



The Judiciary Review

Report from the Senate Judiciary Committee (D)

JAY COSTA JR., DEMOCRATIC CHAIRMAN

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Good Faith Immunity for Assisting Crime Victims Signed by Governor Rendell

■ Senate Bill 164 Printer's No. 1222

Governor Rendell signed legislation that amends the Judicial Code to incorporate the definitions of "personal injury crime" and "victim" used in the Crime Victims Act. Under the legislation sponsored by Senator Costa, any person who renders assistance to the victim of a personal injury crime will be immunized from civil damages for any injury caused by rendering such assistance. By using these definitions found in the Crime Victims Act, the legislation will incorporate the current list of crimes and also expand civil immunity protection to those who come to the aid of victims of crimes such as arson, simple assault, harassment and stalking, homicide by vehicle while driving under the influence of alcohol, aggravated assault by vehicle while driving under the influence of alcohol and homicide by operation of a watercraft while under the influence of alcohol.

The legislation was amended in the House of Representatives to authorize county children and youth services to petition for removal of a child from foster care if one of the foster parents has been convicted of offenses listed in section 6344 of the Domestic Relations Code that would otherwise disqualify the person from serving as a foster parent. Additionally, once removed the amendment prevents the child from being returned to the custody of a disqualified person. Currently, people who apply to be foster

parents and adoptive parents must supply criminal and child abuse background checks. The amendment applies to petitions filed on or after the effective date of the act.

Current Status: Act 31 of 2003

Voters Confront Constitutional Amendments on Ballot

Earlier this year, pursuant to Article XI, section 1 of the Pennsylvania Constitution, the General Assembly, passed for the second time a proposed constitutional amendment to eliminate the requirement that criminal defendants meet witnesses against them "face-to-face" and to authorize the General Assembly to enact statutes that will permit the use of closed circuit and videotaped testimony in criminal prosecutions that involve child victims or material child witnesses. The proposed amendments are intended to facilitate testimony by such children who would be unable or otherwise reluctant to testify in the presence of the accused due to emotional distress resulting in an inability to communicate. Currently, thirty-five other states authorize such testimony.

Legislation authorizing the use of closed circuit testimony for child victims and witnesses was first enacted as Act 14 of 1986. However, upon review by the Pennsylvania Supreme Court, the statutory authorization for such testimony was found to violate Article I, section 9 of the Pennsylvania Constitution in the

companion cases of *Commonwealth v. Ludwig*, 527 Pa. 472, 594 A.2d 281 (1991); and *Commonwealth v. Lohman*, 527 Pa. 492, 594 A.2d 291 (1991).

There, the Pennsylvania Supreme Court distinguished the face-to-face confrontation rights of a criminal defendant found in Article I, section 9 from the confrontational rights found in the Sixth Amendment to the United States Constitution.

In a separate proceeding, the United States Supreme Court upheld a Maryland statute authorizing closed circuit testimony, finding that the Sixth amendment included a preference for face-to-face confrontation; it did not provide an absolute guarantee. *Craig v. Maryland*, 497 U.S. 836, 110 S.Ct 3157 (1990).

In response to the Pennsylvania Supreme Court opinions, the General Assembly considered and adopted, in separate legislative sessions, an amendment to the Constitution of Pennsylvania removing the "face-to-face" requirement under Pennsylvania's confrontation clause and authorizing the General Assembly to enact statutes governing closed circuit and videotaped testimony in criminal prosecutions involving child witnesses. See, Senate Bill No. 218—Joint Resolution No. 1 of 1994 and Senate Bill No. 11—Joint Resolution No. 1 of 1995 (Special Session No. 1). The proposed amendment was adopted by the electorate by a vote of 1,176,652 - 400,727. However, the procedures regarding presentation of this joint resolution were challenged.

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There, the petitioners alleged that the authorization to the General Assembly to enact statutes providing for the use of child witness videotaped or closed-circuit testimony conflicted with the Supreme Court's rulemaking authority under Article V, section 10 (c) of the Pennsylvania Constitution. Further, petitioners alleged that the presentment of the proposed amendment failed to satisfy the requirements of Article XI, section 1. The challenge resulted in the invalidation of the amendment by the Pennsylvania Supreme Court. The Supreme Court, affirming a decision and order of the Commonwealth Court, invalidated the amendment finding that the presentation of the proposed amendment did not satisfy the presentation requirements of Article XI, section 1. *Bergdoll v. Kane*, 557 Pa. 72, 731 A.2d 1261 (1999).

These measures will appear on the November 4, 2003 ballot for adoption by the electorate. The amendments have again been challenged in the Commonwealth Court requesting, *inter alia*, the issuance of a preliminary injunction of the adoption and implementation of the proposed amendments. *Bergdoll v. Commonwealth, Cortes and Fisher et al.* (706 M.D. 2003).

Allegheny County Mental Health Courts

The Council of State Governments concluded its annual meeting in Pittsburgh on October 23-26, 2003. As part of that meeting, the Council of State Governments Criminal Justice Section, that includes Senator Jay Costa Jr. and Senator Robert Thompson as members, presented a project entitled the Consensus Project. This effort will, in part, study Allegheny County's Mental Health Courts and the procedures used by the Allegheny County Court of Common Pleas and various

county social service agencies. The meeting was hosted by Senators Jane Orié and Costa, and included representatives from the Court of Common Pleas, District Attorney's Office, Public Defender's Office, County Jail, County Human Services Department, Western Psychiatric Hospital and Office of Behavior Health among others. Additionally, under Senate Resolution 125, the Legislative Budget and Finance Committee will also study these programs and make recommendations to the General Assembly.

Allegheny County has been a leader in coordinating a variety of services that facilitate the reintegration of offenders back into their community. Further, by coordinating services, the county is able to insure that offenders comply with mandatory court ordered responsibilities such as child support, drug and alcohol treatment and work release.

The Council of State Governments and Legislative Budget and Finance Committee will study the Allegheny County model as well as programs that have recently been introduced in Philadelphia and Chester Counties. The result will be the publication of a report to the Council of State Government membership and a report by the LBFC to the General Assembly.

JUDICIARY COMMITTEE REPORTS

■ House Bill 46 Printer's No. 50

The legislation adds historical burial lots and historic burial places to section 5509 of the Crimes Code specifying that any person who intentionally desecrates a historic burial lot or historic burial place commits a misdemeanor of the first degree. Historical burial lots and historic burial places are defined as an individual burial site within a historic burial place or a tract of land which has been in existence as a burial ground for more than 100 years; or listed in or eligible for the

National Register of Historic Places as determined by the Pennsylvania Historical and Museum Commission.

Current Status—Senate Calendar Second Consideration

Executive Nominations

The Senate Judiciary Committee conducted a public hearing and reported the following nominations for consideration by the Senate:

- **Michael L. Green** to the PA Board of Probation and Parole
- **Jeffrey Imboden** to the PA Board of Probation and Parole

Current Status—Confirmed



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