

By Mr. Giordano of Methuen, petition of Larry F. Giordano that provision be made for the taking of testimony of persons who because of age, infirmity, understanding or other handicap would have difficulty testifying in person. The Judiciary.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety.

AN ACT PROVIDING FOR TAKING TESTIMONY OF WITNESSES OF MINOR CHILDREN OR WITH DIFFICULTIES BECAUSE OF AGE, INFIRMITY, UNDERSTANDING OR OTHER HANDICAP, AND ESTABLISHING STANDARDS FOR CHILD CARE PERSONNEL.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 233 of the General Laws is hereby  
2 amended by inserting after section 80 the following section: —

3 Section 81. (a) For the purpose of this section the words  
4 “Witness in need of assistance” shall mean any person for whom  
5 a court may order, after a hearing, the use of a suitable alternative  
6 procedure for the taking of testimony of such person in a civil  
7 or criminal court proceeding when the court has found beyond  
8 a reasonable doubt that such person because of age, infirmity,  
9 understanding or other handicap, will probably suffer severe and  
10 long lasting emotional trauma, lose a sufficient understanding of  
11 being a witness, or become incapable of giving testimony as a  
12 result in each event of testifying in open court.

13 (b) At any time after a civil legal action is filed or a complaint  
14 or indictment is issued alleging any criminal offense, the  
15 proponent of a prospective witness in need of assistance by motion  
16 or the court on its own motion shall require a hearing by the court,  
17 before trial or if during a trial on reasonable notice, to determine  
18 beyond a reasonable doubt whether such a person is a witness in  
19 need of assistance for purposes of testifying in a specific

20 proceeding and the court shall enter specific findings upon the  
21 record detailing the reasons for such findings.

22 (c) If the court finds that such person is a witness in need of  
23 assistance then in addition to ordering any other appropriate  
24 means for the taking of testimony by such witness outside the  
25 courtroom, the court may order the following:

26 (1) That the testimony of a witness in need of assistance be taken  
27 in a suitable setting outside the courtroom, before trial or during  
28 the trial and that such testimony be recorded on film, videotape  
29 or other similar device. In the case of a civil proceeding such  
30 testimony shall be taken in the presence of the judge, who heard  
31 the above mentioned motion, the attorneys for the parties, and  
32 the parties. In the case of a criminal proceeding such testimony  
33 shall be taken in the presence of said judge, the prosecutor, defense  
34 counsel and the defendant. In either case the judge may allow the  
35 presence of such others as he deems best and the judge shall  
36 provide appropriate court-supervised counselling services, if he  
37 finds the same are necessary, before and after any such testimony  
38 is given. In any event when such testimony is taken, counsel shall  
39 be given the opportunity to examine or cross examine the witness  
40 in need of assistance to the same extent as would be permitted  
41 at trial. Such film, videotape or other similar device should be  
42 admissible as substantive evidence to the same extent as and in  
43 lieu of live testimony by the witness in need of assistance in any  
44 said courtroom proceeding for which the said judge issues an order  
45 for such use of said testimony.

46 (2) The court shall ensure that such recorded testimony is in  
47 color; every voice on the recording is audible and identified; the  
48 witness in need of assistance is visible at all times; the recording  
49 equipment is capable of making an accurate record and is operated  
50 by a competent operator; and the court at trial shall ensure that  
51 the recorded testimony is accurate; each party to the proceeding  
52 is afforded the opportunity to view the recording before it is shown  
53 at the trial; and the courtroom is equipped with monitors which  
54 permit the jury and others present in the courtroom to see and  
55 hear the recording or transmission.

1 SECTION 2. Chapter 233 of the General Laws is hereby  
2 amended by adding after section 81 the following section: —

3 Section 82. A child victim of sexual abuse, under the age of  
4 fifteen, shall be considered a competent witness and shall be  
5 allowed to testify, if in the opinion of the court and before  
6 admitting such statement or statements into evidence, the  
7 determination is made that the general purposes of the evidence  
8 is such that the interest of justice will be served by the admission  
9 of such statements, and shall consider the age and maturity of the  
10 child, the nature and duration of the abuse, the relationship of  
11 the child to the offender, the reliability of the assertions, and the  
12 reliability of the child as a witness in deciding whether to admit  
13 any such evidence or statement.

1 SECTION 3. Chapter 28A of the General Laws is hereby  
2 amended by inserting after section 11A the following section: —

3 Section 11B. The office shall establish minimum standards for  
4 child care personnel which shall include minimum requirements  
5 as to good moral character based upon a screening process  
6 established in cooperation with the department of public safety  
7 and the probation department. No child care personnel at a child  
8 care facility or other child care program who has been found guilty  
9 of any crime involving moral turpitude as established by the office  
10 shall be employed or retained in any capacity involving direct  
11 contact with children, transportation or supervision.

12 To grant an exemption to a person, the office shall have clear  
13 and convincing evidence to support a reasonable belief that the  
14 person is of good character so as to justify an exemption. The  
15 person shall bear the burden of setting forth sufficient evidence  
16 of rehabilitation, including, but not limited to, the circumstances  
17 surrounding the incident, the time period that has elapsed since  
18 the incident, the nature of the harm occasioned to the victim, if  
19 any, and the history of the person since the incident, or such other  
20 circumstances that shall indicate that the person will not present  
21 a danger to the safety or well-being of the children. The decision  
22 of the office relating to the exemption may be appealed to the  
23 administrative hearings officers who shall decide the matter based  
24 on competent evidence.

25 Such minimum standards as established by the office shall  
26 prohibit persons under the age of twenty-one from being the  
27 operator of a child care facility and a person under the age of

28 sixteen from being employed at such facility unless such person  
29 is under direct supervision.

30 Such minimum standards so established for training shall  
31 ensure that all child care personnel enroll in and satisfactorily  
32 complete an approved introductory course in child care which  
33 shall include the following topics: — state and local rules and  
34 regulations governing child care; health, safety and nutrition of  
35 children; identification and reporting requirements of child abuse  
36 and neglect; and child growth and development.

37 Such training shall be completed within six months from date  
38 of employment or six months from the effective date of the  
39 establishment of the said training program.

40 Reasonable exemptions from all or a portion of the training  
41 requirements and introductory course shall be granted to child  
42 care personnel based on educational credentials or passing of a  
43 competency examination. The office shall also establish  
44 reasonable in-service training programs and require that all such  
45 personnel undergo periodic training to ensure the awareness to  
46 the latest child care program developments.

47 Training requirements shall not apply to certain support staff  
48 and personnel, including, but not limited to, swimming  
49 instructors, piano and music teachers, dance instructors,  
50 gymnastic instructors and other occasional and specialized trained  
51 personnel.