

No. 1995-33 (SS1)

AN ACT

SB 100

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, requiring the presence of parents, guardians or custodians at proceedings involving juveniles; further defining "delinquent act" to exclude certain criminal offenses; and providing for children committing delinquent acts.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 1523. Parental or legal guardian attendance required at juvenile hearings.

(a) Order to attend.—In summary proceedings before a district justice or judge of the minor judiciary involving any individual who is under 18 years of age and is not emancipated, the district justice or judge of the minor judiciary may, when the district justice or judge of the minor judiciary determines that it is in the best interest of the child, issue an order specifically requiring the parent or legal guardian or other person with whom the child resides, if other than the parent or guardian, to be present and ready to participate in the proceedings with the juvenile. No later than ten days before such proceedings, the district justice or judge of the minor judiciary shall send a notice of the order to the parent or legal guardian or person with whom the child resides if other than the parent or guardian. Nothing in this subsection shall be construed to vest in either the individual who is under 18 years of age and is not emancipated to require participation under this subsection or the parent, legal guardian or other person with whom such individual resides the right to participate under this subsection.

(b) Contempt.—A person failing to comply with an order of participation may be found in contempt of court as outlined in section 4137 (relating to contempt powers of district justices).

(c) Bench warrant.—The district justice or judge of the minor judiciary shall issue a bench warrant for any parent, guardian or person with whom the child resides, if other than the parent or guardian, who fails to appear at any proceedings. The district justice or judge of the minor judiciary may waive any fine or other punishment if the person is found to be present and ready to participate in the proceedings with the juvenile after a bench warrant is issued.

Section 2. Section 6301(b)(2) of Title 42 is amended to read:

§ 6301. Short title and purposes of chapter.

* * *

(b) Purposes.—This chapter shall be interpreted and construed as to effectuate the following purposes:

* * *

(2) Consistent with the protection of the public interest, to [remove from] *provide for* children committing delinquent acts [the consequences of criminal behavior, and to substitute therefor a program] *programs* of supervision, care and rehabilitation *which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.*

* * *

Section 3. The definition of “delinquent act” in section 6302 of Title 42 is amended to read:

§ 6302. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

“Delinquent act.”

(1) The term means an act designated a crime under the law of this Commonwealth, or of another state if the act occurred in that state, or under Federal law, or under local ordinances.

(2) The term shall not include:

(i) The crime of murder.

(ii) *Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct and a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used during the commission of the offense which, if committed by an adult, would be classified as:*

(A) *Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).*

(B) *Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).*

(C) *Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).*

(D) *Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).*

(E) *Robbery of motor vehicle as defined in 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).*

(F) *Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).*

(G) *Kidnapping as defined in 18 Pa.C.S. § 2901 (relating to kidnapping).*

(H) Voluntary manslaughter.

(I) An attempt, conspiracy or solicitation to commit murder or any of these crimes as provided in 18 Pa.C.S. §§ 901 (relating to criminal attempt), 902 (relating to criminal solicitation) and 903 (relating to criminal conspiracy).

(iii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct and has been previously adjudicated delinquent of any of the following prohibited conduct which, if committed by an adult, would be classified as:

(A) Rape as defined in 18 Pa.C.S. § 3121.

(B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123.

(C) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).

(D) Robbery of motor vehicle as defined in 18 Pa.C.S. § 3702.

(E) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125.

(F) Kidnapping as defined in 18 Pa.C.S. § 2901.

(G) Voluntary manslaughter.

(H) An attempt, conspiracy or solicitation to commit murder or any of these crimes as provided in 18 Pa.C.S. §§ 901, 902 and 903.

[(ii)] (iv) Summary offenses, unless the child fails to comply with a lawful sentence imposed thereunder, in which event notice of such fact shall be certified to the court.

[(iii)] (v) A crime committed by a child who has been found guilty in a criminal proceeding for other than a summary offense.

* * *

Section 4. Section 6322 of Title 42 is amended to read:

§ 6322. Transfer from criminal proceedings.

