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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2321 Session of  
2018

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INTRODUCED BY BLOOM, EVERETT, BARBIN, M. K. KELLER, MILLARD,  
TOOHIL, KINSEY, LONGIETTI, SCHLOSSBERG, J. McNEILL, CHARLTON,  
HELM, MUSTIO, CALTAGIRONE, STEPHENS, READSHAW, MARSICO, MURT,  
STURLA, ROEBUCK, D. COSTA, YOUNGBLOOD, BRIGGS, SAYLOR, COX  
AND HILL-EVANS, MAY 3, 2018

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REFERRED TO COMMITTEE ON JUDICIARY, MAY 3, 2018

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in depositions and  
3 witnesses, further providing for admissibility of certain  
4 statements.

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

7 Section 1. Section 5985.1(a), (a.1) and (a.2) of Title 42 of  
8 the Pennsylvania Consolidated Statutes are amended to read:

9 § 5985.1. Admissibility of certain statements.

10 (a) General rule.--

11 (1) An out-of-court statement made by a child victim or  
12 witness, who at the time the statement was made was 12 years  
13 of age or younger, describing any of the offenses enumerated  
14 in [18 Pa.C.S. Chs. 25 (relating to criminal homicide), 27  
15 (relating to assault), 29 (relating to kidnapping), 31  
16 (relating to sexual offenses), 35 (relating to burglary and  
17 other criminal intrusion) and 37 (relating to robbery)]

1 paragraph (2), not otherwise admissible by statute or rule of  
2 evidence, is admissible in evidence in any criminal or civil  
3 proceeding if:

4 [(1)] (i) the court finds, in an in camera hearing, that  
5 the evidence is relevant and that the time, content and  
6 circumstances of the statement provide sufficient indicia of  
7 reliability; and

8 [(2)] (ii) the child either:

9 [(i)] (A) testifies at the proceeding; or

10 [(ii)] (B) is unavailable as a witness.

11 (2) The following offenses under 18 Pa.C.S. (relating to  
12 crimes and offenses) shall apply to paragraph (1):

13 Chapter 25 (relating to criminal homicide).

14 Chapter 27 (relating to assault).

15 Chapter 29 (relating to kidnapping).

16 Chapter 30 (relating to human trafficking).

17 Chapter 31 (relating to sexual offenses).

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

20 Chapter 37 (relating to robbery).

21 Section 4302 (relating to incest).

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

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

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

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

29 Section 6320 (relating to sexual exploitation of  
30 children).

1 (a.1) Emotional distress.--In order to make a finding under  
2 subsection [(a) (2) (ii)] (a) (1) (ii) (B) that the child is  
3 unavailable as a witness, the court must determine, based on  
4 evidence presented to it, that testimony by the child as a  
5 witness will result in the child suffering serious emotional  
6 distress that would substantially impair the child's ability to  
7 reasonably communicate. In making this determination, the court  
8 may do all of the following:

9 (1) Observe and question the child, either inside or  
10 outside the courtroom.

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

14 (a.2) Counsel and confrontation.--If the court hears  
15 testimony in connection with making a finding under subsection  
16 [(a) (2) (ii)] (a) (1) (ii) (B), all of the following apply:

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

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

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