

SENATE BILL NO. 621

October 31, 2019, Introduced by Senators IRWIN, RUNESTAD and THEIS and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1961 PA 236, entitled "Revised judiciary act of 1961," by amending section 2163a (MCL 600.2163a), as amended by 2018 PA 343.

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

1 children and adults within the court or legal system or that has
2 performed the duties of a courtroom support dog prior to September
3 27, 2018.

4 (b) "Custodian of the videorecorded statement" means the
5 ~~department of health and human services,~~ investigating law
6 enforcement agency, prosecuting attorney, or department of attorney
7 general or another person designated under the county protocols
8 established as required by section 8 of the child protection law,
9 1975 PA 238, MCL 722.628.

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

18 (d) "Nonoffending parent or legal guardian" means a natural
19 parent, stepparent, adoptive parent, or legally appointed or
20 designated guardian of a witness who is not alleged to have
21 committed a violation of the laws of this state, another state, the
22 United States, or a court order that is connected in any manner to
23 a witness's videorecorded statement.

24 (e) "Videorecorded statement" means a witness's statement
25 taken by a custodian of the videorecorded statement as provided in
26 subsection (7). Videorecorded statement does not include a
27 videorecorded deposition taken as provided in subsections (20) and
28 (21).

29 (f) "Vulnerable adult" means that term as defined in section

1 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

2 (g) "Witness" means an alleged victim of an offense listed
3 under subsection (2) who is any of the following:

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

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

7 (iii) A vulnerable adult.

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

9 (a) For purposes of subsection (1)(g)(i) and (ii), prosecutions
10 and proceedings under section 136b, 145c, 520b to 520e, or 520g of
11 the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
12 750.520b to 750.520e, and 750.520g.

13 (b) For purposes of subsection (1)(g)(iii), 1 or more of the
14 following matters:

15 (i) Prosecutions and proceedings under section 110a, 145n,
16 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,
17 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

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

21 (3) If pertinent, the court must permit the witness to use
22 dolls or mannequins, including, but not limited to, anatomically
23 correct dolls or mannequins, to assist the witness in testifying on
24 direct and cross-examination.

25 (4) The court must permit a witness who is called upon to
26 testify to have a support person sit with, accompany, or be in
27 close proximity to the witness during his or her testimony. The
28 court must also permit a witness who is called upon to testify to
29 have a courtroom support dog and handler sit with, or be in close

1 proximity to, the witness during his or her testimony.

2 (5) A notice of intent to use a support person or courtroom
3 support dog is only required if the support person or courtroom
4 support dog is to be utilized during trial and is not required for
5 the use of a support person or courtroom support dog during any
6 other courtroom proceeding. A notice of intent under this
7 subsection must be filed with the court and must be served upon all
8 parties to the proceeding. The notice must name the support person
9 or courtroom support dog, identify the relationship the support
10 person has with the witness, if applicable, and give notice to all
11 parties that the witness may request that the named support person
12 or courtroom support dog sit with the witness when the witness is
13 called upon to testify during trial. A court must rule on a motion
14 objecting to the use of a named support person or courtroom support
15 dog before the date when the witness desires to use the support
16 person or courtroom support dog.

17 (6) An agency that supplies a courtroom support dog under this
18 section conveys all responsibility for the courtroom support dog to
19 the participating prosecutor's office or government entity in
20 charge of the local courtroom support dog program during the period
21 of time the participating prosecutor's office or government entity
22 in charge of the local program is utilizing the courtroom support
23 dog.

24 (7) A custodian of the videorecorded statement may take a
25 witness's videorecorded statement before the normally scheduled
26 date for the defendant's preliminary examination. The videorecorded
27 statement must state the date and time that the statement was
28 taken; must identify the persons present in the room and state
29 whether they were present for the entire videorecording or only a

1 portion of the videorecording; and must show a time clock that is
2 running during the taking of the videorecorded statement.

3 (8) A videorecorded statement may be considered in court
4 proceedings only for 1 or more of the following purposes:

5 (a) ~~It may be admitted~~ **Admission** as evidence at all pretrial
6 proceedings, ~~except that it cannot be introduced including~~
7 **admission** at the preliminary examination ~~instead of in addition to~~
8 the live testimony of the witness **if the statement was taken**
9 **according to the forensic interviewing protocol implemented as**
10 **required under section 8 of the child protection law, 1975 PA 238,**
11 **MCL 722.628.**

12 (b) ~~It may be admitted~~ **Admission** for impeachment purposes. **If**
13 **any part of a videorecorded statement is admitted for impeachment**
14 **purposes, the entire statement is admissible.**

15 (c) ~~It may be considered~~ **Consideration** by the court in
16 determining the sentence.

17 (d) ~~It may be used~~ **Use** as a factual basis for a no contest
18 plea or to supplement a guilty plea.

19 (e) **Consideration by a hearing officer in a hearing held under**
20 **section 7(6) of the child protection law, 1975 PA 238, MCL 722.627.**

21 (f) **Admission as evidence at trial, so long as the admission**
22 **is consistent with any requirements of the confrontation clause of**
23 **Amendment VI to the Constitution of the United States and if the**
24 **statement was taken according to the forensic interviewing protocol**
25 **implemented as required under section 8 of the child protection**
26 **law, 1975 PA 238, MCL 722.628.**

27 (9) A videorecorded deposition may be considered in court
28 proceedings only as provided by law.

