

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 853 Session of  
1989

INTRODUCED BY HAGARTY, BLAUM, STUBAN, STAIRS, LaGROTTA, SEMMEL, JAROLIN, S. H. SMITH, LEVDANSKY, BISHOP, HECKLER, KOSINSKI, LASHINGER, RITTER, McVERRY, CALTAGIRONE, VEON, MORRIS, DISTLER, TIGUE, FARMER, YANDRISEVITS, FOX, RYBAK, COLAIZZO, MELIO, NAHILL, MARSICO, CHADWICK, D. W. SNYDER, CAPPABIANCA, COWELL, J. L. WRIGHT, DeLUCA, SAURMAN, ACOSTA, SCHEETZ, G. SNYDER, WILSON, DIETTERICK, GODSHALL, WAMBACH, ROBINSON, HASAY, GRUPPO, BUNT, SALOOM, COY, SERAFINI, RAYMOND, HERMAN, TANGRETTI, DORR, MRKONIC, MICHLOVIC, ADOLPH, LANGTRY, ARGALL, VROON, NOYE, FLICK, ANGSTADT, GEIST, TRICH, BELARDI, DEMPSEY, MICOZZIE, DURHAM, DALEY, E. Z. TAYLOR, MILLER, WESTON, CIVERA, GIGLIOTTI, ITKIN, STABACK, HARPER, BUSH, HOWLETT AND J. H. CLARK, APRIL 3, 1989

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 27, 1990

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, ~~providing for the~~ <—  
3 ~~admissibility of certain out of court statements.~~ <—  
4 PROVIDING FOR JUROR QUALIFICATION, FOR JURISDICTION AND VENUE <—  
5 OF JUVENILE MATTERS, FOR LIMITATION OF ACTIONS RELATING TO  
6 CONVERSION AND THEFT OF TIMBER, FOR ACCESS TO AND DISCLOSURE  
7 OF CERTAIN CONFIDENTIAL INFORMATION AND FOR CONFIDENTIAL  
8 COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELORS; PROVIDING FOR  
9 THE DISPOSITION OF A DELINQUENT CHILD, INCLUDING DRIVER'S  
10 LICENSE SUSPENSION, FOR AN OFFENSE INVOLVING A MOTOR VEHICLE;  
11 GRANTING IMMUNITY TO THE OWNERS, TENANTS OR LESSEES OF  
12 AGRICULTURAL PROPERTY FROM CERTAIN CLAIMS INVOLVING  
13 INDIVIDUALS PICKING THEIR OWN AGRICULTURAL PRODUCTS; AND  
14 FURTHER PROVIDING FOR THE LIABILITY OF CORPORATE DIRECTORS.

15 The General Assembly of the Commonwealth of Pennsylvania  
16 hereby enacts as follows:

17 ~~Section 1. Title 42 of the Pennsylvania Consolidated~~ <—  
18 ~~Statutes is amended by adding a section to read:~~

~~§ 5985.1. Admissibility of certain statements.~~

~~(a) General rule. An out of court statement made by a child victim or witness, who at the time the statement was made was 11 years of age or younger, describing indecent contact, sexual intercourse, deviate sexual intercourse or aggravated assault performed with or on the child by another, not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal proceeding if:~~

~~(1) The court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability.~~

~~(2) The child either:~~

~~(i) testifies at the proceeding; or~~

~~(ii) is unavailable as a witness and there is corroborative evidence of the act.~~

~~(b) Notice required. A statement otherwise admissible under subsection (a) shall not be received into evidence unless the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.~~

~~Section 2. This act shall take effect in 60 days.~~

SECTION 1. ~~SECTION 4502~~ SECTIONS 1515(A)(1) AND 4502 OF  
TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS ARE  
AMENDED TO READ:

§ 1515. JURISDICTION AND VENUE.

