

TENDER YEARS OUTLINE

I. The statute – 42 P.S. 5985.1

Hearsay admissible if:

- (1) Specific notice to defense beforehand
- (2) Under 12 &
- (3) Child either
 - testifies OR
 - is deemed unavailable due to emotional distress
- (4) Re. physical abuse/indecent contact/sexual offense &
- (5) Relevant &
- (6) Sufficient outside indicia of reliability

Unavailable means emotional distress + an inability to communicate

Can be shown either through an in camera hearing, parent/custodian, or by expert
defense counsel must be present for any in camera hearing [5985.1 (a.2)]
defense counsel can request an independent evaluation of child's
emotional unavailability

Factors for sufficient indicia of reliability:*(Idaho v. Wright, Com. v. Hanawalt)

Spontaneity *

Consistent repetition *

Mental state of the child *

Age appropriate terminology *

Motive to fabricate *

Rich in detail? So graphic that it must have occurred?

Statement has a ring of truth to it?

Interrogator uses leading or open ended questions?

Timing – was the complaint prompt?

Complainant's character for truthfulness in general

This hearsay exception is not considered firmly rooted by federal or state court-
not considered particularly reliable without establishing reliability

II. Defenses beyond the requirements of the Statute

Not applicable to proceedings under the juvenile act- look at the language
5985.1 - “admissible in any criminal or civil proceeding”
compare 5984 (videotaped depositions) “in any prosecution or adjudication”
compare 5985 (closed circuit tv) “in any prosecution or adjudication”
compare 5986 language specific for “a dependency proceeding”
no case law on 5985.1 seems to originate from juvenile court

“Face to face” confrontation

Bergdoll v. Kane 731 A.2d 1261 (PA 1997).

Crawford v. Washington 124 S.Ct. 1354 (2004)

Testimonial? questioning by police, statements to counselors/drs.

III Cases to know

Idaho v. Wright, 110 S.Ct. 3139 (1990).

Hearsay statements of 2 _ yr old to a pediatrician had been admitted under Idaho’s residual hearsay exception. Not a firmly rooted hearsay exception and no particularized guarantees of trustworthiness

Commonwealth v. Hanawalt, 615 A.2d 432 (Pa.Super. 1992).

Hearsay statements of 4 year old to mother, state trooper, and doctor deemed admissible following in camera hearing. Holds Tender Years Statute constitutional because of requirements for particularized guarantees of trustworthiness in each individual case. Lists factors to use in making this determination.

Commonwealth v. Crossley, 711 A.2d 1025 (Pa.Super. 1998).

If sufficient timely and specific notice is not given, requirements of the statute have not been met and the statement is excluded. And see Commonwelath v. O’Drain, 829 A.2d 316 (Pa.Super. 2003).

Coy v. Iowa 487 108 s.Ct. 2798 (1988).

Iowa’s statute permitting the use of a screen and lighting so that the child could not see the defendant invalid b/c face to face requirements of the 6th amendment require a case specific, individualized finding that such protections are necessary

Maryland v. Craig 110 S.Ct. 3157 (1990).

Maryland’s close circuit television statute ok b/c included case specific evaluations

Commonwealth v. Bean 677 A.2d 842 (Pa.Super. 1996).

Rigorous analysis of what constitutes a sufficient indicia of reliability; new trial granted b/c trial court did not consider complainant’s incompetency when judging reliability- complainant was mildly retarded, unable to distinguish btwn lies and truth, and tended to tell adults what he thought they wanted to hear

Commonwealth v. Lyons 833 A.2d 245 (Pa.Super. 2003).

When tender years hearsay was presented, Lyons wanted to call complainant to exonerate him & claims that his right to face to face confrontation was violated; court holds that Tender Years is constitutional under federal (6th amendment) and state law (article 1 section 9) as it relates to defendant’s right to call witnesses. BUT NOTE this case was decided prior to Crawford.