

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1322 Session of
1995

INTRODUCED BY GREENLEAF, O'PAKE, HECKLER, LEMMOND, ANDREZESKI,
BELL, CORMAN, DELP, MUSTO, PICCOLA, SCHWARTZ, FISHER, KASUNIC
AND HART, NOVEMBER 29, 1995

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, JANUARY 30, 1996

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, reenacting AND AMENDING <—
3 provisions relating to child victims and witnesses.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. ~~Sections 5981, 5982, 5983, 5984, 5985, 5985.1,~~ <—
7 ~~5986, 5987 and 5988~~ SECTION 5981 of Title 42 of the Pennsylvania <—
8 Consolidated Statutes ~~are reenacted~~ IS AMENDED to read: <—

9 § 5981. Declaration of policy.

10 In order to promote the best interests of the children of
11 this Commonwealth [and], in recognition of the necessity of <—
12 affording to children who are material witnesses to or victims
13 of crimes additional consideration and different treatment from
14 that of adults, AND IN ORDER TO IMPLEMENT THE CONSTITUTIONAL <—
15 AMENDMENT ADOPTED ON NOVEMBER 7, 1995, the General Assembly
16 declares its intent, this subchapter, to provide these children
17 with additional rights and protections during their involvement
18 with the criminal justice system. The General Assembly urges the

1 news media to use restraint in revealing the identity or address
2 of children who are victims of or witnesses to crimes.

3 SECTION 2. THE DEFINITION OF "CHILD" OR "CHILDREN" IN <—
4 SECTION 5982 OF TITLE 42 IS AMENDED TO READ:

5 § 5982. Definitions.

6 The following words and phrases when used in this subchapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Child" or "children." An individual or individuals under 14
10 years of age. [In the case of an individual from 14 to 15 years <—
11 of age, there shall be a rebuttable presumption that the
12 individual will benefit from the use of procedures in sections
13 5984 (relating to videotaped depositions) and 5985 (relating to
14 testimony by closed-circuit television). In the case of an
15 individual from 16 to 17 years of age, there shall be a
16 rebuttable presumption that the individual will not benefit from
17 the use of procedures in sections 5984 and 5985.] <—

18 ~~"Qualified shorthand reporter." An individual engaged in the <—~~
19 ~~active practice of general shorthand reporting who is skilled in~~
20 ~~the art of verbatim reporting by the use of a written shorthand~~
21 ~~system, whether manual or machine; or any individual who is an~~
22 ~~official court or legislative reporter; or any individual who is~~
23 ~~the holder of a certified shorthand reporter certificate~~
24 ~~mandated by State or Federal law.~~

25 ~~§ 5983. Rights and services.~~

26 ~~(a) Designation of persons to act on behalf of children.—~~
27 ~~Courts of common pleas may designate one or more persons as a~~
28 ~~child advocate to provide the following services on behalf of~~
29 ~~children who are involved in criminal proceedings as victims or~~
30 ~~material witnesses:~~

1 ~~(1) To explain, in language understood by the child, all~~
2 ~~legal proceedings in which the child will be involved.~~

3 ~~(2) As a friend of the court, to advise the judge,~~
4 ~~whenever appropriate, of the child's ability to understand~~
5 ~~and cooperate with any court proceedings.~~

6 ~~(3) To assist or secure assistance for the child and the~~
7 ~~child's family in coping with the emotional impact of the~~
8 ~~crime and subsequent criminal proceedings in which the child~~
9 ~~is involved.~~

10 ~~(b) Qualifications. Persons designated under subsection (a)~~
11 ~~may be attorneys at law or other persons who, by virtue of~~
12 ~~service as rape crisis or domestic violence counselors or by~~
13 ~~virtue of membership in a community service organization or of~~
14 ~~other experience acceptable to the court, possess education,~~
15 ~~experience or training in child or sexual abuse and a basic~~
16 ~~understanding of the criminal justice system.~~

17 * * *

18 SECTION 3. SECTIONS 5984 AND 5985 OF TITLE 42 ARE REENACTED
19 AND AMENDED TO READ:

20 § 5984. Videotaped depositions.

21 (a) Depositions.--In any prosecution involving a child
22 victim or child material witness, the court may[, for good cause
23 shown,] order the taking of a videotaped deposition of the
24 victim or material witness on motion of the [child through his
25 parent or guardian, or where applicable, the child's advocate or
26 the] attorney for the Commonwealth. THE ATTORNEY FOR THE
27 COMMONWEALTH SHALL ESTABLISH THROUGH THE PRESENTATION OF
28 EVIDENCE THAT IN THE PARTICULAR CASE BEFORE THE COURT THE CHILD
29 WOULD SUFFER SUCH SIGNIFICANT TRAUMA AND EMOTIONAL DISTRESS
30 CAUSED BY THE CHILD HAVING TO APPEAR BEFORE THE DEFENDANT THAT

1 IT WOULD BE DIFFICULT FOR THE CHILD TO TESTIFY IN THE PRESENCE
2 OF THE DEFENDANT. THE ATTORNEY FOR THE COMMONWEALTH AND THE
3 DEFENDANT MAY PRESENT EXPERT TESTIMONY. Such videotaped
4 depositions, if taken for use at the preliminary hearing, may be
5 used only at the preliminary hearing in lieu of the testimony of
6 the child. If such videotaped deposition is taken for use at
7 trial, it may be used only at the trial in lieu of the testimony
8 of the child. The depositions shall be taken before the court in
9 chambers or in a special facility designed for taking the
10 depositions of children. Only the attorneys for the defendant
11 and for the Commonwealth, persons necessary to operate the
12 equipment, a qualified shorthand reporter and, WHERE <—
13 APPROPRIATE, THE COURT MAY ALLOW any person whose presence would
14 contribute to the welfare and well-being of the child, including
15 persons designated under section 5983 (relating to rights and
16 services), may be present in the room with the child during his
17 deposition. The court shall permit the defendant to observe and
18 hear the testimony of the child [in person] but shall ensure <—
19 that the child cannot hear or see the defendant. Examination and
20 cross-examination of the child shall proceed in the same manner
21 as permitted at trial. The court shall make certain that the
22 defendant and defense counsel have adequate opportunity to
23 communicate for the purposes of providing an effective defense.

