

HOUSE BILL No. 4327

February 24, 2011, Introduced by Reps. Brunner, Smiley, Santana, Darany, Bauer, Slavens, Geiss, Townsend, Liss, Barnett, Tlaib, Hovey-Wright, Brown, Oakes, Rutledge, Cavanagh, Dillon, Segal, Haugh, Switalski, Durhal, Meadows, McCann and Lipton 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 2002 PA 604.

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 another
5 person designated under the county protocols established as
6 required by section 8 of the child protection law, 1975 PA 238, MCL
7 722.628.

8 (b) "Developmental disability" means that term as defined in
9 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a,

1 except that, for the purposes of implementing this section,
2 developmental disability includes only a condition that is
3 attributable to a mental impairment or to a combination of mental
4 and physical impairments and does not include a condition
5 attributable to a physical impairment unaccompanied by a mental
6 impairment.

7 (c) "Videorecorded statement" means a witness's statement
8 taken by a custodian of the videorecorded statement as provided in
9 subsection (5). Videorecorded statement does not include a
10 videorecorded deposition taken as provided in subsections (17) and
11 (18).

12 (D) "VULNERABLE ADULT" MEANS 1 OR MORE OF THE FOLLOWING:

13 (i) AN ADULT AS DEFINED IN SECTION 11(B) OF THE SOCIAL WELFARE
14 ACT, 1979 PA 218, MCL 400.11.

15 (ii) AN ADULT AS DEFINED IN SECTION 3(1)(B) OF THE ADULT FOSTER
16 CARE FACILITY LICENSING ACT, 1979 PA 218, MCL 400.703.

17 (E) ~~(d)~~-"Witness" means an alleged victim of an offense listed
18 under subsection (2) who is ~~either~~ **ANY** of the following:

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

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

22 (iii) A VULNERABLE ADULT.

23 (2) This section only applies to **THE FOLLOWING**:

24 (A) **FOR PURPOSES OF SUBSECTION (1)(E)(i) AND (ii)**, prosecutions
25 and proceedings under section 136b, 145c, 520b to 520e, or 520g of
26 the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
27 750.520b to 750.520e, and 750.520g, or under former section 136 or

1 136a of the Michigan penal code, 1931 PA 328.

2 (B) FOR PURPOSES OF SUBSECTION (1) (E) (iii), 1 OR MORE OF THE
3 FOLLOWING:

4 (i) PROSECUTIONS AND PROCEEDINGS UNDER SECTION 110A, 145N,
5 145O, 145P, 174, OR 174A OF THE MICHIGAN PENAL CODE, 1931 PA 328,
6 MCL 750.110A, 750.145N, 750.145O, 750.145P, 750.174, AND 750.174A.

7 (ii) PROSECUTIONS AND PROCEEDINGS FOR AN ASSAULTIVE CRIME AS
8 THAT TERM IS DEFINED IN SECTION 9A OF CHAPTER X OF THE CODE OF
9 CRIMINAL PROCEDURE, 1927 PA 175, MCL 770.9A.

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

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

27 (5) A custodian of the videorecorded statement may take a

1 witness's videorecorded statement before the normally scheduled
2 date for the defendant's preliminary examination. The videorecorded
3 statement shall state the date and time that the statement was
4 taken; shall identify the persons present in the room and state
5 whether they were present for the entire videorecording or only a
6 portion of the videorecording; and shall show a time clock that is
7 running during the taking of the videorecorded statement.

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

10 (a) It may be admitted as evidence at all pretrial
11 proceedings, except that it may not be introduced at the
12 preliminary examination instead of the live testimony of the
13 witness.

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

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

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

19 **(7) A VIDEORECORDED DEPOSITION MAY BE CONSIDERED IN COURT**
20 **PROCEEDINGS ONLY AS PROVIDED BY LAW.**

21 **(8) ~~(7)~~**—In a videorecorded statement, the questioning of the
22 witness should be full and complete; shall be in accordance with
23 the forensic interview protocol implemented as required by section
24 8 of the child protection law, 1975 PA 238, MCL 722.628, **OR AS**
25 **OTHERWISE PROVIDED BY LAW**; and, if appropriate for the witness's
26 developmental level **OR MENTAL ACUITY**, shall include, but is not
27 limited to, all of the following areas:

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

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

3 (c) The relationship, if any, between the witness and the
4 accused.

