

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

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

7 § 5992. Definitions.

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

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

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

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

24 (i) Communication.

25 (ii) Self-care.

26 (iii) Home living.

27 (iv) Social and interpersonal.

28 (v) Use of community resources.

29 (vi) Self-direction.

30 (vii) Functional academic.

1 (viii) Work.

2 (ix) Health and safety.

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

5 § 5993. Admissibility of certain statements.

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

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

16 (2) the individual has an intellectual disability or
17 autism; and

18 (3) the individual either:

19 (i) testifies at the proceeding; or

20 (ii) is unavailable as a witness.

21 (b) Enumerated offenses.--The following offenses under 18
22 Pa.C.S. (relating to crimes and offenses) shall apply to
23 subsection (a):

24 Chapter 25 (relating to criminal homicide).

25 Chapter 27 (relating to assault).

26 Chapter 29 (relating to kidnapping).

27 Chapter 30 (relating to human trafficking).

28 Chapter 31 (relating to sexual offenses).

29 Chapter 35 (relating to burglary and other criminal
30 intrusion).

1 Chapter 37 (relating to robbery).

2 Section 4302 (relating to incest).

3 Section 4304 (relating to endangering welfare of
4 children) if the offense involved sexual contact with the
5 victim.

6 Section 6301(a)(1)(ii) (relating to corruption of
7 minors).

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

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

10 Section 6320 (relating to sexual exploitation of
11 children).

12 (c) Unavailability.--

13 (1) In order to make a finding under subsection (a)(3)
14 (ii) that an individual is unavailable as a witness, the
15 court must determine, based on evidence presented to it:

16 (i) the mental and physical age and maturity of the
17 individual;

18 (ii) the nature and duration of the offense;

19 (iii) the relationship of the individual to the
20 offender;

21 (iv) the reliability of the assertion;

22 (v) the reliability of the individual; and

23 (vi) any other factor the court deems appropriate.

24 (2) In making a determination under paragraph (1), the
25 court may do all of the following:

26 (i) Observe and question the individual, either
27 inside or outside the courtroom.

28 (ii) Hear testimony of a parent or custodian or any
29 other person, such as a person who has dealt with the
30 individual in a medical or therapeutic setting.

1 (d) Counsel and confrontation.--If the court hears testimony
2 in connection with making a finding under subsection (c), all of
3 the following apply:

4 (1) Except as provided in paragraph (2), the defendant,
5 the attorney for the defendant and the attorney for the
6 Commonwealth or, in the case of a civil proceeding, the
7 attorney for the plaintiff, have the right to be present.

8 (2) If the court observes or questions the individual,
9 the court shall not permit the defendant to be present.

10 (e) Notice required.--A statement otherwise admissible under
11 subsection (a) shall not be received into evidence unless the
12 proponent of the statement notifies the adverse party of the
13 proponent's intention to offer the statement and the particulars
14 of the statement sufficiently in advance of the proceeding at
15 which the proponent intends to offer the statement into evidence
16 to provide the adverse party with a fair opportunity to prepare
17 to meet the statement.

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

