

SENATE BILL No. 1356

May 23, 2002, Introduced by Senators HAMMERSTROM, GOSCHKA, JOHNSON and BULLARD 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 1998 PA 324.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (A) "CUSTODIAN OF THE VIDEORECORDED STATEMENT" MEANS THE
3 FAMILY INDEPENDENCE AGENCY, INVESTIGATING LAW ENFORCEMENT AGENCY,
4 PROSECUTING ATTORNEY, OR DEPARTMENT OF ATTORNEY GENERAL OR
5 ANOTHER PERSON DESIGNATED UNDER THE COUNTY PROTOCOLS ESTABLISHED
6 AS REQUIRED BY SECTION 8 OF THE CHILD PROTECTION LAW, 1975
7 PA 238, MCL 722.628.

8 (B) ~~(a)~~ "Developmental disability" means that term as
9 defined in section 100a of the mental health code, 1974 PA 258,
10 MCL 330.1100a, except that, for the purposes of implementing this

1 section, developmental disability includes only a condition that
2 is attributable to a mental impairment or to a combination of
3 mental and physical impairments — and does not include a condi-
4 tion attributable to a physical impairment unaccompanied by a
5 mental impairment.

6 (C) "VIDEORECORDED STATEMENT" MEANS A WITNESS'S STATEMENT
7 TAKEN BY A CUSTODIAN OF THE VIDEORECORDED STATEMENT AS PROVIDED
8 IN SUBSECTION (5). VIDEORECORDED STATEMENT DOES NOT INCLUDE A
9 VIDEORECORDED DEPOSITION TAKEN AS PROVIDED IN SUBSECTIONS (17)
10 AND (18).

11 (D) ~~(b)~~ "Witness" means an alleged victim of an offense
12 listed under subsection (2) who is either of the following:

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

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

16 (2) This section only applies to prosecutions and proceed-
17 ings under section 136b, 145c, 520b to 520e, or 520g of the
18 Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
19 750.520b to 750.520e, and 750.520g, or under former section 136
20 or 136a of the Michigan penal code, 1931 PA 328.

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

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

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

12 (5) ~~In order to avoid excessive questioning of a witness, a~~
13 ~~videotape statement of a witness may be taken by the investigat-~~
14 ~~ing law enforcement agency prior to~~ A CUSTODIAN OF THE VIDEOR-
15 ECORDED STATEMENT MAY TAKE A WITNESS'S VIDEORECORDED STATEMENT
16 BEFORE the normally scheduled date for the defendant's prelimi-
17 nary examination. The ~~videotape of a videotape~~ VIDEORECORDED
18 statement shall state the date and time that the statement was
19 taken; shall identify the persons present in the room and state
20 whether they were present for the entire ~~videotaping~~
21 VIDEORECORDING or only a portion of the ~~videotaping~~
22 VIDEORECORDING; and shall show a time clock that is running
23 during the taking of the VIDEORECORDED statement.

24 (6) A ~~videotape~~ VIDEORECORDED statement ~~of a witness~~
25 ~~taken as provided in subsection (5)~~ may be considered in court
26 proceedings only for 1 or more of the following:

1 (a) It may be admitted as evidence at all pretrial
2 proceedings, except that it may not be introduced at the
3 preliminary examination instead of the live testimony of the
4 witness.

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

6 (c) It may be considered by the court in determining the
7 sentence.

8 (D) IT MAY BE USED AS A FACTUAL BASIS FOR A NO CONTEST PLEA
9 OR TO SUPPLEMENT A GUILTY PLEA.

10 (7) In a ~~videotape~~ VIDEORECORDED statement, ~~taken as pro-~~
11 ~~vided in subsection (5),~~ the questioning of the witness should
12 be full and complete; ~~and~~ SHALL BE IN ACCORDANCE WITH THE
13 FORENSIC INTERVIEW PROTOCOL IMPLEMENTED AS REQUIRED BY SECTION 8
14 OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.628; AND, IF
15 APPROPRIATE FOR THE WITNESS'S DEVELOPMENTAL LEVEL, shall include,
16 but IS not ~~be~~ limited to, all of the following areas:

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

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

20 (c) The relationship, if any, between the witness and the
21 accused.

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

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

25 (8) A CUSTODIAN OF THE VIDEORECORDED STATEMENT MAY RELEASE
26 OR CONSENT TO THE RELEASE OR USE OF A VIDEORECORDED STATEMENT OR
27 COPIES OF A VIDEORECORDED STATEMENT TO A LAW ENFORCEMENT AGENCY,

1 AN AGENCY AUTHORIZED TO PROSECUTE THE CRIMINAL CASE TO WHICH THE
2 VIDEORECORDED STATEMENT RELATES, OR AN ENTITY THAT IS PART OF
3 COUNTY PROTOCOLS ESTABLISHED UNDER SECTION 8 OF THE CHILD PROTEC-
4 TION LAW, 1975 PA 238, MCL 722.628. The defendant and, if repre-
5 sented, his or her attorney has the right to view and hear ~~the~~
6 ~~videotape taken as provided in subsection (5) not less than 48~~
7 ~~hours before the normally scheduled date for~~ A VIDEORECORDED
8 STATEMENT BEFORE the defendant's preliminary examination. UPON
9 REQUEST, THE PROSECUTING ATTORNEY SHALL PROVIDE THE DEFENDANT
10 AND, IF REPRESENTED, HIS OR HER ATTORNEY WITH REASONABLE ACCESS
11 AND MEANS TO VIEW AND HEAR THE VIDEORECORDED STATEMENT AT A REA-
12 SONABLE TIME BEFORE THE DEFENDANT'S PRETRIAL OR TRIAL OF THE
13 CASE. ON GOOD CAUSE SHOWN, THE COURT MAY ORDER THAT A COPY OF
14 THE VIDEORECORDED STATEMENT MAY BE GIVEN TO A DEFENDANT TO USE
15 FOR PURPOSES OF A COURT PROCEEDING AND RETURNED WITHOUT COPYING.