(A) JURISDICTION.--EXCEPT AS OTHERWISE PRESCRIBED BY GENERAL

RULE ADOPTED PURSUANT TO SECTION 503 (RELATING TO REASSIGNMENT OF MATTERS), DISTRICT JUSTICES SHALL, UNDER PROCEDURES PRESCRIBED BY GENERAL RULE, HAVE JURISDICTION OF ALL OF THE FOLLOWING MATTERS:

(1) SUMMARY OFFENSES, EXCEPT THOSE WITHIN THE JURISDICTION OF AN ESTABLISHED AND OPEN TRAFFIC COURT AND EXCEPT THOSE ARISING OUT OF THE SAME EPISODE OR TRANSACTION INVOLVING A DELINQUENT ACT FOR WHICH A CHILD IS CHARGED AS A DELINQUENT CHILD UNDER CHAPTER 63 (RELATING TO JUVENILE MATTERS).

\* \* \*

§ 4502. QUALIFICATIONS OF JURORS.

EVERY CITIZEN OF THIS COMMONWEALTH WHO IS OF THE REQUIRED MINIMUM AGE FOR VOTING FOR STATE OR LOCAL OFFICIALS AND WHO RESIDES IN THE COUNTY SHALL BE QUALIFIED TO SERVE AS A JUROR THEREIN UNLESS SUCH CITIZEN:

(1) IS UNABLE TO READ, WRITE, SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE;

(2) IS INCAPABLE, BY REASON OF MENTAL OR PHYSICAL INFIRMITY, TO RENDER EFFICIENT JURY SERVICE; OR

(3) HAS BEEN CONVICTED OF OR HAS A CHARGE PENDING AGAINST HIM FOR A CRIME PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR AND HAS NOT BEEN GRANTED A PARDON OR AMNESTY THEREFOR.

~~SECTION 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.~~

SECTION 2. SECTION 5526 OF TITLE 42 IS AMENDED BY ADDING A PARAGRAPH TO READ:

§ 5526. FIVE YEAR LIMITATION.

THE FOLLOWING ACTIONS AND PROCEEDINGS MUST BE COMMENCED WITHIN FIVE YEARS:

1           \* \* \*

2           (5) AN ACTION FOR CONVERSION OF TIMBER.

3           SECTION 3. SECTIONS 5945.1 AND 6303 OF TITLE 42 ARE AMENDED  
4 TO READ:

5   § 5945.1. CONFIDENTIAL COMMUNICATIONS [TO] WITH SEXUAL ASSAULT  
6 COUNSELORS.

7   (A) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
8 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
9 SUBSECTION:

10   "COPARTICIPANT." A VICTIM PARTICIPATING IN GROUP COUNSELING.

11   "RAPE CRISIS CENTER." ANY OFFICE, INSTITUTION OR CENTER  
12 OFFERING ASSISTANCE TO VICTIMS OF SEXUAL ASSAULT AND THEIR  
13 FAMILIES THROUGH CRISIS INTERVENTION, MEDICAL AND LEGAL  
14 ACCOMPANIMENT AND FOLLOW-UP COUNSELING.

15   "SEXUAL ASSAULT COUNSELOR." A PERSON WHO IS ENGAGED IN ANY  
16 OFFICE, INSTITUTION OR CENTER DEFINED AS A RAPE CRISIS CENTER  
17 UNDER THIS SECTION, WHO HAS UNDERGONE 40 HOURS OF SEXUAL ASSAULT  
18 TRAINING AND IS UNDER THE CONTROL OF A DIRECT SERVICES  
19 SUPERVISOR OF A RAPE CRISIS CENTER, WHOSE PRIMARY PURPOSE IS THE  
20 RENDERING OF ADVICE, COUNSELING OR ASSISTANCE TO VICTIMS OF  
21 SEXUAL ASSAULT.

22   "VICTIM." A PERSON WHO CONSULTS A SEXUAL ASSAULT COUNSELOR  
23 FOR THE PURPOSE OF SECURING ADVICE, COUNSELING OR ASSISTANCE  
24 CONCERNING A MENTAL, PHYSICAL OR EMOTIONAL CONDITION CAUSED OR  
25 REASONABLY BELIEVED TO BE CAUSED BY A SEXUAL ASSAULT. THE TERM  
26 SHALL ALSO INCLUDE THOSE PERSONS WHO HAVE A SIGNIFICANT  
27 RELATIONSHIP WITH A VICTIM OF SEXUAL ASSAULT AND WHO SEEK  
28 ADVICE, COUNSELING OR ASSISTANCE FROM A SEXUAL ASSAULT COUNSELOR  
29 CONCERNING A MENTAL, PHYSICAL OR EMOTIONAL CONDITION CAUSED OR  
30 REASONABLY BELIEVED TO BE CAUSED BY A SEXUAL ASSAULT OF A

