

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1381 Session of 2023

INTRODUCED BY D. MILLER, HARRIS, BULLOCK, SANCHEZ, MADDEN, HANBIDGE, SCHLOSSBERG, HOHENSTEIN, KINKEAD, HILL-EVANS, McNEILL, MALAGARI, KHAN, KINSEY, SCOTT, CEPEDA-FREYTIZ, ROZZI, GREEN, FRIEL, HOWARD, MAYES, OTTEN, BRIGGS, DONAHUE AND KRAJEWSKI, JUNE 12, 2023

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 27, 2023

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in juvenile matters,
3 further providing for short title and purposes of chapter,
4 for definitions, for scope of chapter, for powers and duties
5 of probation officers, for summary offenses, for inspection
6 of court files and records, for guardian ad litem for child
7 in court proceedings, for transfer from criminal proceedings,
8 for informal adjustment, for taking into custody, for
9 detention of child, for release or delivery to court and for
10 place of detention, providing for confinement in juvenile
11 treatment facilities, further providing for notice and
12 hearing, providing for questioning and interrogating a child,
13 further providing for consent decree, providing for school
14 stability for certain students, further providing for
15 disposition of delinquent child, for limitation on and change
16 in place of commitment and for transfer to criminal
17 proceedings.

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

20 Section 1. Section 6301(b)(1.1) of Title 42 of the
21 Pennsylvania Consolidated Statutes is amended to read:

22 § 6301. Short title and purposes of chapter.

23 * * *

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

3 * * *

4 (1.1) To provide for the care, protection, safety,
5 access to free and appropriate public education and wholesome
6 mental and physical development of children coming within the
7 provisions of this chapter.

8 * * *

9 Section 2. The definitions of "assessment," "child,"
10 "delinquent act," "delinquent child" and "dependent child" in
11 section 6302 of Title 42 are amended and the section is amended
12 by adding definitions to read:

13 § 6302. Definitions.

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

17 "504 plan." An agreement under 29 U.S.C. § 794 (relating to
18 nondiscrimination under Federal grants and programs).

19 * * *

20 "Assessment." An independent individualized examination by a
21 licensed professional of a child to determine the child's
22 psychosocial needs and problems, including the type and extent
23 of any mental health, substance abuse or co-occurring mental
24 health and substance abuse disorders and recommendations for
25 treatment. The term includes, but is not limited to, a drug and
26 alcohol, psychological and psychiatric evaluation, records
27 review, clinical interview and the administration of a formal
28 test and instrument.

29 * * *

30 "Child." An individual who:

- 1 (1) is under the age of 18 years;
- 2 (2) is under the age of 21 years who committed an act of
3 delinquency before reaching the age of 18 years; or
- 4 (3) is under the age of 21 years and was adjudicated
5 dependent before reaching the age of 18 years, who has
6 requested the court to retain jurisdiction and who remains
7 under the jurisdiction of the court as a dependent child
8 because the court has determined that the child is:
- 9 (i) completing secondary education or an equivalent
10 credential;
- 11 (ii) enrolled in an institution which provides
12 postsecondary or [vocational] career and technical
13 education;
- 14 (iii) participating in a program actively designed
15 to promote or remove barriers to employment;
- 16 (iv) employed for at least 80 hours per month; or
- 17 (v) incapable of doing any of the activities
18 described in subparagraph (i), (ii), (iii) or (iv) due to
19 a medical or behavioral health condition, which is
20 supported by regularly updated information in the
21 permanency plan of the child.

22 * * *

23 "Delinquent act."

24 [(1) The term means an] An act designated a crime,
25 excluding a summary offense, under the law of this
26 Commonwealth, or of another state if the act occurred in that
27 state, or under Federal law, or an act which constitutes
28 indirect criminal contempt under Chapter 62A (relating to
29 protection of victims of sexual violence or intimidation)
30 with respect to sexual violence or 23 Pa.C.S. Ch. 61

1 (relating to protection from abuse). The term shall not
2 include a summary offense or the failure of a child to comply <--
3 with a lawful sentence imposed for a summary offense. [or the
4 failure of a child to comply with a lawful sentence imposed
5 for a summary offense, in which event notice of the fact
6 shall be certified to the court.

