

SENATE BILL No. 1089

September 5, 2018, Introduced by Senator JONES 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, 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.

(b) "Developmental disability" means that term as defined in

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

8 (C) "NONOFFENDING PARENT OR LEGAL GUARDIAN" MEANS A NATURAL
9 PARENT, STEPPARENT, ADOPTIVE PARENT, OR LEGALLY APPOINTED OR
10 DESIGNATED GUARDIAN OF A WITNESS WHO IS NOT ALLEGED TO HAVE
11 COMMITTED A VIOLATION OF THE LAWS OF THIS STATE, ANOTHER STATE, THE
12 UNITED STATES, OR A COURT ORDER THAT IS CONNECTED IN ANY MANNER TO
13 A WITNESS'S VIDEORECORDED STATEMENT.

14 (D) ~~(e)~~—"Videorecorded statement" means a witness's statement
15 taken by a custodian of the videorecorded statement as provided in
16 subsection (5). Videorecorded statement does not include a
17 videorecorded deposition taken as provided in subsections (16) and
18 (17).

19 (E) ~~(d)~~—"Witness" means an alleged victim of an offense listed
20 under subsection (2) who is either of the following:

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

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

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

25 (a) A proceeding brought under section 2(a)(1) of this chapter
26 in which the alleged offense, if committed by an adult, would be a
27 felony under section 136b, 145c, 520b to 520e, or 520g of the

1 Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b
2 to 750.520e, and 750.520g. ~~7, or under former section 136 or 136a of~~
3 ~~the Michigan penal code, 1931 PA 328.~~

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

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

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

22 (5) A custodian of the videorecorded statement may take a
23 witness's videorecorded statement. The videorecorded statement
24 shall be admitted at all proceedings except the adjudication stage
25 instead of the live testimony of the witness. The videorecorded
26 statement shall state the date and time that the statement was
27 taken; shall identify the persons present in the room and state

1 whether they were present for the entire ~~videorecording~~**VIDEO**
2 **RECORDING** or only a portion of the ~~videorecording~~**VIDEO RECORDING**;
3 and shall show a time clock that is running during the taking of
4 the statement.

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

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

12 (b) The location and area of the alleged offense or 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 other persons known to the witness who may
17 have personal knowledge of the offense or offenses.

18 (7) A custodian of the videorecorded statement may release or
19 consent to the release or use of a videorecorded statement or
20 copies of a videorecorded statement to a law enforcement agency, an
21 agency authorized to prosecute the criminal case to which the
22 videorecorded statement relates, or an entity that is part of
23 county protocols established under section 8 of the child
24 protection law, 1975 PA 238, MCL 722.628. Each respondent and, if
25 represented, his or her attorney has the right to view and hear the
26 videorecorded statement at a reasonable time before it is offered
27 into evidence. In preparation for a court proceeding and under

1 protective conditions, including, but not limited to, a prohibition
2 on the copying, release, display, or circulation of the
3 videorecorded statement, the court may order that a copy of the
4 videorecorded statement be given to the defense.

5 (8) If authorized by the prosecuting attorney in the county in
6 which the videorecorded statement was taken **AND WITH THE CONSENT OF**
7 **A MINOR WITNESS'S NONOFFENDING PARENT OR LEGAL GUARDIAN**, a
8 videorecorded statement may be used for purposes of training the
9 custodians of the videorecorded statement in that county, **OR FOR**
10 **PURPOSES OF TRAINING PERSONS IN ANOTHER COUNTY THAT WOULD MEET THE**
11 **DEFINITION OF CUSTODIAN OF THE VIDEORECORDED STATEMENT HAD THE**
12 **VIDEORECORDED STATEMENT BEEN TAKEN IN THAT OTHER COUNTY**, on the
13 forensic interview protocol implemented as required by section 8 of
14 the child protection law, 1975 PA 238, MCL 722.628. **THE CONSENT**
15 **REQUIRED UNDER THIS SUBSECTION MUST BE OBTAINED THROUGH THE**
16 **EXECUTION OF A WRITTEN, FULLY INFORMED, TIME-LIMITED, AND REVOCABLE**
17 **RELEASE OF INFORMATION. AN INDIVIDUAL PARTICIPATING IN TRAINING**
18 **UNDER THIS SUBSECTION IS ALSO REQUIRED TO EXECUTE A NONDISCLOSURE**
19 **AGREEMENT TO PROTECT WITNESS CONFIDENTIALITY.**

20 (9) Except as provided in this section, an individual,
21 including, but not limited to, a custodian of the videorecorded
22 statement, the witness, or the witness's parent, guardian, guardian
23 ad litem, or attorney, shall not release or consent to release a
24 videorecorded statement or a copy of a videorecorded statement.

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

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

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

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

1 permitted at the adjudication stage.

2 (14) In a proceeding brought under section 2(a)(1) of this
3 chapter in which the alleged offense, if committed by an adult,
4 would be a felony under section 136b, 145c, 520b to 520e, or 520g
5 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
6 750.520b to 750.520e, and 750.520g, ~~or under former section 136 or~~
7 ~~136a of the Michigan penal code, 1931 PA 328,~~ if, upon the motion
8 of a party made before the adjudication stage, the court finds on
9 the record that the special arrangements specified in subsection
10 (15) are necessary to protect the welfare of the witness, the court
11 shall order 1 or both of those special arrangements. In determining
12 whether it is necessary to protect the welfare of the witness, the
13 court shall consider both of the following:

14 (a) The age of the witness.

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

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

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

26 (b) A questioner's stand or podium shall be used for all
27 questioning of all witnesses by all parties, and shall be located

1 in front of the witness stand.

2 (16) In a proceeding brought under section 2(a)(1) of this
3 chapter in which the alleged offense, if committed by an adult,
4 would be a felony under section 136b, 145c, 520b to 520e, or 520g
5 of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,
6 750.520b to 750.520e, and 750.520g, ~~or under former section 136 or~~
7 ~~136a of the Michigan penal code, 1931 PA 328,~~ if, upon the motion
8 of a party or in the court's discretion, the court finds on the
9 record that the witness is or will be psychologically or
10 emotionally unable to testify at a court proceeding even with the
11 benefit of the protections afforded the witness in subsections (3),
12 (4), and (15), the court shall order that a videorecorded
13 deposition of a witness shall be taken to be admitted at the
14 adjudication stage instead of the witness's live testimony.

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

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

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

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.