

## No. 1986-165

## AN ACT

HB 1498

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for sentencing guidelines, for community public service programs and for the treatment of dangerous juvenile offenders.

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

Section 1. Section 1520 of Title 42 of the Pennsylvania Consolidated Statutes, is repealed.

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

§ 1521. *Accelerated Rehabilitative Disposition for summary offenders.*

(a) *General rule.*—*Except for summary cases charging offenses under Title 75 (relating to vehicles) and summary offenses where a prior offense or conviction thereof may affect the grading of a subsequent offense, a district justice may, after institution of proceedings in a summary case, refer that case to the district attorney for consideration for inclusion in Accelerated Rehabilitative Disposition as provided by general rules. The defendant shall not be required to plead guilty to be accepted into this program.*

(b) *Public service programs.*—*An offender admitted to Accelerated Rehabilitative Disposition for such summary offense may be required to participate in a program in which an agency or organization is willing to assume supervision or placement responsibility for such offenders. The program in general shall be approved by the court of common pleas of that district and the district attorney. This program may include work, counseling, public service, job training, education or other appropriate community service or self-improvement. The conditions of the program may include the imposition of costs and restitution, the imposition of a reasonable charge relating to the expense of administering the program and any other conditions agreed to by the offender.*

(c) *Completion of program.*—*Upon successful completion of the program, the summary charges shall be dismissed, and the offender shall not be obligated to pay any fine or serve any sentence of imprisonment.*

(d) *Refusal to accept or complete program.*—*If the case is not recommended or not accepted into the program or the person refuses to accept the conditions of the program or, without good cause, either fails to complete it or violates any of its conditions, the case shall be returned to the district justice for proceedings on the charges as provided by law.*

(e) *Immunity.*—*A district justice, probation officer and any public service or charitable organization supervising or administering a public service program under this section shall be immune from any civil action for damages brought by a person admitted to this program. Nothing in this section shall be construed to limit or otherwise affect or preclude liability*

*resulting from gross negligence or intentional misconduct. Reckless, willful or wanton misconduct constitutes gross negligence.*

*(f) Definition.—As used in this section the term “district justice” includes a judge of the Pittsburgh Magistrates Court.*

Section 3. Section 2154 of Title 42 is amended to read:

§ 2154. Adoption of guidelines for sentencing.

*(a) General rule.—The commission shall adopt guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for [felonies and misdemeanors committed by a defendant.] defendants who plead guilty or nolo contendere to, or who were found guilty of, felonies and misdemeanors. The guidelines shall:*

*(1) Specify the range of sentences applicable to crimes of a given degree of gravity.*

*[(2) Specify a range of sentences of increased severity for defendants previously convicted of a felony or felonies or convicted of a crime involving the use of a deadly weapon.]*

*(2) Specify a range of sentences of increased severity for defendants previously convicted of or adjudicated delinquent for one or more misdemeanor or felony offenses committed prior to the current offense. For purposes of this section “previously convicted or adjudicated delinquent” shall include any finding of guilt or adjudication of delinquency whether or not sentence has been imposed or disposition ordered prior to the commission of the current offense.*

*(3) Specify a range of sentences of increased severity for defendants who possessed a deadly weapon during the commission of the current conviction offense.*

*[(3)] (4) Prescribe variations from the range of sentences applicable on account of aggravating or mitigating circumstances.*

*(b) Definition.—As used in this section the term “possessed” means on the defendant’s person or within his immediate physical control.*

Section 4. The definition of “delinquent act” in section 6302 of Title 42 is amended and the section is amended by adding a definition 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:

\* \* \*

*“Dangerous juvenile offender.” A child who has been determined by the court to meet all of the following requirements:*

*(1) Is 15 years of age or older.*

*(2) Has been adjudicated delinquent for one or more of the following offenses:*

*(i) Attempted murder.*

*(ii) Voluntary manslaughter.*

*(iii) Rape.*

- (iv) *Involuntary deviate sexual intercourse.*
- (v) *Kidnapping.*
- (vi) *Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).*
- (vii) *Felonious aggravated assault as defined in 18 Pa.C.S. § 2702 (relating to aggravated assault).*
- (viii) *Aggravated assault with a deadly weapon.*
- (ix) *Arson as defined in 18 Pa.C.S. § 3301(a) (relating to arson and related offenses).*

