

SENATE BILL NO. 882

February 12, 1998, Introduced by Senators BENNETT, NORTH, GOUGEON, STEIL and HART and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 2163a (MCL 600.2163a), as amended by 1989 PA 253.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2163a. (1) As used in this section:
2 (a) "Developmental disability" means ~~an impairment of gen-~~
3 ~~eral intellectual functioning or adaptive behavior which meets~~
4 ~~the following criteria: (i) It originated before the person~~
5 ~~became 18 years of age. (ii) It has continued since its origina-~~
6 ~~tion or can be expected to continue indefinitely. (iii) It con-~~
7 ~~stitutes a substantial burden to the impaired person's ability to~~
8 ~~perform normally in society. (iv) It is attributable to mental~~
9 ~~retardation, autism, or any other condition of a person related~~
10 ~~to mental retardation because it produces a similar impairment or~~

1 ~~requires treatment and services similar to those required for a~~
2 ~~person who is mentally retarded.~~ THAT TERM AS DEFINED IN
3 SECTION 100A OF THE MENTAL HEALTH CODE, 1974 PA 258,
4 MCL 330.1100A.

5 (b) "Witness" means an alleged victim of ~~any of the~~
6 ~~offenses~~ AN OFFENSE listed under subsection (2) who is either of
7 the following:

8 (i) A person under ~~15~~ 16 years of age.

9 (ii) A person ~~15~~ 16 years of age or older with a develop-
10 mental disability.

11 (2) This section only applies to prosecutions and proceed-
12 ings under section 136b, 145c, ~~or~~ 520b to 520E, OR 520g of the
13 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
14 ~~being sections 750.136b, 750.145c, and 750.520b to 750.520g of~~
15 ~~the Michigan Compiled Laws~~ 1931 PA 328, MCL 750.136B, 750.145C,
16 750.520B TO 750.520E, AND 750.520G, or under former section 136
17 or 136a of ~~Act No. 328 of the Public Acts of 1931~~ THE MICHIGAN
18 PENAL CODE, 1931 PA 328.

19 (3) If pertinent, the witness shall be permitted the use of
20 dolls or mannequins, including, but not limited to, anatomically
21 correct dolls or mannequins, to assist the witness in testifying
22 on direct and cross-examination.

23 (4) A witness who is called upon to testify shall be permit-
24 ted to have a support person sit with, accompany, or be in close
25 proximity to the witness during his or her testimony. A notice
26 of intent to use a support person shall name the support person,
27 identify the relationship the support person has with the

1 witness, and ~~shall~~ give notice to all parties to the proceeding
2 that the witness may request that the named support person sit
3 with the witness when the witness is called upon to testify
4 during any stage of the proceeding. The notice of intent to use
5 a named support person shall be filed with the court and shall be
6 served upon all parties to the proceeding. The court shall rule
7 on any motion objecting to the use of a named support person
8 prior to the date at which the witness desires to use the support
9 person.

10 (5) In order to avoid excessive questioning of a witness, a
11 videotape statement of a witness may be taken by the investigat-
12 ing law enforcement agency prior to the normally scheduled date
13 for the defendant's preliminary examination. The videotape of a
14 videotape statement shall state the date and time that the state-
15 ment was taken; SHALL IDENTIFY the persons present in the room ~~,~~
16 ~~their identities,~~ and STATE whether they were present for the
17 entire videotaping or only a portion of the videotaping; and
18 shall show a time clock that ~~shall be~~ IS running during the
19 taking of the statement.

20 (6) A videotape statement of a witness taken ~~pursuant to~~
21 AS PROVIDED IN subsection (5) may be considered in court proceed-
22 ings only ~~as follows~~ FOR 1 OR MORE OF THE FOLLOWING:

23 (a) It may be admitted as evidence at all pretrial proceed-
24 ings, except that it may not be introduced at the preliminary
25 examination instead of the live testimony of the witness.

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

1 (c) It may be considered by the court in determining the
2 sentence.

3 (7) In a videotape statement taken ~~pursuant to~~ AS PROVIDED
4 IN subsection (5), the questioning of the witness should be full
5 and complete and shall include, but not be limited to, ALL OF the
6 following areas:

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

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

10 (c) The relationship, if any, between the witness and the
11 accused.

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

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

15 (8) The defendant and, if represented, his or her attorney
16 ~~shall have~~ HAS the right to view and hear the videotape taken
17 ~~pursuant to~~ AS PROVIDED IN subsection (5) not less than 48
18 hours before the normally scheduled date for the defendant's pre-
19 liminary examination.

20 (9) If, upon the motion of ~~any~~ A party made before the
21 preliminary examination, the court finds on the record that the
22 special arrangements specified in subsection (10) are necessary
23 to protect the welfare of the witness, the court shall order
24 those special arrangements. In determining whether it is neces-
25 sary to protect the welfare of the witness, the court shall con-
26 sider ALL OF the following:

1 (a) The age of the witness.

2 ~~(b) The psychological maturity of the witness.~~

3 (B) ~~(c)~~ The nature of the offense or offenses.

4 (C) ~~(d)~~ The desire of the witness or ~~his or her~~ THE
5 WITNESS'S family or guardian to have the testimony taken in a
6 room closed to the public.

7 (10) If the court determines on the record that it is neces-
8 sary to protect the welfare of the witness and grants the motion
9 made under subsection (9), the court shall order both of the
10 following:

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

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

23 (11) If upon the motion of any party made before trial the
24 court finds on the record that the special arrangements specified
25 in subsection (12) are necessary to protect the welfare of the
26 witness, the court shall order those special arrangements. In

1 determining whether it is necessary to protect the welfare of the
2 witness, the court shall consider ALL OF the following:

3 (a) The age of the witness.

4 ~~(b) The psychological maturity of the witness.~~

5 (B) ~~(c)~~ The nature of the offense or offenses.

6 (C) ~~(d)~~ The desire of the witness or ~~his or her~~ THE
7 WITNESS'S family or guardian to have the testimony taken in a
8 room closed to the public.

9 (12) If the court determines on the record that it is neces-
10 sary to protect the welfare of the witness and grants the motion
11 made under subsection (11), the court shall order 1 or more of
12 the following:

13 (a) All persons not necessary to the proceeding shall be
14 excluded during the witness's testimony from the courtroom where
15 the trial is held. The witness's testimony shall be broadcast by
16 closed circuit television to the public in another location out
17 of sight of the witness.

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

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

1 (13) If, upon the motion of ~~any~~ A party or in the court's
2 discretion, the court finds on the record that the witness is or
3 will be psychologically or emotionally unable to testify at a
4 court proceeding even with the benefit of the protections
5 afforded the witness in subsections (3), (4), (10), and (12), the
6 court shall order that a videotape deposition of a witness shall
7 be taken to be admitted at a court proceeding instead of the
8 WITNESS'S live testimony. ~~of the witness.~~

9 (14) For purposes of the videotape deposition under subsec-
10 tion (13), the WITNESS'S examination and cross-examination ~~of~~
11 ~~the witness~~ shall proceed in the same manner as if the witness
12 testified at the court proceeding for which the videotape deposi-
13 tion is to be used, and the court shall order that the witness,
14 during his or her testimony, shall not be confronted by the
15 defendant but shall permit the defendant to hear the testimony of
16 the witness and to consult with his or her attorney.

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

19 ~~(16) This section applies to cases filed on or after and~~
20 ~~proceedings held on or after January 1, 1988.~~

21 ~~(17) This section shall take effect January 1, 1988.~~