1 VICTIM.

2 "CONFIDENTIAL COMMUNICATION." [INFORMATION] ALL INFORMATION,  
3 ORAL OR WRITTEN, TRANSMITTED BETWEEN A VICTIM OF SEXUAL ASSAULT  
4 AND A SEXUAL ASSAULT COUNSELOR IN THE COURSE OF [THAT] THEIR  
5 RELATIONSHIP [AND IN CONFIDENCE BY A MEANS WHICH, SO FAR AS THE  
6 VICTIM IS AWARE, DOES NOT DISCLOSE THE INFORMATION TO A THIRD  
7 PERSON OTHER THAN THOSE WHO ARE PRESENT TO FURTHER THE INTERESTS  
8 OF THE VICTIM IN THE CONSULTATION OR THOSE TO WHOM DISCLOSURE IS  
9 REASONABLY NECESSARY FOR THE TRANSMISSION OF THE INFORMATION OR  
10 AN ACCOMPLISHMENT OF THE PURPOSES FOR WHICH THE SEXUAL ASSAULT  
11 COUNSELOR IS CONSULTED. THE TERM INCLUDES ALL INFORMATION  
12 RECEIVED BY THE SEXUAL ASSAULT COUNSELOR IN THE COURSE OF THAT  
13 RELATIONSHIP] INCLUDING, BUT NOT LIMITED TO, ANY ADVICE,  
14 REPORTS, STATISTICAL DATA, MEMORANDA, WORKING PAPERS, RECORDS OR  
15 THE LIKE, GIVEN OR MADE DURING THAT RELATIONSHIP.

16 (B) PRIVILEGE.--[A SEXUAL ASSAULT COUNSELOR HAS A PRIVILEGE  
17 NOT TO BE EXAMINED AS A WITNESS IN ANY CIVIL OR CRIMINAL  
18 PROCEEDING WITHOUT THE PRIOR WRITTEN CONSENT OF THE VICTIM BEING  
19 COUNSELED BY THE COUNSELOR AS TO ANY CONFIDENTIAL COMMUNICATION  
20 MADE BY THE VICTIM TO THE COUNSELOR OR AS TO ANY ADVICE, REPORT  
21 OR WORKING PAPER GIVEN OR MADE IN THE COURSE OF THE  
22 CONSULTATION.]

23 (1) NO SEXUAL ASSAULT COUNSELOR MAY, WITHOUT THE WRITTEN  
24 CONSENT OF THE VICTIM, DISCLOSE THE VICTIM'S CONFIDENTIAL  
25 ORAL OR WRITTEN COMMUNICATIONS TO THE COUNSELOR NOR CONSENT  
26 TO BE EXAMINED IN ANY COURT OR CRIMINAL PROCEEDING.

27 (2) NO COPARTICIPANT WHO IS PRESENT DURING COUNSELING  
28 MAY DISCLOSE A VICTIM'S CONFIDENTIAL COMMUNICATION MADE  
29 DURING THE COUNSELING SESSION NOR CONSENT TO BE EXAMINED IN  
30 ANY CIVIL OR CRIMINAL PROCEEDING WITHOUT THE WRITTEN CONSENT

1     OF THE VICTIM.

2     § 6303.   SCOPE OF CHAPTER.

3     (A)   GENERAL RULE.--THIS CHAPTER SHALL APPLY EXCLUSIVELY TO  
4   THE FOLLOWING:

5           (1)   PROCEEDINGS IN WHICH A CHILD IS ALLEGED TO BE  
6   DELINQUENT OR DEPENDENT.

7           (2)   TRANSFERS UNDER SECTION 6322 (RELATING TO TRANSFER  
8   FROM CRIMINAL PROCEEDINGS).

9           (3)   PROCEEDINGS ARISING UNDER SUBCHAPTER E (RELATING TO  
10  DISPOSITIONS AFFECTING OTHER JURISDICTIONS).