7 (2) The term shall not include:

8 (i) The crime of murder.

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

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

16 (relating to rape).

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

20 (C) Aggravated assault as defined in 18 Pa.C.S.
21 § 2702(a)(1) or (2) (relating to aggravated assault).

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

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

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

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

1 (relating to kidnapping).

2 (H) Voluntary manslaughter.

3 (I) An attempt, conspiracy or solicitation to
4 commit murder or any of these crimes as provided in
5 18 Pa.C.S. §§ 901 (relating to criminal attempt), 902
6 (relating to criminal solicitation) and 903 (relating
7 to criminal conspiracy).

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

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

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

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

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

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

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

23 (G) Voluntary manslaughter.

24 (H) An attempt, conspiracy or solicitation to
25 commit murder or any of these crimes as provided in
26 18 Pa.C.S. §§ 901, 902 and 903.

27 (iv) Summary offenses.

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

1 "Delinquent child." The following:

2 (1) A child [ten] 13 years of age or older whom the
3 court has found to have committed a delinquent act and [is]
4 for whom it is established is in need of treatment,
5 supervision or rehabilitation.

6 (2) A child 12 10 years of age or older who the court <--
7 has found to have committed one of the following and for whom
8 it is established is in need of treatment, supervision or
9 rehabilitation:

10 (i) The crime of murder.

11 (ii) A sexual offense which would be designated as a
12 felony in the first degree if committed by an adult.

13 ~~(3) The term does not include a child who is found to~~ <--
14 ~~have committed a summary offense or failed to comply with a~~
15 ~~lawful sentence imposed for a summary offense.~~

16 "Dependent child." A child who:

17 (1) is without proper parental care or control,
18 subsistence, education as required by law, or other care or
19 control necessary for [his] the child's physical, mental, or
20 emotional health, or morals. A determination that there is a
21 lack of proper parental care or control may be based upon
22 evidence of conduct by the parent, guardian or other
23 custodian that places the health, safety or welfare of the
24 child at risk, including evidence of the parent's, guardian's
25 or other custodian's use of alcohol or a controlled substance
26 that places the health, safety or welfare of the child at
27 risk;

28 (2) has been placed for care or adoption in violation of
29 law;

30 (3) has been abandoned by his or her parents, guardian,

1 or other custodian;

2 (4) is without a parent, guardian, or legal custodian;

3 (5) while subject to compulsory school attendance is
4 habitually and without justification truant from school;

5 (6) has committed a specific act or acts of habitual
6 disobedience of the reasonable and lawful commands of his or
7 her parent, guardian or other custodian and who is
8 ungovernable and found to be in need of care, treatment or
9 supervision;

10 (7) has committed a delinquent act or crime, other than
11 a summary offense, while under the age of [~~ten~~] 13 years
12 except as provided in paragraph (2) of the definition of
13 "delinquent child";

14 (8) has been formerly adjudicated dependent, and is
15 under the jurisdiction of the court, subject to its
16 conditions or placements and who commits an act which is
17 defined as ungovernable in paragraph (6);

18 (9) has been referred pursuant to section 6323 (relating
19 to informal adjustment and diversion), and who commits an act
20 which is defined as ungovernable in paragraph (6); or

21 (10) is born to a parent whose parental rights with
22 regard to another child have been involuntarily terminated
23 under 23 Pa.C.S. § 2511 (relating to grounds for involuntary
24 termination) within three years immediately preceding the
25 date of birth of the child and conduct of the parent poses a
26 risk to the health, safety or welfare of the child.

27 * * *

28 "Individualized education plan." A plan developed in
29 accordance with 22 Pa. Code § 14.131 (relating to IEP) and 20
30 U.S.C. Ch. 33 (relating to education of individuals with

1 disabilities).

