

6303. Definitions.

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Accept for service." Decide on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

"Adult." An individual 18 years of age or older.

"Adult family member." A person 18 years of age or older who has the responsibility to provide care or services to an individual with an intellectual disability or chronic psychiatric disability.

"Bodily injury." Impairment of physical condition or substantial pain.

"Child." An individual under 18 years of age.

"**Bodily injury.**" Impairment of physical condition or substantial pain.

"**Serious bodily injury.**" Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ. . . .

(b.1) Child abuse.--The term "child abuse" shall mean intentionally, knowingly or recklessly doing any of the following:

(1) Causing bodily injury to a child through any recent act or failure to act.

(2) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(3) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(4) Causing sexual abuse or exploitation of a child through any act or failure to act.

(5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(6) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or

failure to act.

(7) Causing serious physical neglect of a child.

(8) Engaging in any of the following recent acts:

(i) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(ii) Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.

(iii) Forcefully shaking a child under one year of age.

(iv) Forcefully slapping or otherwise striking a child under one year of age.

(v) Interfering with the breathing of a child.

(vi) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(vii) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(A) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed.

(B) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(C) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(D) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(9) Causing the death of the child through any act or failure to act.

(10) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

(c) Restatement of culpability.--Conduct that causes injury or harm to a child or creates a risk of

injury or harm to a child shall not be considered child abuse if there is no evidence that the person acted intentionally, knowingly or recklessly when causing the injury or harm to the child or creating a risk of injury or harm to the child.

(d) Child abuse exclusions.--The term "child abuse" does not include any conduct for which an exclusion is provided in section 6304 (relating to exclusions from child abuse).

6304. Exclusions from child abuse.

(a) Environmental factors.--No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors, such as inadequate housing, furnishings, income, clothing and medical care, that are beyond the control of the parent or person responsible for the child's welfare with whom the child resides. This subsection shall not apply to any child-care service as defined in this chapter, excluding an adoptive parent.

(b) Practice of religious beliefs.--If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of sincerely held religious beliefs of the child's parents or relative within the third degree of consanguinity and with whom the child resides, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. In such cases the following shall apply:

(1) The county agency shall closely monitor the child and the child's family and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health.

(2) All correspondence with a subject of the report and the records of the department and the county agency shall not reference child abuse and shall acknowledge the religious basis for the child's condition.

(3) The family shall be referred for general protective services, if appropriate.

(4) This subsection shall not apply if the failure to provide needed medical or surgical care causes the death of the child.

(5) This subsection shall not apply to any child-care service as defined in this chapter, excluding an adoptive parent.

(c) Use of force for supervision, control and safety purposes.--Subject to subsection (d), the use of reasonable force on or against a child by the child's own parent or person responsible for the child's welfare shall not be considered child abuse if any of the following conditions apply:

(1) The use of reasonable force constitutes incidental, minor or reasonable physical contact with the child or other actions that are designed to maintain order and control.

(2) The use of reasonable force is necessary:

(i) to quell a disturbance or remove the child from the scene of a disturbance that threatens physical injury to persons or damage to property;

(ii) to prevent the child from self-inflicted physical harm;

(iii) for self-defense or the defense of another individual; or

(iv) to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are on the child or within the control of the child.

(d) Rights of parents.--Nothing in this chapter shall be construed to restrict the generally recognized existing rights of parents to use reasonable force on or against their children for the purposes of supervision, control and discipline of their children. Such reasonable force shall not constitute child abuse.

(e) Participation in events that involve physical contact with child.--An individual participating in a practice or competition in an interscholastic sport, physical education, a recreational activity or an extracurricular activity that involves physical contact with a child does not, in itself, constitute contact that is subject to the reporting requirements of this chapter.

(f) Child-on-child contact.--

(1) Harm or injury to a child that results from the act of another child shall not constitute child abuse unless the child who caused the harm or injury is a perpetrator.

(2) Notwithstanding paragraph (1), the following shall apply:

(i) Acts constituting any of the following crimes against a child shall be subject to the reporting requirements of this chapter:

(A) rape as defined in 18 Pa.C.S. § 3121 (relating to rape);

(B) involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);

(C) sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault);

(D) aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault);

(E) indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault); and

(F) indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(ii) No child shall be deemed to be a perpetrator of child abuse based solely on physical or mental injuries caused to another child in the course of a dispute, fight or scuffle entered into by mutual consent.

