

No. 2019-31

AN ACT

SB 479

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

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

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

§ 5985.1. Admissibility of certain statements.

(a) General rule.—

(1) 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 any of the offenses enumerated in **[18 Pa.C.S. Chs. 25 (relating to criminal homicide), 27 (relating to assault), 29 (relating to kidnapping), 31 (relating to sexual offenses), 35 (relating to burglary and other criminal intrusion) and 37 (relating to robbery)] paragraph (2)**, not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:

[(1)] (i) 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)] (ii) the child either:

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

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

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

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).

(a.1) Emotional distress.—In order to make a finding under subsection **[(a)(2)(ii)] (a)(1)(ii)(B)** 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

that would substantially impair the child's ability to reasonably communicate. In making this determination, the court may do all of the following:

(1) Observe and question the child, 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 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)] (a)(1)(ii)(B), 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 has the right to be present.

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

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

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

TOM WOLF