2 "Material loss." The following:

3 (1) A financial loss found by the court to have been
4 caused by a delinquent act of a child and is:

5 (i) uninsured property loss;

6 (ii) a deductible paid on an insurance claim for
7 property;

8 (iii) actual lost wages because of bodily injury;

9 (iv) uninsured medical expense from bodily injury;

10 or

11 (v) costs incurred due to emotional distress or
12 trauma, including counseling and therapy services.

13 (2) A material loss that entitled the person to receive
14 compensation from the Crime Victim Services and Compensation
15 Fund.

16 "Nonviolent felony." A felony offense that does not
17 constitute a crime of violence as defined under section 9714(g)
18 (relating to sentences for second and subsequent offenses). The
19 term does not include firearm-related offenses or murder.

20 * * *

21 "Risk and needs assessment." An assessment of a juvenile's
22 likelihood of reoffending, which may include the criminogenic
23 needs of the child, shown, through an independent external
24 analysis, to be free of racial bias and disparate impact.

25 "School of origin." A school ~~within a school district~~ ENTITY <--
26 that:

27 (1) a child ~~attended~~ WAS ENROLLED IN before being <--
28 adjudicated a delinquent child; or

29 (2) the child would attend based on the address of the
30 child's parents or guardian.

1 * * *

2 Section 3. Sections 6303(b), 6304(a)(5) and (c), 6304.1,
3 6307(b), 6311(b)(2), 6322, 6323, 6324, 6325, 6326(b) and (c) and
4 6327 of Title 42 are amended to read:

5 § 6303. Scope of chapter.

6 * * *

7 †(b) Minor judiciary.--No child shall be detained, committed <--
8 or sentenced to imprisonment by a magisterial district judge or
9 a judge of the minor judiciary. [unless the child is charged <--
10 with an act set forth in paragraph (2)(i), (ii), (iii) or (v) of
11 the definition of "delinquent act" in section 6302 (relating to
12 definitions).]

13 * * *

14 § 6304. Powers and duties of probation officers.

15 (a) General rule.--For the purpose of carrying out the
16 objectives and purposes of this chapter, and subject to the
17 limitations of this chapter or imposed by the court, a probation
18 officer shall:

19 * * *

20 (5) Take into custody and detain a child who is under
21 his or her supervision or care as a delinquent or dependent
22 child if the probation officer has reasonable cause to
23 believe that the health or safety of the child is in imminent
24 danger, or that he or she may abscond or be removed from the
25 jurisdiction of the court, or when ordered by the court
26 pursuant to this chapter [or that he violated the conditions
27 of his probation].

28 * * *

29 (c) Definitions.--As used in this section, the following
30 words and phrases shall have the meanings given to them in this

1 subsection:

2 "Conditions of supervision." A term or condition of a
3 child's supervision, whether imposed by the court or a probation
4 officer consistent with a demonstrated need as determined by
5 validated risk and needs assessment, including compliance with
6 all requirements of Federal, State and local law.

7 "Contraband." An item that a child is not permitted to
8 possess under the conditions of supervision, including an item
9 whose possession is forbidden by any Federal, State or local
10 law.

11 "Court." The court of common pleas or a judge thereof.

12 "Exigent circumstances." The term includes, but is not
13 limited to, reasonable suspicion that contraband or other
14 evidence of violations of the conditions of supervision might be
15 destroyed or suspicion that a weapon might be used.

16 "Personal search." A warrantless search of a child's person,
17 including, but not limited to, the child's clothing and any
18 personal property which is in the possession, within the reach
19 or under the control of the child.

20 "Probation officer." A probation officer appointed or
21 employed by a court or by a county probation department.

22 "Property search." A warrantless search of real property,
23 vehicle or personal property which is in the possession or under
24 the control of a child.

25 "Supervisor." An individual acting in a supervisory or
26 administrative capacity.

27 [§ 6304.1. Summary offenses.]

28 (a) Review.--

29 (1) Upon notice being certified to the court that a
30 child has failed to comply with a lawful sentence imposed for

1 a summary offense, a probation officer shall review the
2 complaints and charges of delinquency pursuant to section
3 6304 (relating to powers and duties of probation officers)
4 for the purpose of considering the commencement of
5 proceedings under this chapter.