(iii) A law enforcement official who receives a report of suspected child abuse is not required to make a report to the department under section 6334(a) (relating to disposition of complaints received), if the person allegedly responsible for the child abuse is a nonperpetrator child.

(g) Defensive force.--Reasonable force for self-defense or the defense of another individual, consistent with the provisions of 18 Pa.C.S. §§ 505 (relating to use of force in self-protection) and 506 (relating to use of force for the protection of other persons), shall not be considered child abuse.

(Dec. 18, 2013, P.L.1170, No.108, eff. Dec. 31, 2014)

AUTHORIZATION FOR RELEASE OF CONFIDENTIAL RECORDS

I, [client name], hereby authorize the Philadelphia Department of Human Services and/or the Philadelphia Law Department to release to [Attorney, Address] any and all records concerning myself and child, CHILD NAME, D.O.B. 01/01/2000. I also authorize staff at Attorney Office to speak with any employee, staff member, or volunteer of Philadelphia Department of Human Services and/or the Philadelphia Law Department about myself or children.

I have been informed that I have the right to revoke the consent at any time by written request, except to the extent that action has been taken in reliance on authorization. This authorization is valid beginning on the date below and will remain in effect until revoked.

I have been informed of my right to inspect the materials to be released. This form has been fully explained and I certify that I understand its contents and have been offered a copy.

Signature of _____, [Mother/Father] of minor child: CHILD NAME,

DOB 01/01/2020

Date: _____

GUIDE TO TENDER YEARS MOTIONS: 42 PA §5895.1

MK FEENEY, 9/22

Start by doing the following:

1. Ascertain that the statement you need to admit is hearsay and cannot come in to evidence any other way.
2. Make sure that the declarant is 16 or younger. Under Rosche v. McCoy, 397 Pa. 615, 156 A.2d 307 (1959), a witness who is 14 or older is presumed competent to testify. When a witness is under 14 years of age, the court must conduct an inquiry as to mental capacity and chronological immaturity. Note: the Tender Years statute was amended in 2021 to increase the age of the declarant from 12 to 16.
3. Make sure that the statement(s) concerns one of the statutorily enumerated crimes and offenses under 42 PA §5895.1
4. If so, then identify all relevant statements you seek to admit, along with the witness(es) through whom you will admit them, and the date, time, location, and circumstances of the statement.
5. If there is more than one statement, it is helpful to make a detailed master list to help when you draft the motion. You can also have the witness or witnesses each make a detailed list with dates and all other relevant information.
6. If there is police involvement, get the 75-48 and/or any other supporting documents, and ascertain which police officers you will need for the motion.
7. If child was interviewed by Philadelphia Children's Alliance (PCA), you will need parent or guardian's permission to get the written reports, and a court order for any video interview.
8. If there was any medical treatment, get the medical records and review for recorded statements. Also talk to providers to see if there are any unrecorded statements by the child that would need to be admitted.
9. Prepare and file a motion to give notice of the intent to seek to admit the statements.
10. In preparing the case, determine who will be able to testify about emotional distress to the child, i.e., parent, therapist, etc.

Form of Motion

The motion should contain the following:

- a. general recitation of facts and procedural history
- b. formal notice of the intent to seek admission of statements under the statute
- c. legal argument.
- d. each statement sought to be admitted, along with the information as to the witness who will testify, and the date, time, location, and circumstances of the statement. Be as specific and detailed as possible.

Litigating the Motion

1. Subpoena all witnesses.
2. If you have PCA videos, they can be played in lieu of testimony. PCA interviewers will not want to come to court.
3. Elicit as many facts and details as possible from witnesses during their testimony.
4. Each individual statement, if more than one, must be dealt with separately and in detail.
5. Have the appropriate witness(es) ready to testify about emotional distress child would experience if they had to testify in court. This can be more than one person.
6. Judge will determine competency and emotional distress component separately by interviewing the child *in camera*.
7. If the judge determines that the statements meet the criteria for admissibility and deems them admissible, then the statements will come in regardless of whether the child is competent to testify or not, or whether they are deemed available or not.