16 (9) IF AUTHORIZED BY THE PROSECUTING ATTORNEY IN THE COUNTY
17 IN WHICH THE VIDEORECORDED STATEMENT WAS TAKEN, A VIDEORECORDED
18 STATEMENT MAY BE USED FOR PURPOSES OF TRAINING THE CUSTODIANS OF
19 THE VIDEORECORDED STATEMENT IN THAT COUNTY ON THE FORENSIC INTER-
20 VIEW PROTOCOL IMPLEMENTED AS REQUIRED BY SECTION 8 OF THE CHILD
21 PROTECTION LAW, 1975 PA 238, MCL 722.628.

22 (10) EXCEPT AS PROVIDED IN THIS SECTION, AN INDIVIDUAL,
23 INCLUDING, BUT NOT LIMITED TO, A CUSTODIAN OF THE VIDEORECORDED
24 STATEMENT, THE WITNESS, OR THE WITNESS'S PARENT, GUARDIAN, GUARD-
25 IAN AD LITEM, OR ATTORNEY, SHALL NOT RELEASE OR CONSENT TO
26 RELEASE A VIDEORECORDED STATEMENT OR A COPY OF A VIDEORECORDED
27 STATEMENT.

1 (11) A VIDEORECORDED STATEMENT THAT BECOMES PART OF THE
2 COURT RECORD IS SUBJECT TO A PROTECTIVE ORDER OF THE COURT FOR
3 THE PURPOSE OF PROTECTING THE PRIVACY OF THE WITNESS.

4 (12) A VIDEORECORDED STATEMENT SHALL NOT BE COPIED OR REPRO-
5 DUCED IN ANY MANNER EXCEPT AS PROVIDED IN THIS SECTION. A VIDE-
6 ORECORDED 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 RULE GOVERNING DISCOVERY IN A
10 CRIMINAL PROCEEDING. THIS SECTION DOES NOT PROHIBIT THE PRODUC-
11 TION OR RELEASE OF A TRANSCRIPT OF A VIDEORECORDED STATEMENT.

12 (13) ~~(9)~~ If, upon the motion of a party made before the
13 preliminary examination, the court finds on the record that the
14 special arrangements specified in subsection ~~(10)~~ (14) are nec-
15 essary to protect the welfare of the witness, the court shall
16 order those special arrangements. In determining whether it is
17 necessary to protect the welfare of the witness, the court shall
18 consider all of the following:

19 (a) The age of the witness.

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

21 (c) The desire of the witness or the witness's family or
22 guardian to have the testimony taken in a room closed to the
23 public.

24 (14) ~~(10)~~ If the court determines on the record that it is
25 necessary to protect the welfare of the witness and grants the
26 motion made under subsection ~~(9)~~ (13), the court shall order
27 both of the following:

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

6 (b) In order to protect the witness from directly viewing
7 the defendant, the courtroom shall be arranged so that the
8 defendant is seated as far from the witness stand as is reason-
9 able and not directly in front of the witness stand. The
10 defendant's position shall be located so as to allow the
11 defendant to hear and see the witness and be able to communicate
12 with his or her attorney.

13 (15) ~~(11)~~ If upon the motion of ~~any~~ A party made before
14 trial the court finds on the record that the special arrangements
15 specified in subsection ~~(12)~~ (16) are necessary to protect the
16 welfare of the witness, the court shall order those special
17 arrangements. In determining whether it is necessary to protect
18 the welfare of the witness, the court shall consider all of the
19 following:

20 (a) The age of the witness.

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

22 (c) The desire of the witness or the witness's family or
23 guardian to have the testimony taken in a room closed to the
24 public.

25 (16) ~~(12)~~ If the court determines on the record that it is
26 necessary to protect the welfare of the witness and grants the

1 motion made under subsection ~~(11)~~ (15), the court shall order 1
2 or more of the following:

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

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

15 (c) A questioner's stand or podium shall be used for all
16 questioning of all witnesses by all parties ~~—~~ and shall be
17 located in front of the witness stand.

18 (17) ~~(13)~~ If, upon the motion of a party or in the court's
19 discretion, the court finds on the record that the witness is or
20 will be psychologically or emotionally unable to testify at a
21 court proceeding even with the benefit of the protections
22 afforded the witness in subsections (3), (4), ~~(10)~~ (14), and
23 ~~(12)~~ (16), the court shall order that a ~~videotape~~
24 VIDEORECORDED deposition of a witness shall be taken to be admit-
25 ted at a court proceeding instead of the witness's live
26 testimony.

1 (18) ~~(14)~~ For purposes of the ~~videotape~~ VIDEORECORDED
2 deposition under subsection ~~(13)~~ (17), the witness's
3 examination and cross-examination shall proceed in the same
4 manner as if the witness testified at the court proceeding for
5 which the ~~videotape~~ VIDEORECORDED deposition is to be used, and
6 the court shall order that the witness, during his or her testi-
7 mony, shall not be confronted by the defendant but shall permit
8 the defendant to hear the testimony of the witness and to consult
9 with his or her attorney.

10 (19) ~~(15)~~ This section is in addition to other protections
11 or procedures afforded to a witness by law or court rule.

12 (20) A PERSON WHO INTENTIONALLY RELEASES A VIDEORECORDED
13 STATEMENT IN VIOLATION OF THIS SECTION IS GUILTY OF A MISDEMEANOR
14 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF
15 NOT MORE THAN \$500.00, OR BOTH.