6 (2) A proceeding commenced under the review in this
7 subsection is a separate action from the underlying summary
8 conviction. For the purposes of proceedings commenced under
9 this section, failure to comply with a lawful sentence
10 imposed for a summary offense is an alleged delinquent act.

11 (3) Any reference to the underlying summary conviction
12 is solely for the purpose of the certification from the
13 magisterial district judge to the court of common pleas that
14 the juvenile was convicted of the summary offense and failed
15 to comply under section 4132(2) (relating to attachment and
16 summary punishment for contempts).

17 (b) Administration of money.--Any money subsequently paid by
18 the child pursuant to the disposition of the charges shall be
19 administered and disbursed in accordance with written guidelines
20 adopted by the president judge of the court of common pleas. The
21 court may direct that any portion of the money received from the
22 child shall be deposited into a restitution fund established by
23 the president judge of the court of common pleas pursuant to
24 section 6352(a)(5) (relating to disposition of delinquent
25 child).]

26 § 6307. Inspection of court files and records.

27 * * *

28 (b) Public availability.--

29 (1.1) The contents of court records and files concerning
30 a child shall not be disclosed to the public unless [any of

1 the following apply:

2 (i) The] the child has been adjudicated delinquent
3 by a court as a result of an act or acts committed when
4 the child was 14 years of age or older and [the conduct
5 would have constituted one or more of the following
6 offenses if committed by an adult:

7 (A) Murder.

8 (B) Voluntary manslaughter.

9 (C) Aggravated assault as defined in 18 Pa.C.S.
10 § 2702(a)(1) or (2) (relating to aggravated assault).

11 (D) Sexual Assault as defined in 18 Pa.C.S. §
12 3124.1 (relating to sexual assault).

13 (E) Aggravated indecent assault as defined in 18
14 Pa.C.S. § 3125 (relating to aggravated indecent
15 assault).

16 (F) Arson as defined in 18 Pa.C.S. § 3301(a)(1)
17 (relating to arson and related offenses).

18 (G) Burglary as a felony in the first degree as
19 defined in 18 Pa.C.S. § 3502(c)(1) (relating to
20 burglary).

21 (H) Involuntary deviate sexual intercourse.

22 (I) Kidnapping.

23 (J) Rape.

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

26 (L) Robbery of motor vehicle.

27 (M) Violation of 18 Pa.C.S. Ch. 61 (relating to
28 firearms and other dangerous articles).

29 (N) Attempt or conspiracy to commit any of the
30 offenses in this subparagraph.

1 (ii) A petition alleging delinquency has been filed
2 alleging that the child has committed an act or acts
3 subject to a hearing pursuant to section 6336(e)
4 (relating to conduct of hearings) and the child
5 previously has been adjudicated delinquent by a court as
6 a result of an act or acts committed when the child was
7 14 years of age or older and the conduct would have
8 constituted one or more of the following offenses if
9 committed by an adult:

10 (A) Murder.

11 (B) Voluntary manslaughter.

12 (C) Aggravated assault as defined in 18 Pa.C.S.
13 § 2702(a)(1) or (2).

14 (D) Sexual Assault as defined in 18 Pa.C.S. §
15 3124.1.

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

18 (F) Arson as defined in 18 Pa.C.S. § 3301(a)(1).

19 (G) Burglary as a felony in the first degree as
20 defined in 18 Pa.C.S. § 3502(c)(1).

21 (H) Involuntary deviate sexual intercourse.

22 (I) Kidnapping.

23 (J) Rape.

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

26 (L) Robbery of motor vehicle.

27 (M) Violation of 18 Pa.C.S. Ch. 61.

28 (N) Attempt or conspiracy to commit any of the
29 offenses in this subparagraph.] was adjudicated
30 delinquent for an offense that cannot be expunged

1 from the child's record.