* Case law has noted that one “indicia of reliability” is the child’s “consistency in repetition” of the statements. Commonwealth v. Barnett, 50 A. 3d 176, 192

(Pa. Super. 2012). Another important indicia of reliability is the spontaneity of the statement. *Id.*

Final Order

1. The judge will issue an order as to each individual statement, and whether it is admissible or not.
2. The judge may find that a statement is inadmissible under the Tender Years statute, but may be admissible under another exception to the hearsay rule.

Procedure After Motion

1. You may move to incorporate testimony from the motion into your case in chief. Depending on the complexity of the motion, you may want to order the notes of testimony for trial.
2. If you take testimony again at trial, then any witness may testify to the hearsay statements of the child which the judge has held to be admissible.

Date: _____

Krystal Bupp
Philadelphia Children's Alliance
300 E. Hunting Park Avenue
Philadelphia, PA 19124

**Re: Philadelphia Children's Alliance Forensic Interview Summary for the interview of FIRST
LAST NAME (DOB: _____)**

To Whom This May Concern:

I am the Custodian of Records for Philadelphia Children's Alliance. I certify that the Forensic Interview Summary for the interview of Child Name (D.O.B.: 00/00/2000) conducted on September 19, 2022 at Philadelphia Children's Alliance was (1) made at or near the time of the aforementioned interview by a person with knowledge of said interview; (2) kept in the course of a regularly conducted activity of a Philadelphia Children's Alliance; and (3) making the Forensic Interview Summary was a regular practice of that activity. I verify that the statements in this letter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

Sincerely,

Krystal Bupp

Title: _____

| APPLICATION FOR SEARCH AND/OR EXTRACT OF POLICE INCIDENT OR OFFENSE REPORT — PLEASE PRINT OR TYPE — <i>INSUFFICIENT, WRONG OR VAGUE INFORMATION MAY RESULT IN A NEGATIVE RESPONSE</i> | | FOR OFFICIAL USE ONLY |
|--|---|---|
| PARTY REQUESTING REPORT (NAME OF APPLICANT) | | No |
| REPORT TO BE MAILED TO (COMPLETE ADDRESS INCLUDING NAME, COMPANY, STREET ADDRESS AND ZIP CODE) | | |
| NAME | | |
| ADDRESS | | |
| CITY, STATE, ZIP CODE | | |
| NAME OF PERSON INVOLVED/VICTIM/COMPLAINANT/OFFENDER OR PERSON WHO ACTUALLY REPORTED THIS INCIDENT TO POLICE, ETC. | | APPLICATION DATE |
| TYPE OF OFFENSE OR INCIDENT (IF STOLEN / RECOVERED AUTO, LICENSE TAG NUMBER/STATE MUST BE GIVEN) | | TELEPHONE NUMBER OF APPLICANT |
| POLICE DISTRICT CONTROL NUMBER (MUST BE GIVEN) | | FILE/CLAIM NUMBER (OPTIONAL) |
| EXACT STREET LOCATION WHERE INCIDENT OR OFFENSE OCCURRED (MUST BE IN PHILADELPHIA) | | TIME OF OCCURRENCE <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. |
| | | DATE OF OCCURRENCE |
| | | DATE REPORTED TO POLICE |
| PLEASE SEND 2 SELF-ADDRESSED STAMPED ENVELOPES. | | |
| MAIL ALL COPIES ALONG WITH \$25.00 FEE | | |
| FEE NOT REFUNDABLE | FOR INQUIRIES, CALL POLICE DEPARTMENT AT 686-1292 — PLEASE ALLOW TEN TO TWELVE WEEKS AFTER RECEIPT OF NUMBERED PINK APPLICATION BEFORE MAKING INQUIRIES. | |
| IF YOU HAVE A DISABILITY AND REQUIRE AN ACCOMMODATION IN ORDER TO COMPLETE THIS FORM AND/OR TO PARTICIPATE IN A PROGRAM OR SERVICE, CONTACT 686-2266 FOR THE ADA COORDINATOR. | | |

82-47 (Rev. 4/05)

