



The Judiciary Review

Report from the Senate Judiciary Committee (D)

JAY COSTA JR., DEMOCRATIC CHAIRMAN

(717) 787-7683

February 2003

Constitutional Amendment, Judicial and Executive Officials and Legislation Pass Judiciary Committee

Senate Passes

Constitutional Amendment

■ Senate Bill 55 Printer's No. 49

The proposed constitutional amendment would eliminate the requirement that criminal defendants meet witnesses against them "face to face" and authorize the use of closed circuit and videotaped testimony by child victims and witnesses in criminal prosecutions. The proposed amendment is intended to facilitate testimony by children who are the victims of crime or who are material witnesses and are unable or reluctant to testify in the presence of the accused due to emotional distress resulting in an inability to communicate.

Legislation authorizing the use of closed circuit testimony for child victims and witnesses was first enacted in 1986. However, the Pennsylvania Supreme Court decided the authorization violated Article I, section 9 of the Pennsylvania Constitution, which unlike the federal constitution, requires a "face to face" confrontation right. Thereafter, the General Assembly considered and adopted, in separate legislative sessions, an amendment to the Constitution of Pennsylvania removing the "face to face" requirement and authorizing the General Assembly to enact statutes governing closed circuit and videotaped testimony in criminal prosecutions involving child witnesses.

This process was challenged

resulting in the Commonwealth Court decision, and later Supreme Court affirmance, in *Bergdoll v. Kane* nullifying the constitutional amendment based on procedural defects that did not conform with the amendment process outlined in Article XI, section 1 of the Pennsylvania Constitution.

This proposed amendment is on second passage and will be placed on the ballot at the first Primary, Municipal or General Election occurring three months after adoption by the General Assembly.

*Current status: House Calendar
Third Consideration.*

Senate Confirms Supreme Court Justice and Common Pleas Judges

On January 28, the Senate voted to confirm William H. Lamb, Esquire as Justice of the Supreme Court of Pennsylvania on the mandatory retirement of Chief Justice Stephen Zappala. The position on the Supreme Court will be filled by election at the November 4, 2003 Municipal Election with the 10-year judicial position commencing on January 5, 2004.

Additionally, on February 11, the Senate confirmed three judges to the Court of Common Pleas for Allegheny County. Jill Rangos, Christine Ward and David Wecht were confirmed by the Senate of Pennsylvania to fill vacancies on that court until Monday, January 5, 2005. All three judicial positions will be on the November 4, 2003 ballot.

Senate Judiciary Committee Endorses Secretary of Corrections

In its only confirmation hearing thus far, the Senate Judiciary Committee considered the nomination of Jeffrey A. Beard, Ph.D. as Secretary of the Department of Corrections. The Secretary was later confirmed by the full Senate on February 11, 2003. Secretary Beard was first nominated to fill this position by Governor Ridge and was re-appointed by Governor Rendell. Secretary Beard brings more than 30 years of experience to this position having served in a variety of capacities for the department including counselor, institutional superintendent, deputy commissioner and commissioner.

Judiciary Committee Considers Variety of Legislation

■ Senate Bill 72 Printer's No. 68

The legislation amends section 2702 of the Crimes Code to add public utility workers and a legal representative of a county children and youth social service agency to the list of officers and employees under the aggravated assault statute. As such, a person commits a felony of the first degree if the offense is committed against such an individual resulting in serious bodily injury and a felony of the second degree if the offense results in bodily injury.

*Current status: Senate Calendar
Third Consideration.*

■ Senate Bill 92 Printer's No. 91

This legislation provides for the institution of a petition for predetermination of the fair market value of property sold in connection with execution proceedings in a deficiency judgement action where the collateral lies in multiple counties. Such actions must be commenced within six (6) months of the entry of the deficiency judgement. Under the legislation, the judgement creditor may file the valuation petition in one county if the property is located in more than one county if:

- The judgement creditor is a non-consumer judgement creditor. A non-consumer judgement creditor is defined as any judgement creditor except a judgement creditor whose judgement was entered with respect to a consumer credit transaction.
- The judgement creditor petitions the deficiency court to determine and fix the fair market value of all the real property collateral to be determined on a parcel by parcel basis and this amount is fixed for all purposes for redetermination purposes.
- The redetermination of fair market value of the real property collateral is made before the execution sale is conducted.
- If the execution sale is concluded and is made to the judgement creditor, the judgement creditor or the judgement debtor must file a petition with the deficiency court seeking a redetermination of the fair market value within six (6) months. However, the judgement creditor may not execute on the real property pending the fair market value determination when the property is sold to the judgement creditor and the judgement debtor alleges its value is sufficient to satisfy the judgement in full.

Determinations under this subsection release the judgement debtor to the extent that the fair market value as determined by the deficiency court

but does not release deductible items such as prior liens, costs, taxes and municipal claims not discharged by the sale. There is no authority granted to the courts to consider the value of property located outside of the Commonwealth of Pennsylvania in determining whether a deficiency exists.

*Current status: Senate Calendar
Second Consideration.*

■ Senate Bill 109 Printer's No. 106

The legislation authorizes the public disclosure of law enforcement records concerning a minor who has been adjudicated delinquent for an offense which would be graded as a felony. Records would also be disclosed if the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

- murder
- voluntary manslaughter
- aggravated assault
- arson
- involuntary deviate sexual intercourse
- kidnapping
- rape
- robbery and robbery of motor vehicle
- attempt or conspiracy to commit any of the above offenses.

Further, the bill provides for the disclosure of law enforcement records if a petition alleging delinquency has been filed by a law enforcement agency

alleging that the child has committed an offense that includes the elements of rape, kidnapping, murder, robbery, arson, burglary or a violation of the Controlled Substance, Drug, Device and Cosmetic Act. Under this provision disclosure can also occur if the child is 12 or 13 years of age and has been previously adjudicated delinquent by a court for any of the offenses in the above list or if the child has been adjudicated delinquent by a court as a result of acts committed when the child was 14 years of age or older and the offense committed would be considered a felony if committed by an adult.

*Current status: Senate Calendar
Second Consideration.*

■ Senate Bill 152 Printer's No. 157

Establishes the Uniform Trade Secrets Act that provides civil penalties for the misappropriation of trade secrets by the acquisition or disclosure of such trade secrets by improper means. The bill provides injunctive relief, damages for actual losses and unjust enrichment and exemplary damages in the amount of two times of the money damages. Attorneys' fees may be awarded for claims for misappropriations or motions to resist or terminate injunctions made in bad faith. Additionally, the bill authorizes protective orders, in camera proceedings and sealing of records to preserve trade secrets in actions under this chapter.

*Current status: Senate Calendar
Second Consideration.*

STATE SENATOR JAY COSTA, JR.

Serving the 43rd District

OFFICES TO SERVE YOU

FOREST HILLS

1501 Ardmore Blvd. • Suite 403 • Pittsburgh, PA 15221 • (412) 241-6690

CARRICK

2306 Brownsville Road • Pittsburgh, PA 15210 • (412) 488-6111

HOMESTEAD

314 East 8th Avenue • Homestead, PA 15120 • (412) 565-7536

HARRISBURG

Senate Box 203043 • Harrisburg, PA 17120-3043 • (717) 787-7683

E-MAIL: costa@dem.pasen.gov • **WEB SITE:** www.SenatorCosta.com