

# HOUSE BILL NO. 6290

June 30, 2022, Introduced by Reps. Hornberger, Tisdell, LaGrand and Yaroach 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 2018 PA 344.

## 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 investigating law enforcement agency, prosecuting attorney, or

1 department of attorney general or another person designated under  
2 the county protocols established as required by section 8 of the  
3 child protection law, 1975 PA 238, MCL 722.628.

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

12 (c) "Nonoffending parent or legal guardian" means a natural  
13 parent, stepparent, adoptive parent, or legally appointed or  
14 designated guardian of a witness who is not alleged to have  
15 committed a violation of the laws of this state, another state, the  
16 United States, or a court order that is connected in any manner to  
17 a witness's videorecorded statement.

18 (d) "Videorecorded statement" means a witness's statement  
19 taken by a custodian of the videorecorded statement as provided in  
20 subsection (5). Videorecorded statement does not include a  
21 videorecorded deposition taken as provided in subsections (16) and  
22 (17).

23 (e) "Witness" means an alleged victim of an offense listed  
24 under subsection (2) who is either of the following:

25 (i) ~~A person~~ **An individual** under 16 years of age.

26 (ii) ~~A person~~ **An individual** 16 years of age or older with a  
27 developmental disability.

28 (2) This section only applies to ~~either~~ **1 or more** of the  
29 following:

1 (a) A proceeding brought under section 2(a)(1) of this chapter  
2 in which the alleged offense, if committed by an adult, would be a  
3 felony under section 136b, 145c, 520b to 520e, or 520g of the  
4 Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b  
5 to 750.520e, and 750.520g.

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

7 **(c) A proceeding brought under section 7j of the child**  
8 **protection law, 1975 PA 238, MCL 722.627j.**

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

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

26 (5) A custodian of the videorecorded statement may take a  
27 witness's videorecorded statement. The videorecorded statement  
28 shall be admitted at all proceedings except the adjudication stage  
29 instead of the live testimony of the witness. The videorecorded

1 statement ~~shall~~**must** state the date and time that the statement was  
2 taken; ~~shall~~**must** identify the ~~persons~~**individuals** present in the  
3 room and state whether they were present for the entire video  
4 recording or only a portion of the video recording; and ~~shall~~**must**  
5 show a time clock that is running during the taking of the  
6 statement.

7 (6) In a videorecorded statement, the questioning of the  
8 witness ~~should~~**must** be full and complete; ~~shall~~**must** be in  
9 accordance with the forensic interview protocol implemented as  
10 required by section 8 of the child protection law, 1975 PA 238, MCL  
11 722.628; and, if appropriate for the witness's developmental level,  
12 ~~shall~~**must** include, but ~~need~~**is** not ~~be~~ limited to, all of the  
13 following areas:

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

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

16 (c) The relationship, if any, between the witness and the  
17 respondent.

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

19 (e) The names of other ~~persons~~**individuals** known to the  
20 witness who may have personal knowledge of the offense or offenses.

21 (7) A custodian of the videorecorded statement may release or  
22 consent to the release or use of a videorecorded statement or  
23 copies of a videorecorded statement to a law enforcement agency, an  
24 agency authorized to prosecute the criminal case to which the  
25 videorecorded statement relates, or an entity that is part of  
26 county protocols established under section 8 of the child  
27 protection law, 1975 PA 238, MCL 722.628. Each respondent and, if  
28 represented, his or her attorney has the right to view and hear the  
29 videorecorded statement at a reasonable time before it is offered

1 into evidence. In preparation for a court proceeding and under  
2 protective conditions, including, but not limited to, a prohibition  
3 on the copying, release, display, or circulation of the  
4 videorecorded statement, the court may order that a copy of the  
5 videorecorded statement be given to the defense. **The order must**  
6 **specify who shall view the videorecorded statement, indicate the**  
7 **time by which the videorecorded statement is required to be**  
8 **returned, and state a reason for the release of the videorecorded**  
9 **statement.**

10 (8) If authorized by the prosecuting attorney in the county in  
11 which the videorecorded statement was taken and with the consent of  
12 a minor witness's nonoffending parent or legal guardian, a  
13 videorecorded statement may be used for purposes of training the  
14 custodians of the videorecorded statement in that county, or for  
15 purposes of training ~~persons~~**individuals** in another county that  
16 would meet the definition of custodian of the videorecorded  
17 statement had the videorecorded statement been taken in that other  
18 county, on the forensic interview protocol implemented as required  
19 by section 8 of the child protection law, 1975 PA 238, MCL 722.628.  
20 The consent required under this subsection must be obtained through  
21 the execution of a written, fully informed, time-limited, and  
22 revocable release of information. An individual participating in  
23 training under this subsection is also required to execute a  
24 nondisclosure agreement to protect witness confidentiality.

