

No. 1996-161

AN ACT

SB 1322

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, amending provisions relating to child victims and witnesses.

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

Section 1. Section 5981 of Title 42 of the Pennsylvania Consolidated Statutes is amended to read:

§ 5981. Declaration of policy.

In order to promote the best interests of the children of this Commonwealth **[and in recognition of the necessity of affording to children]**, *especially those children* who are material witnesses to or victims of crimes **[additional consideration and different treatment from that of adults]**, *and in order to implement the constitutional amendment adopted on November 7, 1995*, the General Assembly declares its intent, in this subchapter, to provide these children **[with additional rights and protections]**, *where necessity is shown, procedures which will protect them* during their involvement with the criminal justice system. The General Assembly urges the news media to use restraint in revealing the identity or address of children who are victims of or witnesses to crimes.

Section 2. The definition of "child" or "children" in section 5982 of Title 42 is amended to read:

§ 5982. 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:

"Child" or "children." An individual or individuals under **[14] 16** years of age. **[In the case of an individual from 14 to 15 years of age, there shall be a rebuttable presumption that the individual will benefit from the use of procedures in sections 5984 (relating to videotaped depositions) and 5985 (relating to testimony by closed-circuit television). In the case of an individual from 16 to 17 years of age, there shall be a rebuttable presumption that the individual will not benefit from the use of procedures in sections 5984 and 5985.]**

* * *

Section 3. Section 5984 of Title 42 is amended to read:

§ 5984. Videotaped depositions.

(a) Depositions.—**[In] Subject to subsection (a.1), in** any prosecution *or adjudication* involving a child victim or child material witness, the court may**[, for good cause shown,]** order the taking of a videotaped deposition of

the *child* victim or *child* material witness [on motion of the child through his parent or guardian, or where applicable, the child's advocate or the attorney for the Commonwealth]. Such videotaped depositions, if taken for use at the preliminary hearing, may be used only at the preliminary hearing in lieu of the testimony of the child. If such videotaped deposition is taken for use at trial, it may be used only at the trial in lieu of the testimony of the child. The depositions shall be taken *under oath or affirmation* before the court in chambers or in a special facility designed for taking the depositions of children. Only the attorneys for the defendant and for the Commonwealth, persons necessary to operate the equipment, a qualified shorthand reporter and any person whose presence would contribute to the welfare and well-being of the child, including persons designated under section 5983 (relating to rights and services), may be present in the room with the child during his deposition. The court shall permit the defendant to observe and hear the testimony of the child [in person] but shall ensure that the child cannot hear or see the defendant. Examination and cross-examination of the child shall proceed in the same manner as permitted at trial. The court shall make certain that the defendant and defense counsel have adequate opportunity to communicate for the purposes of providing an effective defense.

(a.1) Determination.—Before the court orders the child victim or the child material witness to testify by videotaped deposition, the court must determine, based on evidence presented to it, that testifying in the defendant's presence will result in the child suffering serious emotional distress such that the child victim or child material witness cannot reasonably communicate. In making this determination, the court may do all of the following:

(1) Observe and question the child victim or child material witness, 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 child victim or child material witness in a medical or therapeutic setting.

(a.2) Counsel and confrontation.—

(1) If the court observes or questions the child victim or child material witness under subsection (a.1)(1), the attorney for the defendant and the attorney for the Commonwealth have the right to be present, but the court shall not permit the defendant to be present.

(2) If the court hears testimony under subsection (a.1)(2), the defendant, the attorney for the defendant and the attorney for the Commonwealth have the right to be present.

(b) Effect of order.—If the court orders the deposition of a child to be taken under subsection (a), the child may not be required to testify in court at the proceeding for which the deposition was taken.

Section 4. Title 42 is amended by adding a section to read:

§ 5984.1. Testimony by videotaped recording.

(a) Videotape.—Subject to subsection (b), in any prosecution or adjudication involving a child victim or child material witness, the court may order the taking of the child victim's or child material witness's testimony by videotaped recording. The testimony shall be taken under oath or affirmation before the court in chambers or in a special facility designed for taking the videotaped testimony of children. Only the attorneys for the defendant and for the Commonwealth, persons necessary to operate the equipment, a qualified shorthand reporter and any person whose presence would contribute to the welfare and well-being of the child, including persons designated under section 5983 (relating to rights and services), may be present in the room with the child during testimony. The court shall permit the defendant to observe and hear the testimony of the child but shall ensure that the child cannot hear or see the defendant. Examination and cross-examination of the child shall proceed in the same manner as permitted at trial. The court shall make certain that the defendant and defense counsel have adequate opportunity to communicate for the purpose of providing an effective defense.

(b) Determination.—Before the court orders the child victim or the child material witness to testify by videotaped recording, the court must determine, based on evidence presented to it, that testifying in the defendant's presence will result in the child suffering serious emotional distress such that the child victim or child material witness cannot reasonably communicate. In making this determination, the court may do any of the following:

(1) Observe and question the child victim or child material witness, 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 child victim or child material witness in a medical or therapeutic setting.

(c) Counsel and confrontation.—

(1) If the court observes or questions the child victim or child material witness under subsection (b)(1), the attorney for the defendant and the attorney for the Commonwealth have the right to be present, but the court shall not permit the defendant to be present.

