

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bills 882 through 885 (as enrolled)

PUBLIC ACTS 324-327 of 1998

Sponsor: Senator Loren Bennett (Senate Bill 882)
Senator Walter H. North (Senate Bill 883)
Senator Michael J. Bouchard (Senate Bill 884)
Senator Robert Geake (Senate Bill 885)

Senate Committee: Families, Mental Health and Human Services
House Committee: Judiciary

Date Completed: 9-4-98

RATIONALE

Public Acts 44 through 47 of 1987 amended various laws to allow special accommodations for a witness who is under 15 years old or developmentally disabled, and who is an alleged victim of abuse or criminal sexual conduct. The special accommodations apply to criminal prosecutions, juvenile proceedings, and contested cases (such as licensure sanctions), and include videotaping statements and depositions, using anatomically correct dolls, having a support person accompany the witness, closing the hearing, and/or arranging the courtroom so that the defendant is not in direct sight of the witness. These provisions resulted from concerns that the criminal justice system was insensitive to the needs of abused children, who may be bewildered or scared by a courtroom full of adults, including the accused, and by the repetitive questioning that can take place before the preliminary examination.

The testimony of children was the subject of several recommendations of the State Bar of Michigan's Task Force on Children's Justice (which was formed in September 1993 and existed for approximately two years). The task force recommended increasing the age of children for whom special accommodations are available, and suggested that courts should not have to consider a witness's psychological maturity when determining whether to close a hearing.

CONTENT

Senate Bills 882 through 885 amended various laws to extend the special accommodations provisions to children under the age of 16;

delete psychological maturity from the factors a court must consider in determining whether to close a hearing or make other courtroom arrangements; and revise the definition of "developmental disability".

Senate Bill 882 amended the Revised Judicature Act (RJA); Senate Bill 883 amended the juvenile code; Senate Bill 884 amended the teachers' tenure Act; and Senate Bill 885 amended the Administrative Procedures Act.

Closed Hearing Criteria

Under the RJA and the juvenile code, a hearing may be closed to all but those necessary for the proceedings. In addition, the courtroom may be arranged so that the defendant is as far from the witness stand as is reasonable and is not directly in front of the witness stand, and a questioner's stand or podium may be required for the questioning of all witnesses. Under both laws, the court must find that the special arrangements are necessary to protect the welfare of the witness and must consider the following factors in making that determination:

- The age of the witness.
- The nature of the proceeding or offense.
- The desire of the witness or his or her family or guardian to have the proceeding closed.

Previously, those considerations had included the psychological maturity of the witness. Senate Bills 882 and 883 removed that factor.

Developmental Disability

Previously, under the RJA, juvenile code, teachers' tenure Act, and Administrative Procedures Act, "developmental disability", in the special accommodations provisions, meant an impairment of general intellectual functioning or adaptive behavior that met the following criteria:

- It originated before the person reached 18 years of age.
- It continued since its origination or could be expected to continue indefinitely.
- It constituted a substantial burden to the impaired person's ability to perform normally in society.
- It was attributable to mental retardation, autism, or any other condition of a person related to mental retardation because it produced a similar impairment or required treatment and services similar to those required for a mentally retarded person.

The bills deleted that definition and define "developmental disability" as that term is defined in the Mental Health Code. The bills specify, however, that for purposes of implementing the special accommodations sections, "developmental disability" includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(Under the Mental Health Code, "developmental disability", if applied to a person older than five years of age, means a severe, chronic condition that meets all of the following requirements:

- Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
- Is manifested before the individual is 22 years old.
- Is likely to continue indefinitely.
- Results in substantial functional limitation in three or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; or economic self-sufficiency.
- Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or

extended duration and are individually planned and coordinated.

If applied to a minor from birth to five years of age, "developmental disability" means a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability, as defined above for a person older than five, if services are not provided.)

MCL 600.1263a (S.B. 882)
712A.17 & 712A.17b (S.B. 883)
38.104a (S.B. 884)
24.275a (S.B. 885)

BACKGROUND

Under the Revised Judicature Act, the special accommodations apply to prosecutions and proceedings for criminal child abuse (MCL 750.136b), involvement in child sexually abusive activity or material (MCL 750.145c), criminal sexual conduct (CSC) in the first, second, third, or fourth degree (MCL 750.520b to 750.520e), or assault with intent to commit CSC (MCL 750.520g).

Under the juvenile code, the special accommodations apply to proceedings for child abuse; involvement in child sexually abusive activity or material; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC.

Under the teachers' tenure Act and the Administrative Procedures Act, the special accommodations apply to hearings held under those Acts in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since many children are confused and distressed by a judicial process designed for adults, the special accommodations were enacted in 1987 to reduce a child's trauma while preserving a defendant's constitutional rights to have a public trial and to confront the witnesses against him or her. By increasing the age of children for whom special accommodations are available, the bills will extend the existing protections to a larger population of juveniles who have been victimized.

Response: Extending the special accommodations to children under 17, rather than

16, would be consistent with the State's current policy of presuming juvenile status for children aged 16 and under.

Supporting Argument

According to the Task Force on Children's Justice, the concept of psychological maturity was included in order to preserve an appropriate balance between the constitutional rights of the criminally accused and the societal need to protect children from unwarranted inquisition. There is no legal definition of psychological maturity, however. Reportedly, the requirement that this factor be considered has led to preclosure discovery proceedings that defeat the purpose of protecting children. Under the bills, a court still must find that a closed hearing or other special courtroom arrangement is necessary to protect the welfare of the witness. Also, according to the task force, proponents of special arrangements still have the burden of overcoming the presumption of open proceedings, but without the necessity of a psychological inquiry.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bills will have an indeterminate fiscal impact. The effect the bills may have on the number of dispositions is speculative.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.