

No. 1980-12

AN ACT

HB 1850

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for certain provisions relating to juveniles.

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

Section 1. Subsection (c) of section 6308, subsection (a) of section 6321, subsection (b) of section 6353 and subsection (a) of section 6355 of Title 42, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, are amended or added to read:

§ 6308. Law enforcement records.

* * *

(c) Fingerprints and photographs.—

(1) Law enforcement officers shall have the authority to take or cause to be taken the fingerprints or photographs, or both, of any child 15 years of age and older who is alleged to have committed a delinquent act that, but for the application of this chapter, would constitute a felony or a violation of Subchapter A of Chapter 61 of Title 18 (relating to uniform firearms act).

(2) Fingerprint and photographic records shall not be disseminated to law enforcement officers of other jurisdictions, the Pennsylvania State Police or the Federal Bureau of Investigation unless so ordered by the court.

(3) Fingerprints and photographic records of children shall be immediately destroyed by all persons and agencies having these records if the child is not adjudicated delinquent for reason of the alleged acts.

§ 6321. Commencement of proceedings.

(a) General rule.—A proceeding under this chapter may be commenced:

(1) By transfer of a case as provided in section 6322 (relating to transfer from criminal proceedings).

(2) By the court accepting jurisdiction as provided in section 6362 (relating to disposition of resident child received from another state) or accepting supervision of a child as provided in section 6364 (relating to supervision under foreign order).

(2.1) By taking a child into custody in accordance with the provisions of section 6324 (relating to taking into custody).

(3) In other cases by the filing of a petition as provided in this chapter. The petition and all other documents in the proceeding shall be entitled "In the interest of, a minor," and shall be captioned and docketed as provided by general rule.

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§ 6353. Limitation on and change in place of commitment.

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(b) Transfer to other institution.—After placement of the child, and if his progress with the institution warrants it, the institution may seek to transfer the child to a less secure facility, including a group home or foster boarding home. [The institution shall give the committing court written notice of the transfer. If the court does not object to such transfer within ten days after receipt of the notice, the transfer may be effectuated. If the court objects to the transfer, it shall hold a hearing within 20 days after objecting to the transfer for the purpose of reviewing its commitment order.] *The institution shall give the committing court written notice of all requests for transfer and shall give the attorney for the Commonwealth written notice of a request for transfer from a secure facility to another facility. If the court, or in the case of a request to transfer from a secure facility, the attorney for the Commonwealth, does not object to the request for transfer within ten days after the receipt of such notice, the transfer may be effectuated. If the court, or in the case of a request to transfer from a secure facility, the attorney for the Commonwealth, objects to the transfer, the court shall hold a hearing within 20 days after objecting to the transfer for the purpose of reviewing the commitment order. The institution shall be notified of the scheduled hearing, at which hearing evidence may be presented by any interested party on the issue of the propriety of the transfer.* If the institution seeks to transfer to a more secure facility the child shall have a full hearing before the committing court. At the hearing, the court may reaffirm or modify its commitment order.

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§ 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:

(1) The child was 14 or more years of age at the time of the alleged conduct.

(2) A hearing on whether the transfer should be made is held in conformity with this chapter.

(3) Notice in writing of the time, place, and purpose of the hearing is given to the child and his parents, guardian, or other custodian at least three days before the hearing.

(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 [may consider age, mental capacity, maturity, previous records and probation or institutional reports.] *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.

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Section 2. This act shall take effect in 60 days.

APPROVED—The 29th day of February, A. D. 1980.

DICK THORNBURGH