WHITE COPY—POLICE

CANARY COPY—RECORDS

PINK COPY—RETURNED TO APPLICANT AFTER NO. HAS BEEN ASSIGNED

| APPLICATION FOR SEARCH AND/OR EXTRACT OF POLICE INCIDENT OR OFFENSE REPORT — PLEASE PRINT OR TYPE — <i>INSUFFICIENT, WRONG OR VAGUE INFORMATION MAY RESULT IN A NEGATIVE RESPONSE</i> | | FOR OFFICIAL USE ONLY |
|--|---|---|
| PARTY REQUESTING REPORT (NAME OF APPLICANT) | | No |
| REPORT TO BE MAILED TO (COMPLETE ADDRESS INCLUDING NAME, COMPANY, STREET ADDRESS AND ZIP CODE) | | |
| NAME | | |
| ADDRESS | | |
| CITY, STATE, ZIP CODE | | |
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| EXACT STREET LOCATION WHERE INCIDENT OR OFFENSE OCCURRED (MUST BE IN PHILADELPHIA) | | TIME OF OCCURRENCE <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. |
| | | DATE OF OCCURRENCE |
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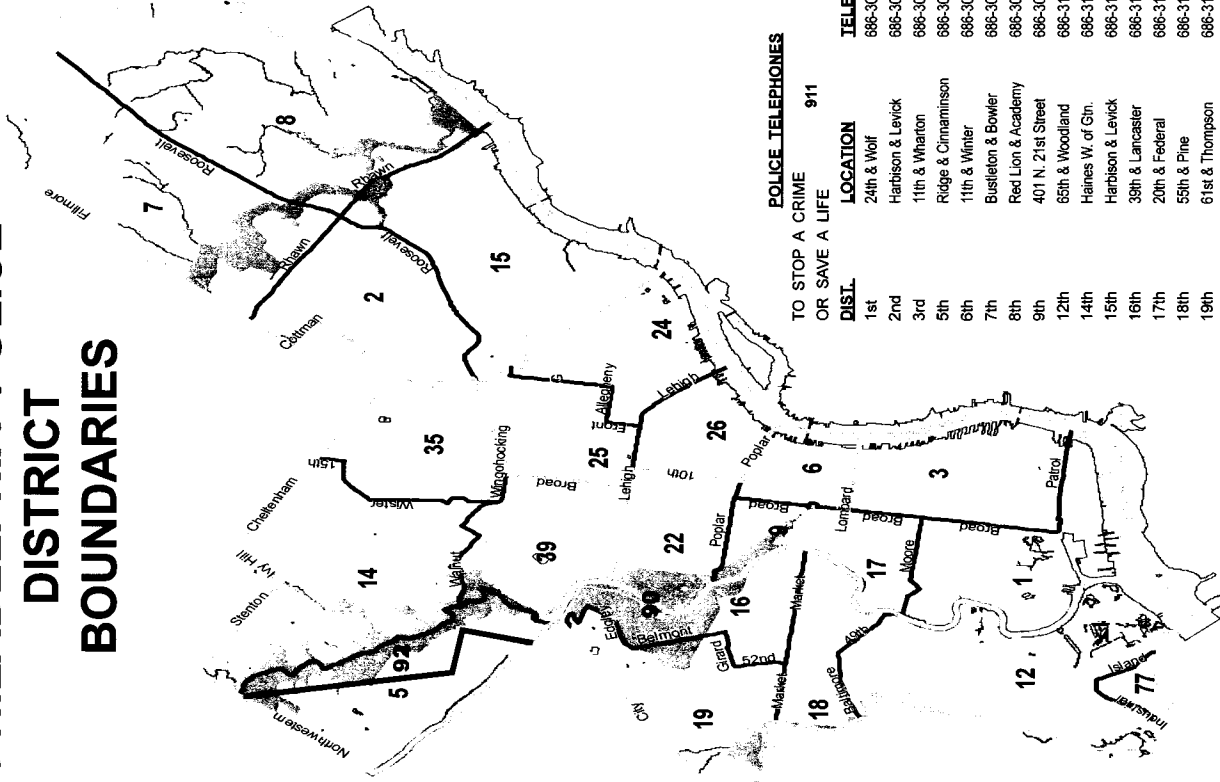
82-47 (Rev. 6/15)

