the public in another location out
23 of sight of the witness.

24 (b) ~~In order to protect the witness from directly viewing the~~
25 ~~defendant,~~—**THAT** the courtroom ~~shall~~—be arranged so that the
26 defendant is seated as far from the witness stand as is reasonable
27 and not directly in front of the witness stand **IN ORDER TO PROTECT**

1 **THE WITNESS FROM DIRECTLY VIEWING THE DEFENDANT.** The defendant's
2 position ~~shall~~**MUST** be the same for all witnesses and ~~shall~~**MUST** be
3 located so as to allow the defendant to hear and see all witnesses
4 and be able to communicate with his or her attorney.

5 (c) ~~A THAT A~~ questioner's stand or podium ~~shall~~ be used for
6 all questioning of all witnesses by all parties and ~~shall~~**MUST** be
7 located in front of the witness stand.

8 **(20)** ~~(18)~~ If, upon the motion of a party or in the court's
9 discretion, the court finds on the record that the witness is or
10 will be psychologically or emotionally unable to testify at a court
11 proceeding even with the benefit of the protections afforded the
12 witness in subsections (3), (4), ~~(15)~~, **(17)**, and ~~(17)~~, **(19)**, the
13 court ~~shall~~**MUST** order that the witness may testify outside the
14 physical presence of the defendant by closed circuit television or
15 other electronic means that allows the witness to be observed by
16 the trier of fact and the defendant when questioned by the parties.

17 **(21)** ~~(19)~~ For purposes of the videorecorded deposition under
18 subsection ~~(18)~~, **(20)**, the witness's examination and cross-
19 examination ~~shall~~**MUST** proceed in the same manner as if the witness
20 testified at the court proceeding for which the videorecorded
21 deposition is to be used. The court ~~shall~~**MUST** permit the defendant
22 to hear the testimony of the witness and to consult with his or her
23 attorney.

24 **(22)** ~~(20)~~ This section is in addition to other protections or
25 procedures afforded to a witness by law or court rule.

26 **(23)** ~~(21)~~ A person who intentionally releases a videorecorded
27 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 takes effect 90 days
4 after the date it is enacted into law.