

HOUSE BILL No. 5872

September 11, 2012, Introduced by Rep. McMillin and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 17b of chapter XIIA (MCL 712A.17b), as amended
by 2002 PA 625.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

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

(a) "Custodian of the videorecorded statement" means the
~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES**,
investigating law enforcement agency, prosecuting attorney, or
department of attorney general or another person designated under
the county protocols established as required by section 8 of the
child protection law, 1975 PA 238, MCL 722.628.

1 (b) "Developmental disability" means that term as defined in
2 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a,
3 except that, for the purposes of implementing this section,
4 developmental disability includes only a condition that is
5 attributable to a mental impairment or to a combination of mental
6 and physical impairments, and does not include a condition
7 attributable to a physical impairment unaccompanied by a mental
8 impairment.

9 (c) "Videorecorded statement" means a witness's statement
10 taken by a custodian of the videorecorded statement as provided in
11 subsection (5). Videorecorded statement does not include a
12 videorecorded deposition taken as provided in subsections (16) and
13 (17).

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

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

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

19 (2) This section only applies to ~~either~~ **1 OR MORE** of the
20 following:

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

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

1 (C) A PROCEEDING BROUGHT UNDER SECTION 7(6) OF THE CHILD
2 PROTECTION LAW, 1975 PA 238, MCL 722.627.

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

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

20 (5) A custodian of the videorecorded statement may take a
21 witness's videorecorded statement. The videorecorded statement
22 shall be admitted at all proceedings except the adjudication stage
23 instead of the live testimony of the witness. The videorecorded
24 statement shall state the date and time that the statement was
25 taken; shall identify the persons present in the room and state
26 whether they were present for the entire ~~videorecording~~-VIDEO
27 RECORDING or only a portion of the ~~videorecording~~; VIDEO RECORDING;

1 and shall show a time clock that is running during the taking of
2 the statement.

3 (6) In a videorecorded statement, the questioning of the
4 witness should be full and complete; shall be in accordance with
5 the forensic interview protocol implemented as required by section
6 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if
7 appropriate for the witness's developmental level, shall include,
8 but need not be limited to, all of the following areas:

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

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

11 (c) The relationship, if any, between the witness and the
12 respondent.

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

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

16 (7) A custodian of the videorecorded statement may release or
17 consent to the release or use of a videorecorded statement or
18 copies of a videorecorded statement to a law enforcement agency, an
19 agency authorized to prosecute the criminal case to which the
20 videorecorded statement relates, or an entity that is part of
21 county protocols established under section 8 of the child
22 protection law, 1975 PA 238, MCL 722.628. Each respondent and, if
23 represented, his or her attorney has the right to view and hear the
24 videorecorded statement at a reasonable time before it is offered
25 into evidence. In preparation for a court proceeding and under
26 protective conditions, including, but not limited to, a prohibition
27 on the copying, release, display, or circulation of the

1 videorecorded statement, the court may order that a copy of the
2 videorecorded statement be given to the defense. **THE ORDER MAY**
3 **SPECIFY WHO SHALL VIEW THE VIDEORECORDED STATEMENT, INDICATE THE**
4 **TIME BY WHICH THE VIDEORECORDED STATEMENT IS REQUIRED TO BE**
5 **RETURNED, AND STATE A REASON FOR THE RELEASE OF THE VIDEORECORDED**
6 **STATEMENT.**

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

13 (9) Except as provided in this section, an individual,
14 including, but not limited to, a custodian of the videorecorded
15 statement, the witness, or the witness's parent, guardian, guardian
16 ad litem, or attorney, shall not release or consent to release a
17 videorecorded statement or a copy of a videorecorded statement.

18 (10) A videorecorded statement that becomes part of the court
19 record is subject to a protective order of the court for the
20 purpose of protecting the privacy of the witness.

21 (11) A videorecorded statement shall not be copied or
22 reproduced in any manner except as provided in this section. A
23 videorecorded statement is exempt from disclosure under the freedom
24 of information act, 1976 PA 442, MCL 15.231 to 15.246, is not
25 subject to release under another statute, and is not subject to
26 disclosure under the Michigan court rules governing discovery. This
27 section does not prohibit the production or release of a transcript

1 of a videorecorded statement.

