

Passed by the House of Representatives on
the 30th day of June, 2016.

Passed by the Senate on the 11th day of
July, 2016.

Gerald Watt Q. C.,
Speaker.

Alicia Williams Grant,
President.

Ramona Small,
Clerk to the House of Representatives.

Ramona Small,
Clerk to the Senate.



THE EVIDENCE (SPECIAL PROVISIONS) (AMENDMENT) ACT, 2016

No. 9 of 2016

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The principal Act is amended by repealing the heading of “PART VI” and substituting the following—

“PART VI

EVIDENCE OTHER THAN BY APPEARANCE IN COURT”.

5. Insertion of section 52A

The principal Act is amended by inserting, after section 52 the following—

“52A. Evidence via Television or Video links

(1) A person or witness, other than the accused or the defendant who is not in Antigua and Barbuda, may give live oral evidence by means of a live television or video link in the following proceedings—

- (a) at a trial on indictment before the High Court;
- (b) appeals to the criminal division of the Court of Appeal;
- (c) in criminal proceedings before the Family Court.

(2) Evidence by a person or witness, other than the accused or the defendant, to which subsection (1) of this section applies shall be given without the leave of the Court.

(3) Where the prosecution and or the defence intends to rely on subsection (1) of this section it shall give notice of intention to do so not less than five (5) days before the trial on indictment or if during trial with the leave of the Court.

(4) A statement made on oath or on affirmation by any person or witness outside of Antigua and Barbuda and given by live oral evidence through a television or video link by virtue of subsection (1) of this section shall be treated for the purpose of section 3 of the Perjury Act Cap 324 as having been made in the proceedings in which it is given in evidence.”.

- (i) the judge or jury,
 - (ii) the legal representatives acting in the proceedings, and
 - (iii) any interpreter or other person appointed to assist, or
- (b) the witness gives evidence from an appropriate place outside the courtroom, either in Antigua and Barbuda or elsewhere by means of technology which allows for the witness to see and or hear a person in the courtroom and be seen and heard by the persons listed in paragraph (a) (i) (ii) and (iii);
- (c) a video recording of an interview of the witness, or a portion thereof made before the hearing be admitted as evidence in chief;
- (d) where the examination-in-chief is tendered in accordance with paragraph (c), cross-examination and any re-examination be video-recorded and any such recording or a portion thereof be admitted as the evidence of the witness on cross-examination or re-examination;
- (e) no person other than those specified in paragraph (a) and the accused be present in the courtroom during the giving of the testimony;
- (f) the wearing of wigs or gowns be dispensed with during the giving of the evidence;
- (g) the examination, cross-examination or re-examination of the witness be conducted through an interpreter or other person approved by the court;
- (h) the witness be assisted in the giving of evidence by a person approved by the court; or
- (i) the witness gives evidence using a device to overcome any disability, disorder or impairment that may affect the ability of the witness to hear or understand the questions and communicate answers.

(6) In giving direction under subsection (5), the court may provide for more than one measure in any particular case.

(7) A witness who cannot adequately hear may be questioned in any appropriate manner.

(8) A witness who cannot adequately speak may give evidence by any appropriate means.”.

4. Repeal and substitution of the heading of Part VI

ANTIGUA AND BARBUDA

THE EVIDENCE (SPECIAL PROVISIONS) (AMENDMENT) ACT, 2016

ARRANGEMENT

Sections

1. Short title.
2. Interpretation
3. Repeal and substitution of section 7
4. Repeal and substitution of heading of PART VI
5. Insertion of section 52A

[L.S.]



I Assent,

Rodney Williams,
Governor-General.

29th August, 2016.

ANTIGUA AND BARBUDA

THE EVIDENCE (SPECIAL PROVISIONS) (AMENDMENT) ACT, 2016

No. 9 of 2016

AN ACT to amend the Evidence (Special Provisions) Act, 2009 and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Evidence (Special Provisions) (Amendment) Act, 2016.

2. Interpretation

In this Act—

“principal Act” means the Evidence (Special Provisions) Act, 2009, No. 5 of 2009;

“vulnerable witness” means a witness, whose ability to give evidence or the quality of whose evidence, is likely to be affected by reason of—

- (a) age of maturity;
- (b) physical, intellectual, or psychiatric disability;

- (c) trauma suffered by the witness;
- (d) the witness’s fear of intimidation;
- (e) the linguistic or cultural background of the witness;
- (f) the nature of the proceedings;
- (g) the nature of the evidence that the witness is expected to give;
- (h) the relationship of the witness to any party to the proceeding;
- (i) the absence of the witness from Antigua and Barbuda; or
- (j) any other ground of a similar nature.

3. Repeal and substitution of section 7

The principal Act is amended by repealing section 7 and substituting the following—

“7. VULNERABLE, DEAF OR MUTE WITNESSES

(1) Where the witness is the complainant in the case and is less than 12 years of age, he or she shall be taken to be a vulnerable witness and shall give evidence in a manner described in subsection (5) (a), (b) or (c) as directed by the judge, and the judge may also apply other measures outlined in subsections (5) (d) to (i) in relation to that testimony.

(2) In any case other than in subsection (1) the judge may, either on the application of a party or a witness or at the discretion of the judge, direct that a vulnerable witness is to give evidence in a manner described in subsection (5).

(3) Subject to subsection (4), the prosecution shall apply to the court directly in accordance with subsection (2) in relation to the complainant in any serious sexual offence case.

(4) The complainant may waive the requirements of subsection (3).

(5) Where a judge makes a direction under subsections (1) or (2), the judge may in addition direct that—

- (a) the witness gives evidence while in the courtroom but unable to see the defendant or specified party or witness by virtue of a screen or other device provided that the screen or other device does not prevent the witness from seeing or being seen by—