WHITE COPY—POLICE

CANARY COPY—RECORDS

PINK COPY—RETURNED TO APPLICANT AFTER NO. HAS BEEN ASSIGNED

PHILADELPHIA POLICE DISTRICT BOUNDARIES



| POLICE TELEPHONES | | |
|---------------------|------------------------|-------------|
| TO STOP A CRIME 911 | | |
| OR SAVE A LIFE | | |
| DIST. | LOCATION | TELEPHONE |
| 1st | 24th & Wolf | 686-3010 |
| 2nd | Harbison & Levick | 686-3020 |
| 3rd | 11th & Wharton | 686-3030 |
| 5th | Ridge & Cinnaminson | 686-3050 |
| 6th | 11th & Winter | 686-3060 |
| 7th | Bustleton & Bowler | 686-3070 |
| 8th | Red Lion & Academy | 686-3080 |
| 9th | 401 N. 21st Street | 686-3090 |
| 12th | 85th & Woodland | 686-3120 |
| 14th | Heines W. of Ctn. | 686-3140 |
| 15th | Harbison & Levick | 686-3150 |
| 16th | 39th & Lancaster | 686-3160 |
| 17th | 20th & Federal | 686-3170 |
| 18th | 55th & Pine | 686-3180 |
| 19th | 61st & Thompson | 686-3190 |
| 22nd | 17th & Montgomery | 686-3220 |
| 24th | 3901 Whittaker Ave. | 686-3240 |
| 25th | 3901 Whittaker Ave. | 686-3250 |
| 26th | E. Girard & Montgomery | 686-3260 |
| 35th | N. Broad & Champlott | 686-3350 |
| 39th | 22nd & Hunting Park | 686-3390 |
| Airport 77th | Intl. Airport | 937-6917-18 |
| Acc. Inv. Div. | 2531 W. Master St | 686-3181 |
| Highway | | 686-3103 |

*INDICATES LOCATION
DISTRICT HEADQUARTERS

CITY OF PHILADELPHIA • DEPARTMENT OF RECORDS

FACT SHEET ABOUT REQUESTS FOR POLICE INCIDENT OR OFFENSE REPORTS

Information provided on this application must be accurate and complete. Please provide exact date, location, date reported to police, name of person(s) involved, nature of incident and district control number. District control number(s) can be obtained from the police district where incident occurred for the current year and the past year. Reports more than 5 years old are not attainable. Insufficient or vague information may result in a negative response.

Please retain this Fact Sheet, complete the attached 3-part form, and **mail all 3 parts to the Department of Records** with a \$25 processing fee. After the Department of Records receives the 3-part form, a numbered copy will be returned to you. Please retain the numbered copy for future reference.

Allow 10 to 12 weeks after receiving your numbered application to receive your report by mail. When inquiring about the status of your report, you must provide the application number shown on your copy.

APPLICATIONS BY MAIL
Department of Records
Incident Reports
Room 168, City Hall
Philadelphia, PA 19107
(215) 686-2266

INQUIRIES CONCERNING REPORTS
Philadelphia Police Department
Reports Control and Review
Room 214 P.A.B., 8th and Race Street
Philadelphia, PA 19106
(215) 686-1292

**TO EXPEDITE SERVICE PLEASE SEND 2 SELF-ADDRESSED, STAMPED ENVELOPES.
FEE \$25 - NOT REFUNDABLE
MAKE CHECKS OR MONEY ORDERS PAYABLE TO "CITY OF PHILADELPHIA"**

THANK YOU FOR APPLYING BY MAIL

TENDER YEARS STATUTE

§ 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 16 years of age or younger, describing any of the offenses enumerated in paragraph (2), not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:

(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
(ii) the child either:

(A) testifies at the proceeding; or

(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)(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)(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.

(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.

(Dec. 22, 1989, P.L.730, No.100, eff. 60 days; Dec. 18, 1996, P.L.1077, No.161, eff. 60 days; Oct. 18, 2000, P.L.615, No.84, eff. imd.; July 15, 2004, P.L.736, No.87, eff. imd.; June 28, 2019, P.L.231, No.31, eff. 60 days; June 30, 2021, P.L.172, No.29, eff. 60 days)

2021 Amendment. Act 29 amended subsec. (a)(1) intro. par.

2019 Amendment. Act 31 amended subsecs. (a), (a.1) and (a.2).