2 (2) If the conduct of the child meets the requirements
3 for disclosure as set forth in paragraph (1.1), then the
4 court shall disclose the name, age and address of the child,
5 the offenses charged and the disposition of the case. The
6 judge who adjudicates a child delinquent shall specify the
7 particular offenses and counts thereof which the child is
8 found to have committed, and such information shall be
9 inserted on any court or law enforcement records or files
10 disclosed to the public as provided for in this section or in
11 section 6308(b)(2) (relating to law enforcement records).

12 * * *

13 § 6311. Guardian ad litem for child in court proceedings.

14 * * *

15 (b) Powers and duties.--The guardian ad litem shall be
16 charged with representation of the legal interests and the best
17 interests of the child at every stage of the proceedings and
18 shall do all of the following:

19 * * *

20 (2) On a timely basis, be given access to relevant court
21 and county agency records, reports of examination of the
22 parents or other custodian of the child pursuant to this
23 chapter and medical, psychological and school records,
24 including an existing Individualized Education Program or 504
25 plan.

26 * * *

27 § 6322. Transfer from criminal proceedings.

28 [(a) General rule.--Except as provided in 75 Pa.C.S. § 6303
29 (relating to rights and liabilities of minors) or in the event
30 the child is charged with murder or any of the offenses excluded

1 by paragraph (2)(ii) or (iii) of the definition of "delinquent
2 act" in section 6302 (relating to definitions) or has been found
3 guilty in a criminal proceeding, if it appears to the court in a
4 criminal proceeding that the defendant is a child, this chapter
5 shall immediately become applicable, and the court shall
6 forthwith halt further criminal proceedings, and, where
7 appropriate, transfer the case to the division or a judge of the
8 court assigned to conduct juvenile hearings, together with a
9 copy of the accusatory pleading and other papers, documents, and
10 transcripts of testimony relating to the case. If it appears to
11 the court in a criminal proceeding charging murder or any of the
12 offenses excluded by paragraph (2)(ii) or (iii) of the
13 definition of "delinquent act" in section 6302, that the
14 defendant is a child, the case may similarly be transferred and
15 the provisions of this chapter applied. In determining whether
16 to transfer a case charging murder or any of the offenses
17 excluded from the definition of "delinquent act" in section
18 6302, the child shall be required to establish by a
19 preponderance of the evidence that the transfer will serve the
20 public interest. In determining whether the child has so
21 established that the transfer will serve the public interest,
22 the court shall consider the factors contained in section
23 6355(a)(4)(iii) (relating to transfer to criminal proceedings).

24 (b) Order.--If the court finds that the child has met the
25 burden under subsection (a), the court shall make findings of
26 fact, including specific references to the evidence, and
27 conclusions of law in support of the transfer order. If the
28 court does not make its finding within 20 days of the hearing on
29 the petition to transfer the case, the defendant's petition to
30 transfer the case shall be denied by operation of law.

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

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

15 (e) Transfer of convicted criminal cases.--]If in a criminal
16 proceeding, the child is found guilty of a crime classified as a
17 misdemeanor, [and the child and the attorney for the <--
18 Commonwealth agree to the transfer,] the case may be transferred <--
19 for disposition to the division or a judge of the court assigned
20 to conduct juvenile hearings.

21 § 6323. Informal adjustment and diversion.

22 (a) General rule.--

23 (1) Before a petition is filed, the probation officer or
24 other officer of the court designated by it, subject to its
25 direction, shall, in the case of a dependent child where the
26 jurisdiction of the court is premised upon the provisions of
27 paragraph (1), (2), (3), (4), (5) or (7) of the definition of
28 "dependent child" in section 6302 (relating to definitions)
29 and if otherwise appropriate, refer the child and his or her
30 parents to any public or private social agency available for

1 assisting in the matter. Upon referral, the agency shall
2 indicate its willingness to accept the child and shall report
3 back to the referring officer within three months concerning
4 the status of the referral.

5 (2) Similarly, the probation officer may in the case of
6 a delinquent child, or a dependent child where the
7 jurisdiction of the court is permitted under paragraph (6) of
8 the definition of "dependent child" in section 6302, refer
9 the child and his or her parents to an agency for assisting
10 in the matter.