24 (b) Effect of order.--If the court orders the deposition of
25 a child to be taken under subsection (a), the child may not be
26 required to testify in court at the proceeding for which the
27 deposition was taken.

28 § 5985. Testimony by closed-circuit television.

29 (a) Closed-circuit television.--The child victim or material
30 witness, through [his parent or guardian, or, where applicable, <—

1 the child's advocate or] the attorney for the Commonwealth may <—
2 move[, for good cause shown,] that the testimony of a child be <—
3 taken in a room other than the courtroom and televised by
4 closed-circuit equipment to be viewed by the court and the
5 finder of fact in the proceeding. THE ATTORNEY FOR THE <—
6 COMMONWEALTH SHALL ESTABLISH THROUGH THE PRESENTATION OF
7 EVIDENCE THAT IN THE PARTICULAR CASE BEFORE THE COURT THE CHILD
8 WOULD SUFFER SUCH SIGNIFICANT TRAUMA AND EMOTIONAL DISTRESS
9 CAUSED BY THE CHILD HAVING TO APPEAR BEFORE THE DEFENDANT THAT
10 IT WOULD BE DIFFICULT FOR THE CHILD TO TESTIFY IN THE PRESENCE
11 OF THE DEFENDANT. THE ATTORNEY FOR THE COMMONWEALTH AND THE
12 DEFENDANT MAY PRESENT EXPERT TESTIMONY. Only the attorneys for
13 the defendant and for the Commonwealth, the court reporter, the
14 judge, persons necessary to operate the equipment and, WHERE <—
15 APPROPRIATE, THE COURT MAY ALLOW any person whose presence would
16 contribute to the welfare and well-being of the child, including
17 persons designated under section 5983 (relating to rights and
18 services), may be present in the room with the child during his
19 testimony. The court shall permit the defendant to observe and
20 hear the testimony of the child [in person] but shall ensure <—
21 that the child cannot hear or see the defendant. The court shall
22 make certain that the defendant and defense counsel have
23 adequate opportunity to communicate for the purposes of
24 providing an effective defense. Examination and cross-
25 examination of the child shall proceed in the same manner as
26 permitted at trial.

27 (b) Effect of order.--If the court orders the testimony of a
28 child to be taken under subsection (a), the child may not be
29 required to testify in court at the proceeding for which the
30 testimony was taken.

1 ~~§ 5985.1. Admissibility of certain statements.~~

2 ~~(a) General rule. An out of court statement made by a child~~
3 ~~victim or witness, who at the time the statement was made was 12~~
4 ~~years of age or younger, describing indecent contact, sexual~~
5 ~~intercourse or deviate sexual intercourse performed with or on~~
6 ~~the child by another, not otherwise admissible by statute or~~
7 ~~rule of evidence, is admissible in evidence in any criminal~~
8 ~~proceeding if:~~

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

13 ~~(2) The child either:~~

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

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

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

25 ~~§ 5986. Hearsay.~~

26 ~~A statement made by a child describing acts and attempted~~
27 ~~acts of indecent contact, sexual intercourse or deviate sexual~~
28 ~~intercourse performed with or on the child by another, not~~
29 ~~otherwise admissible by statute or court ruling, is admissible~~
30 ~~in evidence in a dependency proceeding initiated under Chapter~~

~~63 (relating to juvenile matters), involving that child or other members of that child's family, if a court finds that the time, content and circumstances of this statement provide sufficient indicia of reliability.~~

~~§ 5987. Use of dolls.~~

~~In any criminal proceeding charging unlawful sexual contact or penetration with or on a child, the court shall permit the use of anatomically correct dolls or mannequins to assist an alleged victim in testifying on direct examination and cross-examination.~~

~~§ 5988. Victims of sexual or physical abuse.~~

~~(a) Release of name prohibited. In a prosecution involving a child victim of sexual or physical abuse, unless the court otherwise orders, the name of the child victim shall not be disclosed by officers or employees of the court to the public, and any records revealing the name of the child victim will not be open to public inspection.~~

~~(b) Penalty. Any person who violates this section commits a misdemeanor of the third degree. taken.~~

~~Section 2. This act is enacted for the purpose of reinstating 42 Pa.C.S. §§ 5981, 5982, 5983, 5984, 5985, 5985.1, 5986, 5987 and 5988 which were ruled unconstitutional by the Pennsylvania Supreme Court, following passage of an amendment to section 9 of Article I of the Constitution of Pennsylvania by the qualified electors of this Commonwealth on November 7, 1995.~~

SECTION 4. THE PROVISIONS OF 42 PA.C.S. §§ 5984 AND 5985 ARE REENACTED TO IMPLEMENT THE CONSTITUTIONAL AMENDMENT TO SECTION 9 OF ARTICLE I OF THE CONSTITUTION OF PENNSYLVANIA ADOPTED BY THE QUALIFIED ELECTORS OF THIS COMMONWEALTH ON NOVEMBER 7, 1995.

Section 3 5. This act shall take effect immediately.