

No. 2012-23

AN ACT

SB 815

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for right to counsel; and providing for right to counsel in dependency and delinquency proceedings.

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

Section 1. Section 6337 of Title 42 of the Pennsylvania Consolidated Statutes is amended to read:

§ 6337. Right to counsel.

Except as provided *under this section and* in section 6311 (relating to guardian ad litem for child in court proceedings), a party is entitled to representation by legal counsel at all stages of any proceedings under this chapter and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party *other than a child* appears *at a hearing* without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable. The court may continue the proceeding to enable a party to obtain counsel. [Counsel] *Except as provided under section 6337.1 (relating to right to counsel for children in dependency and delinquency proceedings), counsel* must be provided for a child [unless his parent, guardian, or custodian is present in court and affirmatively waive it. However, the parent, guardian, or custodian may not waive counsel for a child when their interest may be in conflict with the interest or interests of the child]. If the interests of two or more parties may conflict, separate counsel shall be provided for each of them.

Section 2. Title 42 is amended by adding a section to read:

§ 6337.1. *Right to counsel for children in dependency and delinquency proceedings.*

(a) Children in dependency proceedings.—Legal counsel shall be provided for a child who is alleged or has been found to be a dependent child in accordance with the Pennsylvania Rules of Juvenile Court Procedure.

(b) Children in delinquency proceedings.—

(1) In delinquency cases, all children shall be presumed indigent. If a child appears at any hearing without counsel, the court shall appoint counsel for the child prior to the commencement of the hearing. The presumption that a child is indigent may be rebutted if the court ascertains that the child has the financial resources to retain counsel of his choice at his own expense. The court may not consider the financial resources of the child's parent, guardian or custodian when ascertaining whether the child has the financial resources to retain counsel of his choice at his own expense.

(2) Although a child alleged to be delinquent may appear with counsel at the intake conference conducted by a juvenile probation

officer following the submission of a written allegation, counsel shall not be mandatory at the proceeding.

(3) Notwithstanding paragraph (1), a child who is 14 years of age or older may waive the right to counsel if the court has determined that the waiver is knowingly, intelligently and voluntarily made after having conducted a colloquy with the child on the record, in accordance with the Pennsylvania Rules of Juvenile Court Procedure, and the hearing for which waiver is sought is not one of the following:

(i) An informal detention or shelter hearing under section 6332 (relating to informal hearing).

(ii) A hearing to consider transfer to criminal proceedings under section 6355 (relating to transfer to criminal proceedings).

(iii) A hearing to consider evidence on the petition or accept an admission to an alleged delinquent act under section 6341 (relating to adjudication).

(iv) A hearing to consider evidence as to whether the child is in need of treatment, supervision or rehabilitation under section 6341.

(v) A disposition hearing under section 6341 or 6352 (relating to disposition of delinquent child).

(vi) A hearing to modify or revoke probation or other disposition entered under section 6352.

(4) The court may assign stand-by counsel if the child waives counsel at any hearing.

(5) If a child waives counsel for any hearing, the waiver shall only apply to that hearing and the child may revoke the waiver of counsel at any time. At any subsequent hearing, the child shall be informed of the right to counsel.

Section 3. This act shall take effect in 60 days.

APPROVED—The 9th day of April, A.D. 2012

TOM CORBETT