
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 469 Session of
2019

INTRODUCED BY LAUGHLIN AND BAKER, MARCH 22, 2019

REFERRED TO JUDICIARY, MARCH 22, 2019

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in depositions and
3 witnesses, providing for procedures to protect victims and
4 witnesses with intellectual disabilities or autism.

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

7 Section 1. Chapter 59 of Title 42 of the Pennsylvania
8 Consolidated Statutes is amended by adding a subchapter to read:

9 SUBCHAPTER E

10 VICTIMS AND WITNESSES WITH

11 INTELLECTUAL DISABILITIES OR AUTISM

12 Sec.

13 5991. Declaration of policy.

14 5992. Definitions.

15 5993. Admissibility of certain statements.

16 § 5991. Declaration of policy.

17 In order to promote the best interests of residents of this
18 Commonwealth with intellectual disabilities or autism who are
19 material witnesses or victims of crime, the General Assembly

1 declares its intent, in this subchapter, to provide, where
2 necessity is shown, procedures that will protect material
3 witnesses or victims of crime with intellectual disabilities or
4 autism during their involvement with the criminal justice
5 system.

6 § 5992. Definitions.

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

10 "Autism spectrum disorder." Any of the pervasive
11 developmental disorders defined by the most recent edition of
12 the Diagnostic and Statistical Manual of Mental Disorders (DSM),
13 or its successor, including autistic disorder, Asperger's
14 disorder and pervasive developmental disorder not otherwise
15 specified.

16 "Individual with an intellectual disability or autism." As
17 follows:

18 (1) Regardless of the age of the individual, an
19 individual with significantly subaverage general intellectual
20 functioning that is accompanied by significant limitations in
21 adaptive functioning in at least two of the following skill
22 areas:

- 23 (i) Communication.
- 24 (ii) Self-care.
- 25 (iii) Home living.
- 26 (iv) Social and interpersonal.
- 27 (v) Use of community resources.
- 28 (vi) Self-direction.
- 29 (vii) Functional academic.
- 30 (viii) Work.

1 (ix) Health and safety.

2 (2) The term also includes an individual, regardless of
3 age, who has an autism spectrum disorder.

4 § 5993. Admissibility of certain statements.

5 (a) General rule.--An out-of-court statement made by an
6 individual with an intellectual disability or autism who is a
7 victim or witness describing any of the offenses enumerated in
8 subsection (b), not otherwise admissible by statute or rule of
9 evidence, is admissible in evidence in any criminal or civil
10 proceeding if:

11 (1) the court finds, in an in camera hearing, that the
12 evidence is relevant and that the time, content and
13 circumstances of the statement provide sufficient indicia of
14 reliability; and

15 (2) the individual either:

16 (i) testifies at the proceeding; or

17 (ii) is unavailable as a witness.

18 (b) Enumerated offenses.--The following offenses under Title
19 18 (relating to crimes and offenses) shall apply to subsection

20 (a):

21 Chapter 25 (relating to criminal homicide).

22 Chapter 27 (relating to assault).

23 Chapter 29 (relating to kidnapping).

24 Chapter 30 (relating to human trafficking).

25 Chapter 31 (relating to sexual offenses).

26 Chapter 35 (relating to burglary and other criminal
27 intrusion).

28 Chapter 37 (relating to robbery).

29 Section 4302 (relating to incest).

30 Section 4304 (relating to endangering welfare of

1 children) if the offense involved sexual contact with the
2 victim.

3 Section 6301(a)(1)(ii) (relating to corruption of
4 minors).

5 Section 6312(b) (relating to sexual abuse of children).

6 Section 6318 (relating to unlawful contact with minor).

7 Section 6320 (relating to sexual exploitation of
8 children).

9 (c) Emotional distress.--In order to make a finding under
10 subsection (a)(2)(ii) that the individual is unavailable as a
11 witness, the court must determine, based on evidence presented
12 to it, that testimony by the individual as a witness will result
13 in the individual suffering serious emotional distress that
14 would substantially impact the individual's ability to
15 reasonably communicate.

16 (d) Determination by court.--In making a determination under
17 subsection (c), the court may do all of the following:

18 (1) Observe and question the individual, either inside
19 or outside the courtroom.

20 (2) Hear testimony of a parent or custodian or any other
21 person, such as a person who has dealt with the individual in
22 a medical or therapeutic setting.

23 (e) Counsel and confrontation.--If the court hears testimony
24 in connection with making a finding under subsection (c), all of
25 the following apply:

26 (1) Except as provided in paragraph (2), the defendant,
27 the attorney for the defendant and the attorney for the
28 Commonwealth or, in the case of a civil proceeding, the
29 attorney for the plaintiff, have the right to be present.

30 (2) If the court observes or questions the individual,

1 the court shall not permit the defendant to be present.

2 (f) Notice required.--A statement otherwise admissible under
3 subsection (a) shall not be received into evidence unless the
4 proponent of the statement notifies the adverse party of the
5 proponent's intention to offer the statement and the particulars
6 of the statement sufficiently in advance of the proceeding at
7 which the proponent intends to offer the statement into evidence
8 to provide the adverse party with a fair opportunity to prepare
9 to meet the statement.

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