(3) *Has been previously adjudicated delinquent subsequent to the child's 12th birthday for one or more of the following offenses:*

- (i) *Attempted murder.*
- (ii) *Voluntary manslaughter.*
- (iii) *Rape.*
- (iv) *Involuntary deviate sexual intercourse.*
- (v) *Kidnapping.*
- (vi) *Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).*
- (vii) *Felonious aggravated assault as defined in 18 Pa.C.S. § 2702 (relating to aggravated assault).*
- (viii) *Aggravated assault with a deadly weapon.*
- (ix) *Arson as defined in 18 Pa.C.S. § 3301(a) (relating to arson and related offenses).*

*An adjudication for an offense arising from the same criminal episode as the offense considered under paragraph (2) shall not be considered an adjudication for the purpose of this paragraph.*

*"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]~~ *The crime of murder[; or].*
- (ii) ~~[summary]~~ *Summary offenses, unless the child fails [to pay a fine levied] to comply with a lawful sentence imposed thereunder, in which event notice of such fact shall be certified to the court.*
- (iii) *A crime committed by a child who has been found guilty in a criminal proceeding for other than a summary offense.*

\* \* \*

Section 5. Section 6308 of Title 42 is amended to read:

§ 6308. Law enforcement records.

(a) General rule.—~~[Law]~~ *Except as provided in section 6309 (relating to juvenile history record information), the law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 6355 (relating to transfer to criminal proceedings), the interest of national security requires, or the court otherwise orders in the interest of the child, the records and files shall not be open to public inspection.*

tion or their contents disclosed to the public except as provided in subsection (b); but inspection of the records and files is permitted by:

- (1) The court having the child before it in any proceeding.
- (2) Counsel for a party to the proceeding.
- (3) The officers of institutions or agencies to whom the child is committed.
- (4) Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties.
- (5) A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him.

(b) Public availability.—

(1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public except if the child is 14 or more years of age at the time of the alleged conduct and if:

(i) the child has been adjudicated delinquent by a court as a result of an act or acts which include the elements of rape, kidnapping, murder, robbery, arson, burglary or other act involving the use of or threat of serious bodily harm; **[or]**

(ii) a petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed an act or acts which include the elements of rape, kidnapping, murder, robbery, arson, burglary or other act involving the use of or threat of serious bodily harm and the child previously has been adjudicated delinquent by a court as a result of an act or acts which included the elements of one of such crimes[.]; **or**

(iii) *the child is a dangerous juvenile offender.*

(2) If the conduct of the child meets the requirements for disclosure as set forth in paragraph (1), then the court or law enforcement agency, as the case may be, shall disclose the name, age and address of the child, the offenses charged and the disposition of the case. The master or judge who adjudicates a child delinquent shall specify the particular offenses and counts thereof which the child is found to have committed and such information shall be inserted on any law enforcement records or files disclosed to the public as provided for in this section.

(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] 18 Pa.C.S. Ch. 61 Subch. A** (relating to uniform firearms act).

(2) Fingerprint and photographic records **[shall not] may** be disseminated to law enforcement officers of other jurisdictions, the Pennsylvania State Police **[or] and** the Federal Bureau of Investigation **[unless so**

ordered by the court] if a child has, on the basis of a felony or a violation of 18 Pa.C.S. Ch. 61 Subch. A, been adjudicated delinquent or found guilty in a criminal proceeding.

(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 or not found guilty in a criminal proceeding for reason of the alleged acts.

Section 6. Title 42 is amended by adding a section to read:

**§ 6309. Juvenile history record information.**

(a) *Applicability of Criminal History Record Information Act.*—Except for 18 Pa.C.S. §§ 9105 (relating to other criminal justice information), 9112(a) and (b) (relating to mandatory fingerprinting) and 9113 (relating to disposition reporting by criminal justice agencies), the remaining provisions of 18 Pa.C.S. Ch. 91 (relating to criminal history record information) shall apply to all dangerous juvenile offenders whose fingerprints and photographs are taken pursuant to section 6308(c) (relating to law enforcement records) and to any juvenile justice agency which collects, maintains, disseminates or receives juvenile history record information.