25 (9) Except as provided in this section, an individual,  
26 including, but not limited to, a custodian of the videorecorded  
27 statement, the witness, or the witness's parent, guardian, guardian  
28 ad litem, or attorney, shall not release or consent to release a  
29 videorecorded statement or a copy of a videorecorded statement.

1 (10) A videorecorded statement that becomes part of the court  
2 record is subject to a protective order of the court for the  
3 purpose of protecting the privacy of the witness.

4 (11) A videorecorded statement shall not be copied or  
5 reproduced in any manner except as provided in this section. A  
6 videorecorded statement is exempt from disclosure under the freedom  
7 of information act, 1976 PA 442, MCL 15.231 to 15.246, is not  
8 subject to release under another statute, and is not subject to  
9 disclosure under the Michigan court rules governing discovery. This  
10 section does not prohibit ~~the~~ production or release of a transcript  
11 of a videorecorded statement.

12 (12) Except as otherwise provided in subsection (15), if, upon  
13 the motion of a party or in the court's discretion, the court finds  
14 on the record that psychological harm to the witness would occur if  
15 the witness were to testify in the presence of the respondent at a  
16 court proceeding or in a videorecorded deposition taken as provided  
17 in subsection (13), the court shall order that the witness during  
18 his or her testimony be shielded from viewing the respondent in  
19 ~~such a manner as to enable~~ **that enables** the respondent to consult  
20 with his or her attorney and to see and hear the testimony of the  
21 witness without the witness being able to see the respondent.

22 (13) In a proceeding brought under section 2(b) of this  
23 chapter, if, upon the motion of a party or in the court's  
24 discretion, the court finds on the record that psychological harm  
25 to the witness would occur if the witness were to testify at the  
26 adjudication stage, the court shall order to be taken a  
27 videorecorded deposition of a witness that ~~shall~~ **must** be admitted  
28 into evidence at the adjudication stage instead of the live  
29 testimony of the witness. The examination and cross-examination of

1 the witness in the videorecorded deposition shall proceed in the  
2 same manner as permitted at the adjudication stage.

3 (14) In a proceeding brought under section 2(a)(1) of this  
4 chapter in which the alleged offense, if committed by an adult,  
5 would be a felony under section 136b, 145c, 520b to 520e, or 520g  
6 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,  
7 750.520b to 750.520e, and 750.520g, if, upon the motion of a party  
8 made before the adjudication stage, the court finds on the record  
9 that the special arrangements specified in subsection (15) are  
10 necessary to protect the welfare of the witness, the court shall  
11 order 1 or both of those special arrangements. In determining  
12 whether it is necessary to protect the welfare of the witness, the  
13 court shall consider both of the following:

14 (a) The age of the witness.

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

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

20 (a) In order to protect the witness from directly viewing the  
21 respondent, the courtroom ~~shall~~**must** be arranged so that the  
22 respondent is seated as far from the witness stand as is reasonable  
23 and not directly in front of the witness stand. The respondent's  
24 position ~~shall~~**must** be located so as to allow the respondent to  
25 hear and see all witnesses and be able to communicate with his or  
26 her attorney.

27 (b) A questioner's stand or podium ~~shall~~**must** be used for all  
28 questioning of all witnesses by all parties, and ~~shall~~**must** be  
29 located in front of the witness stand.

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

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

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

22           (19) A person who intentionally releases a videorecorded  
23 statement in violation of this section is guilty of a misdemeanor  
24 punishable by imprisonment for not more than ~~93 days~~**1 year** or a  
25 fine of not more than ~~\$500.00~~**\$2,500.00**, or both. **This section**  
26 **does not affect the ability to investigate, arrest, prosecute, or**  
27 **convict an individual for any other violation of the law of this**  
28 **state.**

29           (20) A videorecorded statement made under this section must be



1 retained under the protocols established by the county under  
2 section 8(6) of the child protection law, 1975 PA 238, MCL 722.628.

3 (21) The department is not responsible for storing or  
4 retaining a videorecorded statement under this section.

5 (22) Failure to make a video recording of an interview under  
6 this section, including failure to record the interview in its  
7 entirety, does not prevent a forensic interviewer, the individual  
8 being interviewed, or other witness present during the taking of  
9 the videorecorded statement from testifying in court as to the  
10 circumstances and content of the individual's statement if the  
11 court determines that the testimony is otherwise admissible.

12 Enacting section 1. This amendatory act takes effect 180 days  
13 after the date it is enacted into law.

14 Enacting section 2. This amendatory act does not take effect  
15 unless all of the following bills of the 101st Legislature are  
16 enacted into law:

17 (a) Senate Bill No. \_\_\_\_ or House Bill No. \_\_\_\_ (request no.  
18 03159'21).

19 (b) Senate Bill No. \_\_\_\_ or House Bill No. \_\_\_\_ (request no.  
20 03160'21).