

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 503 Session of 2019

INTRODUCED BY EVERETT, KAUFFMAN, MIHALEK, HERSHEY, DUNBAR, MURT, TOEPEL, ROTHMAN, OTTEN, STEPHENS, IRVIN, MILLARD, PICKETT, ZIMMERMAN, PYLE, OBERLANDER, SIMMONS, THOMAS, KORTZ AND FARRY, FEBRUARY 12, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 11, 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

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

8 § 5992. Definitions.

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

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

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

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

25 (i) Communication.

26 (ii) Self-care.

27 (iii) Home living.

28 (iv) Social and interpersonal.

29 (v) Use of community resources.

30 (vi) Self-direction.

1 (vii) Functional academic.

2 (viii) Work.

3 (ix) Health and safety.

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

6 § 5993. Admissibility of certain statements.

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

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

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

19 (3) the individual either:

20 (i) testifies at the proceeding; or

21 (ii) is unavailable as a witness.

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

25 Chapter 25 (relating to criminal homicide).

26 Chapter 27 (relating to assault).

27 Chapter 29 (relating to kidnapping).

28 Chapter 30 (relating to human trafficking).

29 Chapter 31 (relating to sexual offenses).

30 Chapter 35 (relating to burglary and other criminal

1 intrusion).

2 Chapter 37 (relating to robbery).

3 Section 4302 (relating to incest).

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

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

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

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

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

13 (c) Emotional distress.--In order to make a finding under
14 subsection (a)(3)(ii) that the individual is unavailable as a
15 witness, the court must determine, based on evidence presented
16 to it, that testimony by the individual as a witness will result
17 in the individual suffering serious emotional distress that
18 would substantially impact the individual's ability to
19 REASONABLY communicate. <--

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

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

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

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

30 (1) Except as provided in paragraph (2), the defendant,

1 the attorney for the defendant and the attorney for the
2 Commonwealth or, in the case of a civil proceeding, the
3 attorney for the plaintiff, have the right to be present.

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

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

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