11 (3) The agency may return the referral to the probation
12 officer or other officer for further informal adjustment or
13 other prepetition diversion program if it is in the best
14 interests of the child.

15 (b) Counsel and advice.--Such social agencies and the
16 probation officer or other officer of the court [may]:

17 (1) May give counsel and advice to the parties with a
18 view to an informal adjustment or other diversion program if
19 it appears:

20 [(1)] (i) that counsel and advice without an
21 adjudication would be in the best interest of the public
22 and the child;

23 [(2)] (ii) the child and [his] the child's parents,
24 guardian, or other custodian consent thereto with
25 knowledge that consent is not obligatory; and

26 [(3)] (iii) in the case of the probation officer or
27 other officer of the court, the admitted facts bring the
28 case within the jurisdiction of the court.

29 ~~(2) Shall give counsel and advice to the parties and~~ <--
30 offer the child an opportunity to complete an informal

1 adjustment or other diversion program if:

2 (i) the child has fewer than three prior informal
3 adjustments or prepetition diversions in the past three
4 years;

5 (ii) the child is referred for a misdemeanor or a
6 nonviolent felony;

7 (iii) the child and the child's parents, guardian or
8 other custodian provide informed consent, with knowledge
9 that consent is not obligatory; and

10 (iv) in the ~~case~~ OPINION of the probation officer or <--
11 other officer of the court, the admitted facts bring the
12 case within the jurisdiction of the court.

13 (b.1) Construction.--Nothing in subsection (b) shall be
14 construed to prevent a probation officer from offering an
15 informal adjustment or other diversion program when it is in the
16 best interest of the child and the public.

17 (c) Limitation on duration of counsel and advice.--The
18 giving of counsel and advice by the probation or other officer
19 of the court shall not extend beyond [six] four months from the
20 day commenced unless extended by an order of court for an
21 additional period not to exceed [three] two months.

22 (d) No detention authorized or admission of guilt.--Nothing
23 contained in this section shall authorize the detention of the
24 child[.] or require an admission of guilt AS A PREREQUISITE TO <--
25 ANY INFORMAL ADJUSTMENT OR DIVERSIONARY PROGRAM.

26 (d.1) No monetary obligations other than restitution
27 authorized.--Notwithstanding any other provision of law, an
28 informal adjustment or other diversion program under this
29 section shall not incorporate fines, fees, costs or other
30 monetary obligation, nor shall a child with an informal

1 adjustment be ordered to participate in a program or service
2 that requires the child or the child's family to pay a fee, cost
3 or other monetary obligation.

4 (e) Privileged statements.--An incriminating statement made
5 by a participant to the person giving counsel or advice and in
6 the discussions or conferences incident thereto shall not be
7 used against the declarant over objection in any criminal
8 proceeding or hearing under this chapter.

9 (f) Terms and conditions.--The terms and conditions of an
10 informal adjustment may include payment by the child of
11 reasonable amounts of [money as costs, fees or] restitution,
12 including a [supervision fee and] contribution of not more than
13 \$10 to a restitution fund established by the president judge of
14 the court of common pleas pursuant to section 6352(a)(5)
15 (relating to disposition of delinquent child).
16 § 6324. Taking into custody.

17 A child may be taken into custody:

18 (1) Pursuant to an order of the court under this
19 chapter. Prior to entering a protective custody order
20 removing a child from the home of the parent, guardian or
21 custodian, the court must determine that to allow the child
22 to remain in the home is contrary to the welfare of the
23 child.

24 (2) Pursuant to the laws of arrest.

25 (3) By a law enforcement officer or duly authorized
26 officer of the court if there are reasonable grounds to
27 believe that the child is suffering from illness or injury or
28 is in imminent danger from his or her surroundings, and that
29 his or her removal is necessary.

30 (4) By a law enforcement officer or duly authorized

1 officer of the court if there are reasonable grounds to
2 believe that the child has run away from his or her parents,
3 guardian, or other custodian.

4 (5) By a law enforcement officer or duly authorized
5 officer of the court if there are reasonable grounds to
6 believe that the child has violated conditions of [his] the
7 child's probation by posing a substantial risk of serious
8 bodily harm to a specific individual and there is no
9 alternative to reduce the risk of harm to others.