11          (4)   PROCEEDINGS UNDER THE INTERSTATE COMPACT ON  
12  JUVENILES, AS SET FORTH IN SECTION 731 OF THE ACT OF JUNE 13,  
13  1967 (P.L.31, NO.21), KNOWN AS THE "PUBLIC WELFARE CODE."

14          (5)   PROCEEDINGS IN WHICH A CHILD IS CHARGED WITH A  
15   SUMMARY OFFENSE ARISING OUT OF THE SAME EPISODE OR  
16   TRANSACTION INVOLVING A DELINQUENT ACT FOR WHICH A CHILD IS  
17   CHARGED AS A DELINQUENT CHILD. SUCH SUMMARY OFFENSES SHALL BE  
18   INCLUDED IN ANY PETITION REGARDING THE ANCILLARY DELINQUENT  
19   ACT. UPON FINDING A CHILD TO HAVE COMMITTED A SUMMARY  
20   OFFENSE, THE COURT MAY UTILIZE ANY DISPOSITION AVAILABLE TO  
21   THE MINOR JUDICIARY WHERE A CHILD IS FOUND TO HAVE COMMITTED  
22   A SUMMARY OFFENSE.

23   (B)   MINOR JUDICIARY.--NO CHILD SHALL BE DETAINED, COMMITTED  
24  OR SENTENCED TO IMPRISONMENT BY A DISTRICT JUSTICE OR A JUDGE OF  
25  THE MINOR JUDICIARY.

26   SECTION 4.   SECTION 6352 OF TITLE 42 IS AMENDED BY ADDING A  
27  SUBSECTION TO READ:

28  § 6352.   DISPOSITION OF DELINQUENT CHILD.

29       \* \* \*

30   (C)   DELINQUENT ACT INVOLVING MOTOR VEHICLE.--IN ADDITION TO

1 A DISPOSITION MADE UNDER THIS SECTION, THE COURT SHALL ORDER THE  
2 OPERATING PRIVILEGE OF A DELINQUENT CHILD TO BE SUSPENDED BY THE  
3 DEPARTMENT OF TRANSPORTATION FOR A PERIOD ESTABLISHED IN THIS  
4 SUBSECTION, WHEN, WHILE COMMITTING AN ACT FOR WHICH HE WAS  
5 ADJUDICATED DELINQUENT OR DURING FLIGHT THEREFROM, A MOTOR  
6 VEHICLE WAS USED. WHEN THE COURT ORDERS A SUSPENSION OF THE  
7 OPERATING PRIVILEGE, WHICH SHALL INCLUDE A SUSPENSION OF THE  
8 PRIVILEGE OF OPERATING A MOTORIZED PEDALCYCLE, OF A PERSON UNDER  
9 THIS SUBSECTION, THE DURATION OF THE SUSPENSION SHALL BE AS  
10 FOLLOWS:

11 (1) FOR A FIRST OFFENSE, A PERIOD OF 180 DAYS FROM THE  
12 DATE OF DISPOSITION.

13 (2) FOR A SECOND OFFENSE, A PERIOD OF ONE YEAR FROM THE  
14 DATE OF DISPOSITION.

15 (3) FOR A THIRD OFFENSE, AND ANY OFFENSE THEREAFTER, A  
16 PERIOD OF TWO YEARS FROM THE DATE OF DISPOSITION. SUSPENSIONS  
17 RESULTING FROM OFFENSES WHICH DO NOT ARISE FROM THE SAME  
18 CRIMINAL EPISODE SHALL BE IMPOSED CONSECUTIVELY.

19 A PERSON WHOSE RECORD IS RECEIVED BY THE DEPARTMENT OF  
20 TRANSPORTATION UNDER THIS SUBSECTION AND WHO DOES NOT HAVE A  
21 DRIVER'S LICENSE SHALL BE INELIGIBLE TO APPLY FOR A LEARNER'S  
22 PERMIT UNDER 75 PA.C.S. §§ 1505 (RELATING TO LEARNERS' PERMITS)  
23 AND 1507 (RELATING TO APPLICATION FOR DRIVER'S LICENSE OR  
24 LEARNER'S PERMIT BY MINOR) FOR THE TIME PERIODS SPECIFIED IN  
25 THIS SUBSECTION. IF THE PERSON IS UNDER 16 YEARS OF AGE WHEN HE  
26 IS ADJUDICATED DELINQUENT, THE SUSPENSION OF HIS OPERATING  
27 PRIVILEGE SHALL COMMENCE UPON HIS 16TH BIRTHDAY FOR THE TIME  
28 PERIODS SPECIFIED IN THIS SUBSECTION.