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

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

8 (9) ~~(8)~~—A custodian of the videorecorded statement may release
9 or consent to the release or use of a videorecorded statement or
10 copies of a videorecorded statement to a law enforcement agency, an
11 agency authorized to prosecute the criminal case to which the
12 videorecorded statement relates, or an entity that is part of
13 county protocols established under section 8 of the child
14 protection law, 1975 PA 238, MCL 722.628, **OR AS OTHERWISE PROVIDED**
15 **BY LAW**. The defendant and, if represented, his or her attorney has
16 the right to view and hear a videorecorded statement before the
17 defendant's preliminary examination. Upon request, the prosecuting
18 attorney shall provide the defendant and, if represented, his or
19 her attorney with reasonable access and means to view and hear the
20 videorecorded statement at a reasonable time before the defendant's
21 pretrial or trial of the case. In preparation for a court
22 proceeding and under protective conditions, including, but not
23 limited to, a prohibition on the copying, release, display, or
24 circulation of the videorecorded statement, the court may order
25 that a copy of the videorecorded statement be given to the defense.
26 (10) ~~(9)~~—If authorized by the prosecuting attorney in the
27 county in which the videorecorded statement was taken, a

1 videorecorded statement may be used for purposes of training the
2 custodians of the videorecorded statement in that county on the
3 forensic interview protocol implemented as required by section 8 of
4 the child protection law, 1975 PA 238, MCL 722.628, **OR AS OTHERWISE**
5 **PROVIDED BY LAW.**

6 (11) ~~(10)~~—Except as provided in this section, an individual,
7 including, but not limited to, a custodian of the videorecorded
8 statement, the witness, or the witness's parent, guardian, guardian
9 ad litem, or attorney, shall not release or consent to release a
10 videorecorded statement or a copy of a videorecorded statement.

11 (12) ~~(11)~~—A videorecorded statement that becomes part of the
12 court record is subject to a protective order of the court for the
13 purpose of protecting the privacy of the witness.

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

22 (14) ~~(13)~~—If, upon the motion of a party made before the
23 preliminary examination, the court finds on the record that the
24 special arrangements specified in subsection ~~(14)~~—(15) are
25 necessary to protect the welfare of the witness, the court shall
26 order those special arrangements. In determining whether it is
27 necessary to protect the welfare of the witness, the court shall

1 consider all of the following:

2 (a) The age of the witness.

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

4 (c) The desire of the witness or the witness's family or
5 guardian to have the testimony taken in a room closed to the
6 public.

7 **(D) THE PHYSICAL CONDITION OF THE WITNESS.**

8 **(15)** ~~(14)~~—If the court determines on the record that it is
9 necessary to protect the welfare of the witness and grants the
10 motion made under subsection ~~(13)~~—**(14)**, the court shall order both
11 of the following:

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

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

23 **(16)** ~~(15)~~—If upon the motion of a party made before trial the
24 court finds on the record that the special arrangements specified
25 in subsection ~~(16)~~—**(17)** are necessary to protect the welfare of the
26 witness, the court shall order those special arrangements. In
27 determining whether it is necessary to protect the welfare of the

1 witness, the court shall consider all of the following:

2 (a) The age of the witness.

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

4 (c) The desire of the witness or the witness's family or
5 guardian to have the testimony taken in a room closed to the
6 public.

7 **(D) THE PHYSICAL CONDITION OF THE WITNESS.**

8 **(17)** ~~(16)~~—If the court determines on the record that it is
9 necessary to protect the welfare of the witness and grants the
10 motion made under subsection ~~(15)~~—**(16)**, the court shall order 1 or
11 more of the following:

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

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

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

27 **(18)** ~~(17)~~—If, upon the motion of a party or in the court's

1 discretion, the court finds on the record that the witness is or
2 will be psychologically or emotionally unable to testify at a court
3 proceeding even with the benefit of the protections afforded the
4 witness in subsections (3), (4), ~~(14)~~**(15)**, and ~~(16)~~**(17)**, the
5 court shall order that a videorecorded deposition of a witness
6 shall be taken to be admitted at a court proceeding instead of the
7 witness's live testimony.

8 **(19)** ~~(18)~~ For purposes of the videorecorded deposition under
9 subsection ~~(17)~~**(18)**, the witness's examination and cross-
10 examination shall proceed in the same manner as if the witness
11 testified at the court proceeding for which the videorecorded
12 deposition is to be used. ~~, and the court shall order that the~~
13 ~~witness, during his or her testimony, shall not be confronted by~~
14 ~~the defendant but~~ **THE COURT** shall permit the defendant to hear the
15 testimony of the witness and to consult with his or her attorney.

16 **(20)** ~~(19)~~ This section is in addition to other protections or
17 procedures afforded to a witness by law or court rule.

18 **(21)** ~~(20)~~ A person who intentionally releases a videorecorded
19 statement in violation of this section is guilty of a misdemeanor
20 punishable by imprisonment for not more than 93 days or a fine of
21 not more than \$500.00, or both.