

# HOUSE BILL No. 5271

January 30, 2014, Introduced by Reps. Kosowski, Robinson, Abed, Schor, Hooker, McMillin and Cavanagh 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 2012 PA  
170.

## 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 department of human services, **THE** investigating law enforcement  
4 agency, prosecuting attorney, or **THE** department of attorney general  
5 or another person designated under the county protocols established  
6 as required by section 8 of the child protection law, 1975 PA 238,  
7 MCL 722.628.

8       (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) "Videorecorded statement" means a witness's statement  
9 taken by a custodian of the videorecorded statement as provided in  
10 subsection (5). Videorecorded statement does not include a  
11 videorecorded deposition taken as provided in subsections (18) and  
12 (19).

13 (d) "Vulnerable adult" means that term as defined in section  
14 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

15 (e) "Witness" means an alleged victim of an offense listed  
16 under subsection (2) who is any of the following:

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

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

20 (iii) A vulnerable adult.

21 (2) This section only applies to the following:

22 (a) For purposes of subsection (1)(e)(i) and (ii), prosecutions  
23 and proceedings under section 136b, 145c, 520b to 520e, or 520g of  
24 the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c,  
25 750.520b to 750.520e, and 750.520g, or under former section 136 or  
26 136a of the Michigan penal code, 1931 PA 328.

27 (b) For purposes of subsection (1)(e)(iii), 1 or more of the

1 following:

2 (i) Prosecutions and proceedings under section 110a, 145n,  
3 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,  
4 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

5 (ii) Prosecutions and proceedings for an assaultive crime as  
6 that term is defined in section 9a of chapter X of the code of  
7 criminal procedure, 1927 PA 175, MCL 770.9a.

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

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

25 (5) A custodian of the videorecorded statement may take a  
26 witness's videorecorded statement before the normally scheduled  
27 date for the defendant's preliminary examination. The videorecorded

1 statement shall state the date and time that the statement was  
2 taken; shall identify the persons present in the room and state  
3 whether they were present for the entire ~~videorecording~~ **VIDEO**  
4 **RECORDING** or only a portion of the ~~videorecording~~, **VIDEO RECORDING;**  
5 and shall show a time clock that is running during the taking of  
6 the videorecorded statement.

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

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

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

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

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

18 **(E) IT MAY BE CONSIDERED BY THE COURT IN A PROBATION VIOLATION**  
19 **HEARING.**

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

23 (7) A videorecorded deposition may be considered in court  
24 proceedings only as provided by law.

25 (8) In a videorecorded statement, the questioning of the  
26 witness should be full and complete; shall be in accordance with  
27 the forensic interview protocol implemented as required by section

1 8 of the child protection law, 1975 PA 238, MCL 722.628, or as  
2 otherwise provided by law; and, if appropriate for the witness's  
3 developmental level or mental acuity, shall include, but is not  
4 limited to, all of the following areas:

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

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

7 (c) The relationship, if any, between the witness and the  
8 accused.

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

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

12 (9) A custodian of the videorecorded statement may release or  
13 consent to the release or use of a videorecorded statement or  
14 copies of a videorecorded statement to a law enforcement agency, an  
15 agency authorized to prosecute the criminal case to which the  
16 videorecorded statement relates, or an entity that is part of  
17 county protocols established under section 8 of the child  
18 protection law, 1975 PA 238, MCL 722.628, or as otherwise provided  
19 by law. The defendant and, if represented, his or her attorney has  
20 the right to view and hear a videorecorded statement before the  
21 defendant's preliminary examination. Upon request, the prosecuting  
22 attorney shall provide the defendant and, if represented, his or  
23 her attorney with reasonable access and means to view and hear the  
24 videorecorded statement at a reasonable time before the defendant's  
25 pretrial or trial of the case, **PROBATION HEARING, OR HEARING HELD**  
26 **UNDER SECTION 7(6) OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL**  
27 **722.627.** In preparation for a court proceeding and under protective

