

No. 2000-84

AN ACT

SB 1299

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

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

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

§ 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 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 *or civil* proceeding if:

(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 unavailable as a witness.

* * *

(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 *or, in the case of a civil proceeding, the attorney for the plaintiff* [have] 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.

* * *

Section 2. This act shall take effect immediately.

APPROVED—The 18th day of October, A.D. 2000.

THOMAS J. RIDGE