(b) *Central repository.*—The Pennsylvania State Police shall establish a Statewide central repository of fingerprints, photographs and juvenile history record information of dangerous juvenile offenders whose fingerprints and photographs are taken pursuant to section 6308(c). This repository may be combined with a repository of similar information on adult offenders, as provided in 18 Pa.C.S. Ch. 91.

(c) *Fingerprints and photographs.*—The court of proper jurisdiction shall ensure that the fingerprints and photographs of a dangerous juvenile offender whose fingerprints and photographs which have been taken by an arresting authority pursuant to section 6308(c) are forwarded to the central repository within 48 hours after a dangerous juvenile offender has been adjudicated delinquent.

(d) *Disposition reporting.*—The division or judge of the court assigned to conduct juvenile hearings shall collect and submit juvenile history record information to the central repository within 90 days of an adjudication of delinquency. The division or judge of the court assigned to conduct juvenile hearings shall continually update juvenile history record information as required by the Juvenile Court Judges' Commission.

(e) *Definitions.*—As used in this section the following words and phrases shall have the meanings given to them in this subsection:

“Criminal history record information.” In addition to the meaning in 18 Pa.C.S. § 9102 (relating to definitions), the term includes the meaning of juvenile history record information as defined in this subsection.

“Juvenile history record information.” Information collected pursuant to this section concerning dangerous juvenile offenders whose fingerprints and photographs are taken pursuant to section 6308(c) and arising from the filing of a petition of delinquency, consisting of identifiable descriptions, dates and notations of arrests, indictments, information or other delinquency charges and any adjudication of delinquency, informal adjustment,

*consent decree or preadjudication disposition other than dismissal arising therefrom. Juvenile history record information shall not include intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information or presentence investigation information.*

Section 7. 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 has been found guilty in a criminal proceeding*, if it appears to the court in a criminal proceeding **[other than murder,]** 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, that the defendant is a child, the case may similarly be transferred and the provisions of this chapter applied. **[The]** *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). If the court orders the case to be transferred to the division or a judge of the court assigned to conduct juvenile hearings, 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) Transfer of convicted criminal cases.—If in a criminal proceeding charging murder the child is convicted 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, the case may be transferred for disposition to the division or a judge of the court assigned to conduct juvenile hearings.*

Section 8. Section 6335(a) of Title 42 is amended and the section is amended by adding a subsection to read:

§ 6335. Release or holding of hearing.

(a) General rule.—After the petition has been filed the court shall fix a time for hearing thereon, which, if the child is in detention or shelter care shall not be later than ten days after the filing of the petition. **[If]** *Except as*

*provided in subsection (f), if the hearing is not held within such time, the child shall be immediately released from detention or shelter care. A child may be detained or kept in shelter care for an additional single period not to exceed ten days where:*

- (1) the court determines at a hearing that:
  - (i) evidence material to the case is unavailable;
  - (ii) due diligence to obtain such evidence has been exercised; and
  - (iii) there are reasonable grounds to believe that such evidence will be available at a later date; and
- (2) the court finds by clear and convincing evidence that:
  - (i) the life of the child would be in danger;
  - (ii) the community would be exposed to a specific danger; or
  - (iii) the child will abscond or be removed from the jurisdiction of the court.

The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons shall also be directed to the child if he is 14 or more years of age or is alleged to be a delinquent. A copy of the petition shall accompany the summons.

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*(f) Limitations on release.—The child shall not be released from detention or shelter care under authority of subsection (a) if the failure to hold a hearing within ten days after the filing of the petition is the result of delay caused by the child. Delay shall be deemed to be caused by the child if it results from any one of the following:*

- (1) *The unavailability of the child or his attorney.*
- (2) *Any continuance granted at the request of the child or his attorney.*

*At the conclusion of any court proceeding in which the scheduled hearing is not held, the court shall state on the record whether the failure to hold the hearing resulted from delay caused by the child.*

Section 9. Sections 6336, 6340(b), 6353(a) and 9714(b)(2) of Title 42 are amended to read:

§ 6336. Conduct of hearings.