1 conditions, including, but not limited to, a prohibition on the  
2 copying, release, display, or circulation of the videorecorded  
3 statement, the court may order that a copy of the videorecorded  
4 statement be given to the defense. **THE ORDER SHALL SPECIFY WHO MAY**  
5 **VIEW THE VIDEORECORDED STATEMENT, INDICATE THE TIME BY WHICH THE**  
6 **VIDEORECORDED STATEMENT IS REQUIRED TO BE RETURNED, AND STATE A**  
7 **REASON FOR THE RELEASE OF THE VIDEORECORDED STATEMENT.**

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

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

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

23 (13) A videorecorded statement shall not be copied or  
24 reproduced in any manner except as provided in this section. A  
25 videorecorded statement is exempt from disclosure under the freedom  
26 of information act, 1976 PA 442, MCL 15.231 to 15.246, is not  
27 subject to release under another statute, and is not subject to

1 disclosure under the Michigan court rules governing discovery. This  
2 section does not prohibit the production or release of a transcript  
3 of a videorecorded statement.

4 (14) If, upon the motion of a party made before the  
5 preliminary examination, the court finds on the record that the  
6 special arrangements specified in subsection (15) are necessary to  
7 protect the welfare of the witness, the court shall order those  
8 special arrangements. In determining whether it is necessary to  
9 protect the welfare of the witness, the court shall consider all of  
10 the following:

11 (a) The age of the witness.

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

13 (c) The desire of the witness or the witness's family or  
14 guardian to have the testimony taken in a room closed to the  
15 public.

16 (d) The physical condition of the witness.

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

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

26 (b) In order to protect the witness from directly viewing the  
27 defendant, the courtroom shall be arranged so that the defendant is

1 seated as far from the witness stand as is reasonable and not  
2 directly in front of the witness stand. The defendant's position  
3 shall be located so as to allow the defendant to hear and see the  
4 witness and be able to communicate with his or her attorney.

5 (16) If upon the motion of a party made before trial the court  
6 finds on the record that the special arrangements specified in  
7 subsection (17) are necessary to protect the welfare of the  
8 witness, the court shall order those special arrangements. In  
9 determining whether it is necessary to protect the welfare of the  
10 witness, the court shall consider all of the following:

11 (a) The age of the witness.

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

13 (c) The desire of the witness or the witness's family or  
14 guardian to have the testimony taken in a room closed to the  
15 public.

16 (d) The physical condition of the witness.

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

21 (a) All persons not necessary to the proceeding shall be  
22 excluded during the witness's testimony from the courtroom where  
23 the trial is held. The witness's testimony shall be broadcast by  
24 closed-circuit television to the public in another location out of  
25 sight of the witness.

26 (b) In order to protect the witness from directly viewing the  
27 defendant, the courtroom shall be arranged so that the defendant is



1 seated as far from the witness stand as is reasonable and not  
2 directly in front of the witness stand. The defendant's position  
3 shall be the same for all witnesses and shall be located so as to  
4 allow the defendant to hear and see all witnesses and be able to  
5 communicate with his or her attorney.

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

9 (18) If, upon the motion of a party or in the court's  
10 discretion, the court finds on the record that the witness is or  
11 will be psychologically or emotionally unable to testify at a court  
12 proceeding even with the benefit of the protections afforded the  
13 witness in subsections (3), (4), (15), and (17), the court shall  
14 order that the witness may testify outside the physical presence of  
15 the defendant by closed circuit television or other electronic  
16 means that allows the witness to be observed by the trier of fact  
17 and the defendant when questioned by the parties.

18 (19) For purposes of the videorecorded deposition under  
19 subsection (18), the witness's examination and cross-examination  
20 shall proceed in the same manner as if the witness testified at the  
21 court proceeding for which the videorecorded deposition is to be  
22 used. The court shall permit the defendant to hear the testimony of  
23 the witness and to consult with his or her attorney.

24 (20) This section is in addition to other protections or  
25 procedures afforded to a witness by law or court rule.

26 (21) A person who intentionally releases a videorecorded  
27 statement in violation of this section is guilty of a misdemeanor

1 punishable by imprisonment for not more than ~~93 days~~ **1 YEAR** or a  
2 fine of not more than ~~\$500.00,~~ **\$1,000.00**, or both.

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

9       Enacting section 1. This amendatory act does not take effect  
10 unless all of the following bills of the 97th Legislature are  
11 enacted into law:

12       (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5270 (request no.  
13 03680'13).

14       (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5272 (request no.  
15 03681'13).