

No. 1986-14

AN ACT

SB 176

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for the rights of child victims and witnesses of criminal acts; providing for the videotaping of testimony in certain cases; authorizing certain services; providing for the testimony of children, for the admissibility of certain statements, and for the use of dolls as testimonial aids; providing a penalty; requiring district attorneys to notify the appropriate State board when a health care professional is convicted of a felony; and making an appropriation.

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

Section 1. Chapter 59 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a subchapter to read:

CHAPTER 59
DEPOSITIONS AND WITNESSES

* * *

SUBCHAPTER D
CHILD VICTIMS AND WITNESSES

Sec.

- 5981. Declaration of policy.
- 5982. Definitions.
- 5983. Rights and services.
- 5984. Videotaped depositions.
- 5985. Testimony by closed-circuit television.
- 5986. Hearsay.
- 5987. Use of dolls.
- 5988. Victims of sexual or physical abuse.

§ 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 who are material witnesses to or victims of crimes additional consideration and different treatment from that of adults, the General Assembly declares its intent, in this subchapter, to provide these children with additional rights and protections 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.

§ 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 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.

“Qualified shorthand reporter.” An individual engaged in the active practice of general shorthand reporting who is skilled in the art of verbatim reporting by the use of a written shorthand system, whether manual or machine; or any individual who is an official court or legislative reporter; or any individual who is the holder of a certified shorthand reporter certificate mandated by State or Federal law.

§ 5983. Rights and services.

(a) Designation of persons to act on behalf of children.—Courts of common pleas may designate one or more persons as a child advocate to provide the following services on behalf of children who are involved in criminal proceedings as victims or material witnesses:

(1) To explain, in language understood by the child, all legal proceedings in which the child will be involved.

(2) As a friend of the court, to advise the judge, whenever appropriate, of the child’s ability to understand and cooperate with any court proceedings.

(3) To assist or secure assistance for the child and the child’s family in coping with the emotional impact of the crime and subsequent criminal proceedings in which the child is involved.

(b) Qualifications.—Persons designated under subsection (a) may be attorneys at law or other persons who, by virtue of service as rape crisis or domestic violence counselors or by virtue of membership in a community service organization or of other experience acceptable to the court, possess education, experience or training in child or sexual abuse and a basic understanding of the criminal justice system.

§ 5984. Videotaped depositions.

(a) Depositions.—In any prosecution involving a child victim or child material witness, the court may, for good cause shown, order the taking of a videotaped deposition of the victim or 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 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 ser-

vices), 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.

(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.

§ 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, that the testimony of a child be taken 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.

(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.

§ 5986. Hearsay.

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.

§ 5987. Use of dolls.

In any criminal proceeding charging unlawful sexual contact or penetration with or on a child, 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.

§ 5988. Victims of sexual or physical abuse.

(a) Release of name prohibited.—In a prosecution involving a child victim of sexual or physical abuse, unless the court otherwise orders, the

name of the child victim shall not be disclosed by officers or employees of the court to the public, and any records revealing the name of the child victim will not be open to public inspection.

(b) **Penalty.**—Any person who violates this section commits a misdemeanor of the third degree.

Section 2. Chapter 95 of Title 42 is amended by adding a subchapter to read:

CHAPTER 95
POST-TRIAL MATTERS
* * *
SUBCHAPTER C
REPORT BY DISTRICT ATTORNEY

Sec.

9561. Report by district attorney.

§ 9561. Report by district attorney.

(a) **Reports by district attorneys of felony convictions against health care professionals.**—Whenever a health care professional has been found guilty, has pleaded guilty or has entered a plea of nolo contendere to a felony in this Commonwealth, the district attorney of the county in which the case was prosecuted shall notify the appropriate State board within 30 days of the court's entry of a finding of guilt, acceptance of a guilty plea or acceptance of a plea of nolo contendere.

(b) **Definitions.**—The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

“Health care professional.” A person licensed, certified or registered by any of the State boards as defined in this section.

“State board.” Includes the following departmental administrative boards within the Department of State: the State Board of Medicine, the State Board of Osteopathic Medicine, the State Board of Dentistry, the State Board of Podiatry, the State Board of Pharmacy, the State Board of Nursing, the State Board of Physical Therapy, the State Board of Occupational Therapy Education and Licensure, the State Board of Optometrical Examiners, the State Board of Examiners of Nursing Home Administrators, the State Board of Chiropractic Examiners, the State Board of Psychologist Examiners and the State Board of Examiners in Speech-Language and Hearing.

Section 3. The sum of \$84,000 is hereby appropriated from the General Fund to the Administrative Office of Pennsylvania Courts for the remainder of fiscal year 1985-1986 for the payment of court-ordered videotaping or closed-circuit television proceeding costs.

Section 4. This act shall take effect in 60 days.

APPROVED—The 21st day of February, A. D. 1986.

DICK THORNBURGH