

HOUSE BILL No. 6083

September 16, 1998, Introduced by Reps. Baird, Gire, Price, Brater and LaForge and referred to the Committee on Human Services and Children.

A bill to amend 1939 PA 288, entitled

"An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties,"

by amending section 17b of chapter XIIIA (MCL 712A.17b), as amended by 1998 PA 325.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 17b. (1) As used in this section:

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

~~300.1100a~~ 330.1100A, except that, for the purposes of implementing this section, 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.

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

(i) A person under 16 years of age.

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

(2) This section only applies to either of the following:

(a) A proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

(b) A proceeding brought under section 2(b) of this chapter.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically

1 correct dolls or mannequins, to assist the witness in testifying
2 on direct and cross-examination.

3 (4) A witness who is called upon to testify shall be permit-
4 ted to have a support person sit with, accompany, or be in close
5 proximity to the witness during his or her testimony. A notice
6 of intent to use a support person shall name the support person,
7 identify the relationship the support person has with the wit-
8 ness, and give notice to all parties to the proceeding that the
9 witness may request that the named support person sit with the
10 witness when the witness is called upon to testify during any
11 stage of the proceeding. The notice of intent to use a named
12 support person shall be filed with the court and shall be served
13 upon all parties to the proceeding. The court shall rule on any
14 motion objecting to the use of a named support person prior to
15 the date at which the witness desires to use the support person.

16 (5) In order to avoid excessive questioning of a witness, a
17 videotape statement of a witness may be taken by the investigat-
18 ing agency and shall be admitted at all proceedings except the
19 adjudication stage instead of the live testimony of the witness.
20 The videotape of a videotape statement shall ~~state the date and~~
21 ~~time that the statement was taken;~~ shall identify the persons
22 ~~present in the room and state whether they were present for the~~
23 ~~entire videotaping or only a portion of the videotaping;~~ and
24 ~~shall show a time clock that is~~ DO ALL OF THE FOLLOWING:

25 (A) STATE THE DATE AND TIME THAT THE STATEMENT WAS TAKEN.

26 (B) STATE THE NAME OF EACH PERSON WHO WAS PRESENT IN THE
27 ROOM WHEN THE STATEMENT WAS TAKEN, AND THAT PERSON'S RELATIONSHIP

1 TO THE WITNESS OR TO THE PROCEEDING, OR BOTH, AND WHETHER EACH
2 PERSON WAS PRESENT IN THE ROOM FOR THE ENTIRE VIDEOTAPING OR ONLY
3 A PORTION OF THE VIDEOTAPING.

4 (C) SHOW A TIME CLOCK THAT WAS running during the taking of
5 the statement.

6 (6) In a videotape statement taken as provided in subsection
7 (5), the questioning of the witness should be full and complete
8 and shall include, but not be limited to, all of the following
9 areas:

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

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

13 (c) The relationship, if any, between the witness and the
14 respondent.

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

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

18 (7) Each respondent and, if represented, his or her attorney
19 has the right to view and hear the videotape taken as provided in
20 subsection (5) not less than 48 hours before it is offered into
21 evidence.

22 (8) Except as otherwise provided in subsection (11), if,
23 upon the motion of any party or in the court's discretion, the
24 court finds on the record that psychological harm to the witness
25 would occur if the witness were to testify in the presence of the
26 respondent at a court proceeding or in a videotape deposition
27 taken as provided in subsection (9), the court shall order that

1 the witness during his or her testimony be shielded from viewing
2 the respondent in such a manner as to enable the respondent to
3 consult with his or her attorney and to see and hear the testi-
4 mony of the witness without the witness being able to see the
5 respondent.

6 (9) In a proceeding brought under section 2(b) of this chap-
7 ter, if, upon the motion of a party or in the court's discretion,
8 the court finds on the record that psychological harm to the wit-
9 ness would occur if the witness were to testify at the adjudica-
10 tion stage, the court shall order to be taken a videotape deposi-
11 tion of a witness ~~which~~ THAT shall be admitted into evidence at
12 the adjudication stage instead of the live testimony of the
13 witness. The examination and cross-examination of the witness in
14 the videotape deposition shall proceed in the same manner as per-
15 mitted at the adjudication stage.

16 (10) In a proceeding brought under section 2(a)(1) of this
17 chapter in which the alleged offense, if committed by an adult,
18 would be a felony under section 136b, 145c, 520b to 520e, or 520g
19 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
20 750.520b to 750.520e, and 750.520g, or under former section 136
21 or 136a of the Michigan penal code, 1931 PA 328, if, upon the
22 motion of any party made before the adjudication stage, the court
23 finds on the record that the special arrangements specified in
24 subsection (11) are necessary to protect the welfare of the wit-
25 ness, the court shall order 1 or both of those special
26 arrangements. In determining whether it is necessary to protect

1 the welfare of the witness, the court shall consider both of the
2 following:

3 (a) The age of the witness.

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

5 (11) If the court determines on the record that it is neces-
6 sary to protect the welfare of the witness and grants the motion
7 made under subsection (10), the court shall order 1 or both of
8 the following:

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

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

19 (12) In a proceeding brought under section 2(a)(1) of this
20 chapter in which the alleged offense, if committed by an adult,
21 would be a felony under section 136b, 145c, 520b to 520e, or 520g
22 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
23 750.520b to 750.520e, and 750.520g, or under former section 136
24 or 136a of the Michigan penal code, 1931 PA 328, if, upon the
25 motion of a party or in the court's discretion, the court finds
26 on the record that the witness is or will be psychologically or
27 emotionally unable to testify at a court proceeding even with the

1 benefit of the protections afforded the witness in subsections
2 (3), (4), and (11), the court shall order that a videotape depo-
3 sition of a witness shall be taken to be admitted at the adjudi-
4 cation stage instead of the witness's live testimony.

5 (13) For purposes of the videotape deposition under subsec-
6 tion (12), the witness's examination and cross-examination shall
7 proceed in the same manner as if the witness testified at the
8 adjudication stage, and the court shall order that the witness,
9 during his or her testimony, shall not be confronted by the
10 respondent but shall permit the respondent to hear the testimony
11 of the witness and to consult with his or her attorney.

12 (14) IN A PROCEEDING BROUGHT PURSUANT TO SECTION 2(B) OF
13 THIS CHAPTER, A REPORT MADE BY THE FRIEND OF THE COURT, IF RELE-
14 VANT, IS ADMISSIBLE AS EVIDENCE.

15 (15) ~~-(14)-~~ This section is in addition to other protections
16 or procedures afforded to a witness by law or court rule.