2 (12) Except as otherwise provided in subsection (15), if, upon
3 the motion of a party or in the court's discretion, the court finds
4 on the record that psychological harm to the witness would occur if
5 the witness were to testify in the presence of the respondent at a
6 court proceeding or in a videorecorded deposition taken as provided
7 in subsection (13), the court shall order that the witness during
8 his or her testimony be shielded from viewing the respondent in
9 such a manner as to enable the respondent to consult with his or
10 her attorney and to see and hear the testimony of the witness
11 without the witness being able to see the respondent.

12 (13) In a proceeding brought under section 2(b) of this
13 chapter, if, upon the motion of a party or in the court's
14 discretion, the court finds on the record that psychological harm
15 to the witness would occur if the witness were to testify at the
16 adjudication stage, the court shall order to be taken a
17 videorecorded deposition of a witness that shall be admitted into
18 evidence at the adjudication stage instead of the live testimony of
19 the witness. The examination and cross-examination of the witness
20 in the videorecorded deposition shall proceed in the same manner as
21 permitted at the adjudication stage.

22 (14) In a proceeding brought under section 2(a)(1) of this
23 chapter in which the alleged offense, if committed by an adult,
24 would be a felony under section 136b, 145c, 520b to 520e, or 520g
25 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
26 750.520b to 750.520e, and 750.520g, or under former section 136 or
27 136a of the Michigan penal code, 1931 PA 328, if, upon the motion

1 of a party made before the adjudication stage, the court finds on
2 the record that the special arrangements specified in subsection
3 (15) are necessary to protect the welfare of the witness, the court
4 shall order 1 or both of those special arrangements. In determining
5 whether it is necessary to protect the welfare of the witness, the
6 court shall consider both of the following:

7 (a) The age of the witness.

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

9 (15) If the court determines on the record that it is
10 necessary to protect the welfare of the witness and grants the
11 motion made under subsection (14), the court shall order 1 or both
12 of the following:

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

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

22 (16) In a proceeding brought under section 2(a)(1) of this
23 chapter in which the alleged offense, if committed by an adult,
24 would be a felony under section 136b, 145c, 520b to 520e, or 520g
25 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
26 750.520b to 750.520e, and 750.520g, or under former section 136 or
27 136a of the Michigan penal code, 1931 PA 328, if, upon the motion

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

8 (17) For purposes of the videorecorded deposition under
9 subsection (16), the witness's examination and cross-examination
10 shall proceed in the same manner as if the witness testified at the
11 adjudication stage, and the court shall order that the witness,
12 during his or her testimony, shall not be confronted by the
13 respondent but shall permit the respondent to hear the testimony of
14 the witness and to consult with his or her attorney.

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

17 (19) A person who intentionally releases a videorecorded
18 statement in violation of this section is guilty of a misdemeanor
19 punishable by imprisonment for not more than ~~93 days~~ **1 YEAR** or a
20 fine of not more than ~~\$500.00~~, **\$1,000.00**, or both.

21 **(20) THE COURT SHALL RETAIN A VIDEORECORDED STATEMENT MADE**
22 **UNDER THIS SECTION FOR NOT LESS THAN 1 YEAR AFTER FINAL RESOLUTION**
23 **OF THE CASE, INCLUDING, BUT NOT LIMITED TO, ALL APPELLATE**
24 **PROCEEDINGS. A VIDEORECORDED STATEMENT MADE UNDER THIS SECTION**
25 **SHALL BE STORED IN ACCORDANCE WITH THE COUNTY PROTOCOLS ESTABLISHED**
26 **UNDER SECTION 8 OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL**
27 **722.628.**

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

4 (a) Senate Bill No.____ or House Bill No. 5871(request no.
5 02839'11).

6 (b) Senate Bill No.____ or House Bill No. (request no.
7 03470'11).