

By Miss Howe of Somerville, petition of Marie E. Howe, Barbara Hildt, Marie J. Parente and Patricia G. Fiero for legislation to establish standards for admissions of testimony of children subject to sexual abuse. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT ESTABLISHING STANDARDS FOR ADMISSIONS OF TESTIMONY OF CHILDREN SUBJECT TO SEXUAL ABUSE.

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

1 Chapter 277 of the General Laws is hereby amended by inserting
2 after section 47B the following section:

3 Section 47C. In any civil or criminal proceedings involving a
4 child under the age of sixteen years who allegedly has been a
5 witness to, or the victim of, sexual abuse, there is herewith estab-
6 lished a presumption of competency. The court shall make a
7 further determination of the competency and suitability of said
8 child to testify, considering among other relevant factors, the
9 following characteristics of said child:

10 1. Present understanding of the difference between truth and
11 falsity and an appreciation of the obligation or responsibility to
12 speak the truth, whether or not the abstract concept of an oath is
13 comprehended.

14 Inconsistent statements in a child's testimony may not render
15 the testimony invalid, nor the child victim or witness incompetent.

16 All of a child's statements taken in testimony shall be judged in
17 the context of his or her entire testimony.

18 2. Mental capacity, at the time of the offense(s) in question, to
19 observe or receive impressions of the incident(s). Present mental
20 capacity shall consider:

21 Testimony shall be accepted according to the child's develop-
22 mental level, cognitive capacity, emotional state, behavioral char-
23 acteristics, and other such conditions.

24 The child shall not be expected to relate concepts of time,
25 sequence, exact detail, and other such concepts that may or may
26 not have developed.

27 Questions asked of the child shall be on a par with the child's
28 level of understanding.

29 3. Memory capacity sufficient to retain an independent recol-
30 lection of the observations and experiences that the child is relat-
31 ing in testimony.

32 4. Capacity truly to communicate or translate into words or
33 gestures, or by any means available to that child, the memory of
34 such observation and the capacity to understand simple questions
35 about the occurrence.

36 In order to further the purposes of this act, the following shall be
37 allowed:

38 The burden of raising and proving incompetency shall be on the
39 party alleging it.

40 Competency of the child victim or witness shall be determined
41 on a case by case determination, without the use and application of
42 absolute standardized competency tests or examinations.

43 As there is no known correlation between age and honesty, there
44 is generally no precise age below 16 yrs. of age at which children
45 shall be excluded from testifying as a victim-witness or witness of
46 such offenses.

47 The child shall be afforded all rights equally as those rights
48 afforded to any other victim-witness.

49 Allowances for any number of sessions necessary to account and
50 relate incident(s) and experiences by the child.

51 A child specialist shall be present in attendance and participate
52 with the child throughout the testimony, if necessary.