

Legislative Journal

TUESDAY, FEBRUARY 14, 1995

1995

FIRST SPECIAL SESSION

No. 10

SENATE

TUESDAY, February 14, 1995

The Senate met at 2:55 p.m., Eastern Standard Time.

The PRESIDENT (Lieutenant Governor Mark S. Schweiker) in the Chair.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Special Session of February 13, 1995.

The Clerk proceeded to read the Journal of the preceding Special Session, when, on motion of Senator LOEPER, further reading was dispensed with and the Journal was approved.

LEGISLATIVE LEAVES

The PRESIDENT. The following leaves requested in today's Regular Session will also be granted in the Special Session:

Temporary Capitol leaves for Senator Corman and Senator Belan; and legislative leaves for Senator Jones, Senator Williams, Senator Dawida, and Senator Fumo.

HOUSE MESSAGE

HOUSE CONCURS IN SENATE CONCURRENT RESOLUTION

The Clerk of the House of Representatives informed the Senate that the House has concurred in resolution from the Senate, entitled:

Recess adjournment.

CALENDAR

THIRD CONSIDERATION CALENDAR

BILL REREPORTED FROM COMMITTEE
AS AMENDED OVER IN ORDER

SB 5 -- Without objection, the bill was passed over in its order at the request of Senator LOEPER.

BILL REREPORTED FROM COMMITTEE
AS AMENDED ON THIRD CONSIDERATION
AND FINAL PASSAGE

SB 11 (Pr. No. 65) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for rights of accused in criminal prosecutions.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Berks, Senator O'PAKE.

Senator O'PAKE. Mr. President, unlike some of the things we have been doing in this so-called crime package, this bill, I think, will make a substantial impact in deterring one of the most vicious crimes known today, the crime of child abuse. One of the problems in successfully prosecuting a defendant for abusing or molesting a child is the requirement, according to our State Supreme Court, that the victim be brought into court and that he be examined directly, face to face, by the defense counsel. For a child victim who has already gone through the trauma of the sexual abuse incident, to come back and have to relive that in a courtroom setting and be subjected to the wiles of a crafty defense lawyer is probably the second worst thing that that child has to go through in his or her life.

This, Mr. President, makes it clear, if the voters approve, that the Constitution of Pennsylvania does not require a face-to-face confrontation in court, but, rather, with the sophisticated video equipment of today, that an out-of-court video deposition can substitute for that face-to-face confrontation. I was always puzzled by that Supreme Court decision and I think it was wrong. However, it is the Supreme Court. This should make it clear even to the Supreme Court of Pennsylvania that we do not want to make it more difficult to convict child abusers, that the same requirement in the U.S. Constitution is adequate to protect defendants in Pennsylvania's Constitution.

Therefore, I commend the gentleman from Montgomery, Senator Greenleaf. I hope that we will approve it. I hope the House will take steps to quickly ratify this so it can go on the ballot and make it a little easier for justice to be done and for prosecutors to get a conviction when the heinous crime of child abuse has been committed. I urge its support.

The PRESIDENT. The Chair recognizes the gentleman from Montgomery, Senator Greenleaf.

Senator GREENLEAF. Mr. President, I rise in support of this legislation. This is something that both I and my col-

leagues have been working on for over a decade. We originally passed this bill as a piece of legislation, as a law, and it was enacted and permitted. It was originally an idea that was proposed by the American Bar Association, and as the gentleman from Berks, Senator O'Pake, indicated, it would level the playing field to allow young child abuse victims to testify, if the court decides that is an appropriate action to take. If, psychologically, that child would not be able to testify in open court, and, of course, there are many people, even adults, who have difficulty doing that, it would allow that child to testify in a separate room through closed circuit TV or through a video deposition, but it would still allow the defense to cross-examine the child and still have the opportunity to confront that child, but it would not necessarily have to be in an open courtroom, subject to the judge's determination.

Of course, if this amendment is passed, it would be a constitutional amendment. The original statute that we adopted was found to be constitutional under the United States Constitution, and the Supreme Court ruling has said it is appropriate. Many other States, I think there are something like 25 other States or more now, allow this procedure, but our Pennsylvania Supreme Court did not follow the United States Supreme Court or the United States Constitution and interpreted this law under the Pennsylvania Constitution. It is now necessary for us to clarify our Constitution to make sure that the phrase "confront your accusers," as the phrase is used in the United States Constitution, is the same as what we say in our Constitution, the Pennsylvania Constitution, which says "face to face." They are the same, and I think what this bill purely does is to clarify our Constitution, the Pennsylvania Constitution, by saying that "face to face" and "confront" are the same things, thereby allowing this procedure to go ahead.

We passed this constitutional amendment last Session. This would be the second time for this proposal to pass. Once it does, then it would be placed on the ballot. It looks as if it will be on the ballot in the fall and, if approved by the voters of this Commonwealth, then we will have the opportunity to pass legislation to implement this. And it would follow pretty much what I just outlined, what the provisions of that bill would be, very similar to what we passed over 10 years ago. I think that it would go a long way to enabling young children who have been victims to act as witnesses and to have successful prosecutions, and I would urge my colleagues' support for this proposal.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Shumaker
Armstrong	Heckler	Mowery	Stapleton
Baker	Helfrick	Musto	Stewart
Belan	Holl	O'Pake	Stout
Bell	Hughes	Peterson	Tartaglione
Bodack	Jones	Porterfield	Tilghman

Brightbill	Jubelirer	Punt	Tomlinson
Corman	Kasunic	Rhoades	Uliana
Dawida	LaValle	Robbins	Wagner
Delp	Lemmond	Salvatore	Wenger
Fisher	Loeper	Schwartz	Williams
Gerlach			

NAYS—1

Fumo

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILLS REREPORTED FROM COMMITTEE
AS AMENDED OVER IN ORDER

SB 23 and SB 50 -- Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL OVER IN ORDER

SB 7 -- Without objection, the bill was passed over in its order at the request of Senator LOEPER.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, I request at this time that the Special Session stand in recess.

For the information of the Members, there will be no more votes today, either in Special Session or Regular Session, but I would ask that the Special Session, at this time, stand in recess pending potential bill action in the House.

The PRESIDENT. The Senate will stand in recess.

AFTER RECESS

The PRESIDENT. The time for recess having expired, the Senate will come to order.

ADJOURNMENT

Senator HECKLER. Mr. President, I move that the Special Session do now adjourn until Monday, February 27, 1995, after the conclusion of the Regular Session, unless sooner recalled by the President pro tempore.

The motion was agreed to.

The Special Session of the Senate adjourned at 6:25 p.m., Eastern Standard Time.