29 (10) In a videorecorded statement, the questioning of the

1 witness should be full and complete; must be in accordance with the
2 forensic interview protocol implemented as required by section 8 of
3 the child protection law, 1975 PA 238, MCL 722.628, or as otherwise
4 provided by law; and, if appropriate for the witness's
5 developmental level or mental acuity, must include, but is not
6 limited to, all of the 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 offenses.

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

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

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

14 (11) A custodian of the videorecorded statement may release or
15 consent to the release or use of a videorecorded statement or
16 copies of a videorecorded statement to a law enforcement agency, an
17 agency authorized to prosecute the criminal case to which the
18 videorecorded statement relates, or an entity that is part of
19 county protocols established under section 8 of the child
20 protection law, 1975 PA 238, MCL 722.628, or as otherwise provided
21 by law. The defendant and, if represented, his or her attorney has
22 the right to view and hear a videorecorded statement before the
23 defendant's preliminary examination. Upon request, the prosecuting
24 attorney shall provide the defendant and, if represented, his or
25 her attorney with reasonable access and means to view and hear the
26 videorecorded statement at a reasonable time **but in no event less**
27 **than 10 days** before the defendant's pretrial or trial of the case,
28 **or hearing held under section 7(6) of the child protection law,**
29 **1975 PA 238, MCL 722.627.** In preparation for a court proceeding and

1 under protective conditions, including, but not limited to, a
2 prohibition on the copying, release, display, or circulation of the
3 videorecorded statement, the court may order that a copy of the
4 videorecorded statement be given to the defense. **The protective**
5 **conditions may include a prohibition on defense counsel providing a**
6 **defendant with his or her own copy of the videorecorded statement**
7 **or a prohibition on a defendant who is proceeding pro se from**
8 **receiving or retaining his or her own copy of the videorecorded**
9 **statement. The order shall specify who may view the videorecorded**
10 **statement, indicate the time by which the videorecorded statement**
11 **is required to be returned, and state a reason for the release of**
12 **the videorecorded statement. The order may include any other**
13 **protective conditions the court considers necessary.**

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

1 (13) Except as provided in this section, an individual,
2 including, but not limited to, a custodian of the videorecorded
3 statement, the witness, or the witness's parent, guardian, guardian
4 ad litem, or attorney, shall not release or consent to release a
5 videorecorded statement or a copy of a videorecorded statement.

6 (14) A videorecorded statement that becomes part of the court
7 record is subject to a protective order of the court for the
8 purpose of protecting the privacy of the witness.

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

17 (16) If, upon the motion of a party made before the
18 preliminary examination, the court finds on the record that the
19 special arrangements specified in subsection (17) are necessary to
20 protect the welfare of the witness, the court must order those
21 special arrangements. In determining whether it is necessary to
22 protect the welfare of the witness, the court must consider all of
23 the following factors:

24 (a) The age of the witness.

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

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

29 (d) The physical condition of the witness.

1 (17) 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 (16), the court must order both of the
4 following:

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

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

17 (18) If upon the motion of a party made before trial the court
18 finds on the record that the special arrangements specified in
19 subsection (19) are necessary to protect the welfare of the
20 witness, the court must order those special arrangements. In
21 determining whether it is necessary to protect the welfare of the
22 witness, the court must consider all of the following factors:

23 (a) The age of the witness.

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

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

28 (d) The physical condition of the witness.

29 (19) If the court determines on the record that it is

1 necessary to protect the welfare of the witness and grants the
2 motion made under subsection (18), the court must order 1 or more
3 of the following:

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

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

16 (c) That a questioner's stand or podium be used for all
17 questioning of all witnesses by all parties and must be located in
18 front of the witness stand.

19 (20) If, upon the motion of a party or in the court's
20 discretion, the court finds on the record that the witness is or
21 will be psychologically or emotionally unable to testify at a court
22 proceeding even with the benefit of the protections afforded the
23 witness in subsections (3), (4), (17), and (19), the court must
24 order that the witness may testify outside the physical presence of
25 the defendant by closed circuit television or other electronic
26 means that allows the witness to be observed by the trier of fact
27 and the defendant when questioned by the parties.

28 (21) For purposes of the videorecorded deposition under
29 subsection (20), the witness's examination and cross-examination

1 must proceed in the same manner as if the witness testified at the
2 court proceeding for which the videorecorded deposition is to be
3 used. The court must permit the defendant to hear the testimony of
4 the witness and to consult with his or her attorney.

5 (22) This section is in addition to other protections or
6 procedures afforded to a witness by law or court rule.

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

14 (24) A videorecorded statement made under this section must
15 adhere to the forensic interviewing protocol implemented as
16 required under section 8 of the child protection law, 1975 PA 238,
17 MCL 722.628, and must be retained under the county protocols
18 established under section 8 of the child protection law, 1975 PA
19 238, MCL 722.628.

20 (25) The department of health and human services is not
21 responsible for storing or retaining a videorecorded statement
22 under this section.

23 (26) Failure to make a videorecording of an interview under
24 this section, including failure to record the interview in its
25 entirety, does not prevent a forensic interviewer, the person being
26 interviewed, or other witness present during the taking of the
27 videorecorded statement from testifying in court as to the
28 circumstances and content of the individual's statement if the
29 court determines that the testimony is otherwise admissible.

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

3 Enacting section 2. This amendatory act does not take effect
4 unless all of the following bills of the 100th Legislature are
5 enacted into law:

6 (a) Senate Bill No. 620.

7

8 (b) Senate Bill No. 619.

9