(a) General rule.—Except as provided in 75 Pa.C.S. § 6303 (relating to rights and liabilities of minors) or in the event the child is charged with murder or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of “delinquent act” in section 6302 (relating to definitions) or has been found guilty in a criminal proceeding, if it appears to the court in a criminal proceeding that the defendant is a child, this chapter shall immediately become applicable, and the court shall forthwith halt further criminal proceedings, and, where appropriate, transfer the case to the division or a judge of the court assigned to conduct juvenile hearings, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. If it appears to the court in a criminal proceeding charging murder or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of “delinquent act” in section 6302, that the defendant is a child, the case may similarly be transferred and the provisions of this chapter applied. In determining whether to transfer a

case charging murder[, the court shall apply the criteria in section 6355(a)(4)(iii)(A) (relating to transfer to criminal proceedings). However, the child shall be required to show the court that the child is amenable to treatment, supervision or rehabilitation as a juvenile by meeting the criteria listed in section 6355(a)(4)(iii)(A).] *or any of the offenses excluded from the definition of "delinquent act" in section 6302, the child shall be required to establish by a preponderance of the evidence that the transfer will serve the public interest. In determining whether the child has so established that the transfer will serve the public interest, the court shall consider the factors contained in section 6355(a)(4)(iii) (relating to transfer to criminal proceedings).*

(b) Order.—If the court [orders the case to be transferred to the division or a judge of the court assigned to conduct juvenile hearings,] *finds that the child has met the burden under subsection (a), the court shall make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order. If the court does not make its finding within 20 days of the hearing on the petition to transfer the case, the defendant's petition to transfer the case shall be denied by operation of law.*

(c) Expedited review of transfer orders.—*The transfer order shall be subject to the same expedited review applicable to orders granting or denying release or modifying the conditions of release prior to sentence, as provided in Rule 1762 of the Pennsylvania Rules of Appellate Procedure.*

(d) Effect of transfer order.—*Where review of the transfer order is not sought or where the transfer order is upheld the defendant shall be taken forthwith to the probation officer or to a place of detention designated by the court or released to the custody of his parent, guardian, custodian, or other person legally responsible for him, to be brought before the court at a time to be designated. The accusatory pleading may serve in lieu of a petition otherwise required by this chapter, unless the court directs the filing of a petition.*

[(b)] (e) Transfer of convicted criminal cases.—If in a criminal proceeding [charging murder], the child is [convicted] *found guilty* of a crime [less than murder, the case may be transferred for disposition to the division or a judge of the court assigned to conduct juvenile hearings. If, in a criminal proceeding resulting from a transfer under section 6355(a), the child is convicted of a lesser charge which is] classified as a misdemeanor, *and the child and the attorney for the Commonwealth agree to the transfer*, the case may be transferred for disposition to the division or a judge of the court assigned to conduct juvenile hearings.

Section 5. Section 6340 of Title 42 is amended by adding a subsection to read:

§ 6340. Consent decree.

* * *

(c.1) Terms and conditions.—Consistent with the protection of the public interest, the terms and conditions of a consent decree shall, as appropriate to the circumstances of each case, include provisions which provide balanced attention to the protection of the community, accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community.

* * *

Section 6. Section 6352(a) of Title 42 is amended to read:

§ 6352. Disposition of delinquent child.

(a) General rule.—If the child is found to be a delinquent child the court may make any of the following orders of disposition *determined to be consistent with the protection of the public interest and best suited to [his] the child's treatment, supervision, rehabilitation[,] and welfare, which disposition shall, as appropriate to the individual circumstances of the child's case, provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community:*

(1) Any order authorized by section 6351 (relating to disposition of dependent child).

(2) Placing the child on probation under supervision of the probation officer of the court or the court of another state as provided in section 6363 (relating to ordering foreign supervision), under conditions and limitations the court prescribes.

(3) Committing the child to an institution, youth development center, camp, or other facility for delinquent children operated under the direction or supervision of the court or other public authority and approved by the Department of Public Welfare.

(4) If the child is 12 years of age or older, committing the child to an institution operated by the Department of Public Welfare.

(5) Ordering payment by the child of reasonable amounts of money as fines, costs or restitution as deemed appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child. For an order made under this subsection, the court shall retain jurisdiction until there has been full compliance with the order or until the delinquent child attains 21 years of age. Any restitution order which remains unpaid at the time the child attains 21 years of age shall continue to be collectible under section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties).