10 § 6325. Detention of child.

11 [A child taken into custody shall not be detained or placed
12 in shelter care prior to the hearing on the petition unless his
13 detention or care is required to protect the person or property
14 of others or of the child or because the child may abscond or be
15 removed from the jurisdiction of the court or because he has no
16 parent, guardian, or custodian or other person able to provide
17 supervision and care for him and return him to the court when
18 required, or an order for his detention or shelter care has been
19 made by the court pursuant to this chapter.]

20 (a) General rule.--The following shall apply to the
21 detention of a child:

22 (1) ~~The~~ ABSENT A DEPENDENCY COURT ORDER, THE following <--
23 children shall not be placed in detention prior to
24 DELINQUENCY adjudication: <--

25 (i) A child under 14 years of age.

26 (ii) A child on a written allegation of a
27 misdemeanor offense or nonviolent felony.

28 (iii) A child charged with a status offense,
29 probation violation or nonpayment of fines, fees or
30 restitution.

1 (iv) A child who is pregnant or is the parent to a
2 child born in the past year-, UNLESS THE COURT DETERMINES <--
3 THAT THE CHILD POSES A SPECIFIC, IMMEDIATE AND
4 SUBSTANTIAL RISK OF HARM TO OTHERS, AND THERE IS NO
5 ALTERNATIVE TO REDUCE THE RISK OF HARM TO OTHERS.

6 (v) A child who does not pose an articulable risk of <--
7 harm to another person. A SPECIFIC, IMMEDIATE AND <--
8 SUBSTANTIAL RISK OF HARM TO OTHERS AND THERE IS NO
9 ALTERNATIVE TO REDUCE THE RISK OF HARM TO OTHERS.

10 (2) No child shall be placed in detention solely due to:

11 (i) A lack of supervision alternatives or service
12 options.

13 (ii) A parent or guardian avoiding legal
14 responsibility or obligations.

15 (iii) A risk of self-harm.

16 (iv) Contempt of court.

17 (v) Violations of a valid court order.

18 (vi) Technical violations of probation or aftercare
19 unless there is probable cause that the child poses a
20 specific, immediate and substantial risk of harm to
21 another person.

22 (3) At a detention hearing, a child shall not be placed
23 or allowed to remain in detention unless:

24 (i) the child has scored as detention-eligible on a
25 validated detention risk and needs assessment which may
26 not be overridden to place a child in detention; or

27 (ii) there is clear and convincing evidence that
28 community-based alternatives to detention are
29 insufficient to:

30 (A) secure the presence of the child at the next

1 hearing as demonstrated by the record; or

2 (B) protect the safety of another person from
3 serious threat.

4 (b) Maximum length of time.--A child may not spend more than
5 20 cumulative days in detention prior to adjudication. The 20-
6 day maximum may only be extended at the request of the child
7 through counsel or upon a written finding by a court of a record
8 of a specific, immediate and substantial risk of harm to others.

9 (c) Construction.--Nothing in this section shall be
10 construed to require the detention of a child.

11 (d) Shelter care.--A child pending a dependency petition
12 ~~shall~~ MAY be placed in shelter care after:

<--

13 (1) A finding that a county agency had reasonably
14 engaged in family finding.

15 (2) A copy of the shelter care application had been
16 furnished to all parties.

17 (3) All parties have been notified of the right to
18 counsel.

19 (4) Custody of the child is warranted after
20 consideration of the following:

21 (i) Remaining in the home would be contrary to the
22 welfare and best interest of the child.

23 (ii) Reasonable efforts were made by the county
24 agency to prevent the child's placement in shelter care.

25 (iii) The child's placement is the least restrictive
26 placement that meets the needs of the child, supported by
27 reasons why there are no less restrictive alternatives
28 available.

29 (iv) The lack of effort was reasonable in the case
30 of an emergency placement where services were not

1 offered.

2 § 6326. Release or delivery to court.