29 SECTION 5. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ:  
30 § 8339. AGRICULTURAL IMMUNITY.

1     (A) GENERAL RULE.--NO CAUSE OF ACTION SHALL ARISE AGAINST  
2     THE OWNER, TENANT OR LESSEE OF LAND OR PREMISES FOR INJURIES TO  
3     ANY PERSON, OTHER THAN AN EMPLOYEE OR CONTRACTOR OF THE OWNER,  
4     TENANT OR LESSEE, WHO IS ON THE LAND OR PREMISES FOR THE PURPOSE  
5     OF PICKING AND PURCHASING AGRICULTURAL OR FARM PRODUCTS AT A  
6     FARM OR "U-PICK" OPERATION, UNLESS THE PERSON'S INJURIES WERE  
7     CAUSED BY A CONDITION WHICH INVOLVED AN UNREASONABLE RISK OF  
8     HARM AND ALL OF THE FOLLOWING APPLY:

9             (1) THE OWNER, TENANT OR LESSEE KNEW OR HAD REASON TO  
10            KNOW OF THE CONDITION OR RISK.

11            (2) THE OWNER, TENANT OR LESSEE FAILED TO EXERCISE  
12            REASONABLE CARE TO MAKE THE CONDITION SAFE, OR TO WARN THE  
13            PERSON OF THE CONDITION OR RISK.

14     (B) DEFINITIONS.--AS USED IN THIS SECTION, THE TERM  
15     "AGRICULTURAL OR FARM PRODUCTS" MEANS THE NATURAL PRODUCTS OF  
16     THE FARM, NURSERY, GROVE, ORCHARD, VINEYARD, GARDEN AND APIARY,  
17     INCLUDING, BUT NOT LIMITED TO, TREES AND FIREWOOD.

18     SECTION 6. THE DEFINITION OF "BUSINESS CORPORATION" IN  
19     SECTION 8362 OF TITLE 42 IS AMENDED TO READ:

20     § 8362. DEFINITIONS OF SUBCHAPTER.

21     THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER  
22     SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
23     CONTEXT CLEARLY INDICATES OTHERWISE:

24     "BUSINESS CORPORATION." ANY CORPORATION SUBJECT TO THE ACT  
25     OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS THE INSURANCE  
26     COMPANY LAW OF 1921, THE ACT OF NOVEMBER 30, 1965 (P.L.847,  
27     NO.356), KNOWN AS THE BANKING CODE OF 1965, THE ACT OF DECEMBER  
28     14, 1967 (P.L.746, NO.345), KNOWN AS THE SAVINGS ASSOCIATION  
29     CODE OF 1967, [OR] 15 PA.C.S. PT. II SUBPT. B (RELATING TO  
30     BUSINESS CORPORATIONS), OR ANY ASSOCIATION SUBJECT TO THE ACT OF



1 JUNE 12, 1968 (P.L.173, NO.94), KNOWN AS THE COOPERATIVE  
2 AGRICULTURAL ASSOCIATION ACT.

3 \* \* \*

4 SECTION 7. THE AMENDMENT TO 42 PA.C.S. § 5526 SHALL APPLY TO  
5 ACTIONS THAT ARE COMMENCED ON OR AFTER THE EFFECTIVE DATE OF  
6 THIS ACT.

7 SECTION 8. SECTION 6 (SECTION 8362) SHALL BE RETROACTIVE TO  
8 JANUARY 27, 1984.

9 SECTION 9. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

10 (1) SECTION 1 (SECTION 4502) OF THIS ACT SHALL TAKE  
11 EFFECT IN 60 DAYS.

12 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT  
13 IMMEDIATELY.