(2) If the court hears testimony under subsection (b)(2), the defendant, the attorney for the defendant and the attorney for the Commonwealth have the right to be present.

(d) Effect of order.—If the court orders the testimony of a child to be taken under subsection (a), the child may not be required to testify in court at the proceeding for which the testimony was taken.

Section 5. Sections 5985, 5985.1, 5986 and 5987 of Title 42 are amended to read:

§ 5985. Testimony by closed-circuit television.

(a) Closed-circuit television.—[The child victim or material witness, through his parent or guardian, or, where applicable, the child's advocate or the attorney for the Commonwealth may move, for good cause shown,] *Subject to subsection (a.1), in any prosecution or adjudication involving a child victim or a child material witness, the court may order that the testimony of [a child] the child victim or child material witness be taken under oath or affirmation in a room other than the courtroom and televised by closed-circuit equipment to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the Commonwealth, the court reporter, the judge, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the child, including persons designated under section 5983 (relating to rights and services), may be present in the room with the child during his testimony. The court shall permit the defendant to observe and hear the testimony of the child [in person] but shall ensure that the child cannot hear or see the defendant. The court shall make certain that the defendant and defense counsel have adequate opportunity to communicate for the purposes of providing an effective defense. Examination and cross-examination of the child shall proceed in the same manner as permitted at trial.*

(a.1) Determination.—Before the court orders the child victim or the child material witness to testify by closed-circuit television, the court must determine, based on evidence presented to it, that testifying in the defendant's presence will result in the child suffering serious emotional distress such that the child victim or child material witness cannot reasonably communicate. In making this determination, the court may do all of the following:

(1) Observe and question the child victim or child material witness, 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 child victim or child material witness in a medical or therapeutic setting.

(a.2) Counsel and confrontation.—

(1) If the court observes or questions the child victim or child material witness under subsection (a.1)(1), the attorney for the defendant and the attorney for the Commonwealth have the right to be present, but the court shall not permit the defendant to be present.

(2) If the court hears testimony under subsection (a.1)(2), the defendant, the attorney for the defendant and the attorney for the Commonwealth have the right to be present.

(b) Effect of order.—If the court orders the testimony of a child to be taken under subsection (a), the child may not be required to testify in court at the proceeding for which the testimony was taken.

§ 5985.1. Admissibility of certain statements.

(a) General rule.—An out-of-court statement made by a child victim or witness, who at the time the statement was made was 12 years of age or younger, describing *physical abuse*, indecent contact[, *sexual intercourse or deviate sexual intercourse*] *or any of the offenses enumerated in 18 Pa.C.S. Ch. 31 (relating to sexual offenses)* performed with or on the child by another, not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal proceeding if:

(1) [The] *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] *the* child either:

(i) testifies at the proceeding; or

(ii) is unavailable as a witness [*and there is corroborative evidence of the act*].

(a.1) Emotional distress.—Before the court makes a finding under subsection (a)(2)(ii), the court must determine, based on evidence presented to it, that testimony by the child as a witness will result in the child suffering serious emotional distress such that the child cannot reasonably communicate. In making this determination, the court may do all of the following:

(1) Observe and question the child victim or child material witness, 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 child victim or child material witness in a medical or therapeutic setting.

(a.2) Counsel and confrontation.—If the court hears testimony in connection with making a finding under subsection (a)(2)(ii), 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 have the right to be present.

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

(b) 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.

§ 5986. Hearsay.

(a) *General rule.*—A statement made by a child describing acts and attempted acts of indecent contact, sexual intercourse or deviate sexual intercourse performed with or on the child by another, not otherwise admissible by statute or court ruling, is admissible in evidence in a

dependency proceeding initiated under Chapter 63 (relating to juvenile matters), involving that child or other members of that child's family, if [a court finds that the time, content and circumstances of this statement provide sufficient indicia of reliability.]:

(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 child either:

(i) testifies at the proceeding; or

(ii) is found by the court to be unavailable as a witness.

(b) Emotional distress.—In order to make a finding under subsection (a)(2)(ii) that the child is unavailable as a witness, the court must determine, based on evidence presented to it, that testimony by the child as a witness will result in the child suffering serious emotional distress such that the child cannot reasonably communicate. In making this determination, the court may do all of the following:

(1) Observe and question the child victim or child material witness, 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 child victim or child material witness in a medical or therapeutic setting.

(c) Counsel and confrontation.—If the court hears testimony in connection with making a finding under subsection (a)(2)(ii), 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 have the right to be present.

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

§ 5987. Use of dolls.

In any criminal proceeding charging [unlawful sexual contact or penetration with or on a child,] *physical abuse, indecent contact or any of the offenses enumerated in 18 Pa.C.S. Ch. 31 (relating to sexual offenses)*, the court shall permit the use of anatomically correct dolls or mannequins to assist an alleged victim in testifying on direct examination and cross-examination.

Section 6. This act shall apply to actions commenced on or after the effective date of this act.

Section 7. This act shall take effect in 60 days.

APPROVED—The 18th day of December, A.D. 1996.

THOMAS J. RIDGE