

JUDICIAL CODE (42 PA.C.S.) - PROCEDURES TO PROTECT VICTIMS AND
WITNESSES WITH INTELLECTUAL DISABILITIES OR AUTISM

Act of Jun. 28, 2019, P.L. 228, No. 30

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No. 2019-30

SB 469

AN ACT

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

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

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

**SUBCHAPTER E
VICTIMS AND WITNESSES WITH
INTELLECTUAL DISABILITIES OR AUTISM**

Sec.

5991. Declaration of policy.

5992. Definitions.

5993. Admissibility of certain statements.

§ 5991. Declaration of policy.

In order to promote the best interests of residents of this Commonwealth with intellectual disabilities or autism who are material witnesses or victims of crime, the General Assembly declares its intent, in this subchapter, to provide, where necessity is shown, procedures that will protect material witnesses or victims of crime with intellectual disabilities or autism during their involvement with the criminal justice system.

§ 5992. Definitions.

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

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

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

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

- (i) Communication.
- (ii) Self-care.
- (iii) Home living.
- (iv) Social and interpersonal.
- (v) Use of community resources.
- (vi) Self-direction.
- (vii) Functional academic.
- (viii) Work.

(ix) Health and safety.

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

§ 5993. Admissibility of certain statements.

(a) General rule.--An out-of-court statement made by an individual with an intellectual disability or autism who is a victim or witness describing any of the offenses enumerated in subsection (b), not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil 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; and

(2) the individual either:

(i) testifies at the proceeding; or

(ii) is unavailable as a witness.

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

Chapter 25 (relating to criminal homicide).

Chapter 27 (relating to assault).

Chapter 29 (relating to kidnapping).

Chapter 30 (relating to human trafficking).

Chapter 31 (relating to sexual offenses).

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

Chapter 37 (relating to robbery).

Section 4302 (relating to incest).

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

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

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

Section 6318 (relating to unlawful contact with minor).

Section 6320 (relating to sexual exploitation of children).

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

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

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

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

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

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

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

(f) 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.

APPROVED--The 28th day of June, A.D. 2019.

TOM WOLF