

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 505 Session of 2019

INTRODUCED BY KAUFFMAN, MIHALEK, HERSHEY, EVERETT, MURT, TOEPEL, ROTHMAN, OTTEN, STEPHENS, IRVIN, MILLARD, PICKETT, ZIMMERMAN AND PYLE, FEBRUARY 12, 2019

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 12, 2019

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)]  
 18 paragraph (2), not otherwise admissible by statute or rule of

1 evidence, is admissible in evidence in any criminal or civil  
2 proceeding if:

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

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

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

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

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

12 Chapter 25 (relating to criminal homicide).

13 Chapter 27 (relating to assault).

14 Chapter 29 (relating to kidnapping).

15 Chapter 30 (relating to human trafficking).

16 Chapter 31 (relating to sexual offenses).

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

19 Chapter 37 (relating to robbery).

20 Section 4302 (relating to incest).

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

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

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

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

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

30 (a.1) Emotional distress.--In order to make a finding under

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

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

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

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

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

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

22 \* \* \*

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