(a) General rule.—Hearings under this chapter shall be conducted by the court without a jury, in an informal but orderly manner, and separate from other proceedings not included in section 6303 (relating to scope of chapter).

(b) Functions of district attorney.—The district attorney, upon request of the court, shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth.

(c) Record.—If requested by the party or ordered by the court the proceedings shall be recorded by appropriate means. If not so recorded, full minutes of the proceedings shall be kept by the court.

(d) Proceeding in camera.—Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings under this chapter. Only the parties, their counsel, witnesses, **[and]** *the victim and*

*counsel for the victim*, other persons accompanying a party *or a victim* for his *or her* assistance, and any other person as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his delinquency are being heard.

§ 6340. Consent decree.

\* \* \*

(b) Objection.—Where the child *or the district attorney* objects to a consent decree, the court shall proceed to findings, adjudication and disposition. [Where the child does not object, but an objection is made by the district attorney after consultation with the probation services, the court shall, after considering the objections and reasons therefor, proceed to determine whether it is appropriate to enter a consent decree.]

\* \* \*

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

(a) General rule.—No child shall initially be committed to an institution for a period longer than [three] *four* years or a period longer than he could have been sentenced by the court if he had been convicted of the same offense as an adult, whichever is less. The initial commitment may be extended for a similar period of time, or modified, if the court finds after hearing that the extension or modification will effectuate the original purpose for which the order was entered. The child shall have notice of the extension or modification hearing and shall be given an opportunity to be heard. The committing court shall review each commitment every six months and shall hold a disposition review hearing at least every nine months.

\* \* \*

§ 9714. Sentences for second and subsequent offenses.

\* \* \*

(b) Prior convictions for crimes of violence.—For the purposes of subsection (a), an offender shall be deemed to have prior convictions for crimes of violence if both of the following conditions hold:

\* \* \*

(2) The previous conviction occurred within seven years of the date of the commission of the instant offense, except that any time during which the offender was incarcerated in any penitentiary, prison or other place of detention shall not be considered in computing the relevant seven-year period. Convictions for other offenses arising from the same criminal episode as the instant offense shall not be considered previous convictions for the purpose of this section. [A] *For purposes of this section* previous conviction shall include any conviction, whether or not *judgment of sentence has been imposed or* litigation is pending concerning that conviction.

\* \* \*

Section 10. The following acts are repealed:

Act of June 8, 1881 (P.L.63, No.68), entitled “A supplement to an act, entitled ‘An act to create a middle penitentiary district in this state, and to provide for the erection of a state penitentiary for the same,’ approved the twelfth day of June, Anno Domini one thousand eight hundred and seventy-eight.”



Act of April 28, 1887 (P.L.63, No.30), entitled, as amended, "An act in relation to the imprisonment, government and release of inmates in the Pennsylvania Industrial School at Camp Hill, Cumberland County, Pennsylvania."

Act of June 3, 1893 (P.L.280, No.245), entitled "An act to provide for the payment of the cost and expense of trying prisoners convicted in the courts of Huntingdon county for the violation of law while inmates of the Pennsylvania Industrial Reformatory, and for their maintenance in the county prison or penitentiary after their conviction."

Act of June 6, 1893 (P.L.326, No.263), entitled "A supplement to an act, entitled 'An act in relation to the imprisonment, government and release of convicts in the Pennsylvania Industrial Reformatory at Huntingdon,' approved the twenty-eighth day of April, Anno Domini one thousand eight hundred and eighty-seven."

Act of May 2, 1901 (P.L.126, No.92), entitled "An act to provide for the sale of unserviceable machinery in the Industrial Reformatory at Huntingdon, Pennsylvania, and the other State Reformatories, when said machinery has been purchased by appropriations made from the State Treasury for the purpose."

Act of May 1, 1929 (P.L.1183, No.415), entitled "An act relating to persons paroled from the Pennsylvania Industrial Reformatory at Huntingdon; and regulating the procedure when such persons violate the terms of paroles, and the effect of such violations."

Section 11. (a) Section 1 (repealing section 1520) and section 2 (adding section 1521) shall take effect immediately.

(b) The remainder of this act shall take effect in 60 days.

APPROVED—The 11th day of December, A. D. 1986.

DICK THORNBURGH