(6) An order of the terms of probation may include an appropriate fine considering the nature of the act committed or restitution not in excess of actual damages caused by the child which shall be paid from the earnings of the child received through participation in a constructive program of service or education acceptable to the victim and the court whereby,

during the course of such service, the child shall be paid not less than the minimum wage of this Commonwealth. In ordering such service, the court shall take into consideration the age, physical and mental capacity of the child and the service shall be designed to impress upon the child a sense of responsibility for the injuries caused to the person or property of another. The order of the court shall be limited in duration consistent with the limitations in section 6353 (relating to limitation on and change in place of commitment) and in the act of May 13, 1915 (P.L.286, No.177), known as the ["Child Labor Law.["] The court order shall specify the nature of the work, the number of hours to be spent performing the assigned tasks, and shall further specify that as part of a plan of treatment and rehabilitation that up to 75% of the earnings of the child be used for restitution in order to provide positive reinforcement for the work performed.

In selecting from the alternatives set forth in this section, the court shall follow the general principle that the disposition imposed should provide the means through which the provisions of this chapter are executed and enforced consistent with section 6301(b) (relating to purposes) and when confinement is necessary, the court shall impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation needs of the child.

* * *

Section 7. Section 6355(a)(4) and (e) of Title 42 are amended and the section is amended by adding a subsection to read:

§ 6355. Transfer to criminal proceedings.

(a) General rule.—After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances, of this Commonwealth, the court before hearing the petition on its merits may rule that this chapter is not applicable and that the offense should be prosecuted, and transfer the offense, where appropriate, to the division or a judge of the court assigned to conduct criminal proceedings, for prosecution of the offense if all of the following exist:

* * *

(4) The court finds:

(i) that there is a prima facie case that the child committed the delinquent act alleged;

(ii) that the delinquent act would be considered a felony if committed by an adult; [and]

(iii) that there are reasonable grounds to believe [all of the following:

(A) That the child is not amenable to treatment, supervision or rehabilitation as a juvenile through available facilities, even though there may not have been a prior adjudication of

delinquency. In determining this the court shall consider the following factors:

Age.

Mental capacity.

Maturity.

The degree of criminal sophistication exhibited by the child.

Previous records, if any.

The nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child.

Whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction.

Probation or institutional reports, if any.

The nature and circumstances of the acts for which the transfer is sought.

Any other relevant factors.

(B) That the child is not committable to an institution for the mentally retarded or mentally ill.

(C) That the interests of the community require that the child be placed under legal restraint or discipline or that the offense is one which would carry a sentence of more than three years if committed as an adult.] *that the public interest is served by the transfer of the case for criminal prosecution. In determining whether the public interest can be served, the court shall consider the following factors:*

(A) *the impact of the offense on the victim or victims;*

(B) *the impact of the offense on the community;*

(C) *the threat to the safety of the public or any individual posed by the child;*

(D) *the nature and circumstances of the offense allegedly committed by the child;*

(E) *the degree of the child's culpability;*

(F) *the adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system; and*

(G) *whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:*

(I) *age;*

(II) *mental capacity;*

(III) *maturity;*

(IV) *the degree of criminal sophistication exhibited by the child;*

(V) *previous records, if any;*

(VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child;

(VII) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;

(VIII) probation or institutional reports, if any;

(IX) any other relevant factors; and

(iv) that there are reasonable grounds to believe that the child is not committable to an institution for the mentally retarded or ~~mentally~~ ill.

* * *

(e) Murder and other excluded acts.—Where the petition alleges conduct which if proven would constitute murder, or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of “delinquent act” in section 6302 (relating to definitions), the court shall require the offense to be prosecuted under the criminal law and procedures, except where the case has been transferred pursuant to section 6322 (relating to transfer from criminal proceedings) from the division or a judge of the court assigned to conduct criminal proceedings.

* * *

(g) Burden of proof.—*The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court and that a child is not amenable to treatment, supervision or rehabilitation as a juvenile shall rest with the Commonwealth unless the following apply:*

(1) (i) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the child was 14 years of age at the time of the offense; or

(ii) the child was 15 years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and

(2) there is a prima facie case that the child committed a delinquent act which, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of “delinquent act” in section 6302.

If either of the preceding criteria are met, the burden of establishing by a preponderance of the evidence that retaining the case under this chapter serves the public interest and that the child is amenable to treatment, supervision or rehabilitation as a juvenile shall rest with the child.

Section 8. This act shall apply to all delinquent acts committed on or after the effective date of this act.

Section 9. This act shall take effect in 120 days.

APPROVED—The 17th day of November, A.D. 1995.

THOMAS J. RIDGE