

HOUSE BILL No. 5870

September 11, 2012, Introduced by Rep. McMillin 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~~ **DEPARTMENT OF HUMAN SERVICES**,
4 investigating law enforcement agency, prosecuting attorney, or
5 department of attorney general or another person designated under
6 the county protocols established as required by section 8 of the
7 child protection law, 1975 PA 238, MCL 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,
10 except that, for the purposes of implementing this section,

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

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

11 (d) "Witness" means an alleged victim of an offense listed
12 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 proceedings
17 under section 136b, 145c, 520b to 520e, or 520g of the Michigan
18 penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to
19 750.520e, and 750.520g, or under former section 136 or 136a of the
20 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 on
24 direct and cross-examination.

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

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

11 (5) A custodian of the videorecorded statement may take a
12 witness's videorecorded statement before the normally scheduled
13 date for the defendant's preliminary examination. The videorecorded
14 statement shall state the date and time that the statement was
15 taken; shall identify the persons present in the room and state
16 whether they were present for the entire ~~videorecording~~ **VIDEO**
17 **RECORDING** or only a portion of the ~~videorecording~~ **VIDEO RECORDING**;
18 and shall show a time clock that is running during the taking of
19 the videorecorded statement.

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

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

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

27 (c) It may be considered by the court in determining the

1 sentence.

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

4 (E) IT MAY BE CONSIDERED BY THE COURT IN A PROBATION VIOLATION
5 HEARING.

6 (F) IT MAY BE CONSIDERED BY A HEARING OFFICER IN A HEARING
7 HELD UNDER SECTION 7(6) OF THE CHILD PROTECTION LAW, 1975 PA 238,
8 MCL 722.627.

9 (7) In a videorecorded statement, the questioning of the
10 witness should be full and complete; shall be in accordance with
11 the forensic interview protocol implemented as required by section
12 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if
13 appropriate for the witness's developmental level, shall include,
14 but is not limited to, all of the following areas:

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

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

17 (c) The relationship, if any, between the witness and the
18 accused.

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

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

22 (8) A custodian of the videorecorded statement may release or
23 consent to the release or use of a videorecorded statement or
24 copies of a videorecorded statement to a law enforcement agency, an
25 agency authorized to prosecute the criminal case to which the
26 videorecorded statement relates, or an entity that is part of
27 county protocols established under section 8 of the child

1 protection law, 1975 PA 238, MCL 722.628. The defendant and, if
2 represented, his or her attorney has the right to view and hear a
3 videorecorded statement before the defendant's preliminary
4 examination. Upon request, the prosecuting attorney shall provide
5 the defendant and, if represented, his or her attorney with
6 reasonable access and means to view and hear the videorecorded
7 statement at a reasonable time before the defendant's pretrial or
8 trial of the case **OR HEARING HELD UNDER SECTION 7(6) OF THE CHILD**
9 **PROTECTION LAW, 1975 PA 238, MCL 722.627.** In preparation for a
10 court proceeding and under protective conditions, including, but
11 not limited to, a prohibition on the copying, release, display, or
12 circulation of the videorecorded statement, the court may order
13 that a copy of the videorecorded statement be given to the defense.
14 **THE ORDER SHALL SPECIFY WHO MAY VIEW THE VIDEORECORDED STATEMENT,**
15 **INDICATE THE TIME BY WHICH THE VIDEORECORDED STATEMENT IS REQUIRED**
16 **TO BE RETURNED, AND STATE A REASON FOR THE RELEASE OF THE**
17 **VIDEORECORDED STATEMENT.**

18 (9) If authorized by the prosecuting attorney in the county in
19 which the videorecorded statement was taken, a videorecorded
20 statement may be used for purposes of training the custodians of
21 the videorecorded statement in that county on the forensic
22 interview protocol implemented as required by section 8 of the
23 child protection law, 1975 PA 238, MCL 722.628.

24 (10) Except as provided in this section, an individual,
25 including, but not limited to, a custodian of the videorecorded
26 statement, the witness, or the witness's parent, guardian, guardian
27 ad litem, or attorney, shall not release or consent to release a

1 videorecorded statement or a copy of a videorecorded statement.

2 (11) A videorecorded statement that becomes part of the court
3 record is subject to a protective order of the court for the
4 purpose of protecting the privacy of the witness.

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

13 (13) If, upon the motion of a party made before the
14 preliminary examination, the court finds on the record that the
15 special arrangements specified in subsection (14) are necessary to
16 protect the welfare of the witness, the court shall order those
17 special arrangements. In determining whether it is necessary to
18 protect the welfare of the witness, the court shall consider all of
19 the 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 (14) If the court determines on the record that it is
26 necessary to protect the welfare of the witness and grants the
27 motion made under subsection (13), the court shall order both of

1 the following:

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

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

13 (15) If upon the motion of a party made before trial the court
14 finds on the record that the special arrangements specified in
15 subsection (16) are necessary to protect the welfare of the
16 witness, the court shall order those special arrangements. In
17 determining whether it is necessary to protect the welfare of the
18 witness, the court shall 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 (16) 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 (15), the court shall order 1 or more
27 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 trial is held. The witness's testimony shall be broadcast by
4 closed-circuit television to the public in another location out of
5 sight of the witness.

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

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

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

24 (18) For purposes of the videorecorded deposition under
25 subsection (17), the witness's examination and cross-examination
26 shall proceed in the same manner as if the witness testified at the
27 court proceeding for which the videorecorded deposition is to be

1 used, and the court shall order that the witness, during his or her
2 testimony, shall not be confronted by the defendant but shall
3 permit the defendant to hear the testimony of the witness and to
4 consult with his or her attorney.

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

7 (20) 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~~ **\$1,000.00**, or both.

11 **(21) THE COURT SHALL RETAIN A VIDEORECORDED STATEMENT MADE**
12 **UNDER THIS SECTION FOR NOT LESS THAN 1 YEAR AFTER FINAL RESOLUTION**
13 **OF THE CASE, INCLUDING, BUT NOT LIMITED TO, ALL APPELLATE**
14 **PROCEEDINGS, AND SHALL STORE THE VIDEORECORDED STATEMENT IN**
15 **COMPLIANCE WITH COUNTY PROTOCOLS ESTABLISHED UNDER SECTION 8(6) OF**
16 **THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.628.**

17 Enacting section 1. This amendatory act does not take effect
18 unless all of the following bills of the 96th Legislature are
19 enacted into law:

20 (a) Senate Bill No. ____ or House Bill No. 5871(request no.
21 02839'11).

22 (b) Senate Bill No. ____ or House Bill No. 5872(request no.
23 03469'11).