3 * * *

4 (b) Detention in police lockup generally prohibited.--Unless
5 a child taken into custody is alleged to have committed a crime
6 [or summary offense or to be in violation of conditions of
7 probation or other supervision following an adjudication of
8 delinquency], the child may not be detained in a municipal
9 police lockup or cell or otherwise held securely within a law
10 enforcement facility or structure which houses an adult lockup.
11 A child shall be deemed to be held securely only when physically
12 detained or confined in a locked room or cell or when secured to
13 a cuffing rail or other stationary object within the facility.

14 (c) Detention in police lockup under certain
15 circumstances.--A child alleged to have committed a crime [or
16 summary offense or to be in violation of conditions of probation
17 or other supervision following an adjudication of delinquency]
18 may be held securely in a municipal police lockup or other
19 facility which houses an adult lockup only under the following
20 conditions:

21 (1) the secure holding shall only be for the purpose of
22 identification, investigation, processing, releasing or
23 transferring the child to a parent, guardian, other
24 custodian, or juvenile court or county children and youth
25 official, or to a shelter care or juvenile detention center;

26 (2) the secure holding shall be limited to the minimum
27 time necessary to complete the procedures listed in paragraph
28 (1), but in no case may such holding exceed six hours; and

29 (3) if so held, a child must be separated by sight and
30 sound from incarcerated adult offenders and must be under the

1 continuous visual supervision of law enforcement officials or
2 facility staff.

3 * * *

4 § 6327. Place of detention.

5 (a) General rule.--A child alleged to be delinquent may be
6 detained only in:

7 (1) A licensed foster home or a home approved by the
8 court.

9 (2) A facility operated by a licensed child welfare
10 agency or one approved by the court.

11 (3) A detention home, camp, center or other facility for
12 delinquent children which is under the direction or
13 supervision of the court or other public authority or private
14 agency, and is approved by the Department of [Public Welfare]
15 Human Services.

16 (4) Any other suitable place or facility, designated or
17 operated by the court and approved by the Department of
18 [Public Welfare] Human Services.

19 Under no circumstances shall a child be detained in any facility
20 with adults, or where the child is apt to be abused by other
21 children.

22 (b) Report by correctional officer of receipt of child.--The
23 official in charge of a jail or other facility for the detention
24 of adult offenders or persons charged with crime shall inform
25 the court immediately if a person who is or appears to be under
26 the age of 18 years is received at the facility and shall bring
27 [him] the person before the court upon request or deliver [him]
28 the person to a detention or shelter care facility designated by
29 the court.

30 (c) Detention in jail prohibited.--[It] EXCEPT AS PROVIDED <--

1 UNDER SUBSECTIONS (C.1) AND (D), IT is unlawful for any person
2 in charge of or employed by a jail knowingly to receive for
3 detention or to detain in the jail any person whom he or she has
4 or should have reason to believe is a child [unless, in a
5 criminal proceeding, the child has been charged with or has been
6 found guilty of an act set forth in paragraph (2) (i), (ii),
7 (iii) or (v) of the definition of "delinquent act" in section
8 6302 (relating to definitions)].

9 (c.1) Detention of child.--

10 (1) A child who is subject to criminal proceedings
11 having been charged with an act [set forth under paragraph
12 (2) (i), (ii) or (iii) of] under the definition of "delinquent
13 act" in section 6302, who has not been released on bail and
14 who may seek or is seeking transfer to juvenile proceedings
15 under section 6322 (relating to transfer from criminal
16 proceedings) [may] shall be detained in a secure detention
17 facility approved by the Department of [Public Welfare] Human
18 Services for the detention of alleged and adjudicated
19 delinquent children if the attorney for the Commonwealth has
20 consented to and the court has ordered the detention.

21 (2) Secure detention ordered under this subsection shall
22 not affect a child's eligibility for or ability to post bail.

23 (3) For a child held in secure detention under this
24 subsection, the court [shall] may order the immediate
25 transfer of the child to the county jail if [any of the
26 following apply:

27 (i) The court determines that the child is no longer
28 seeking transfer under section 6322.

29 (ii) The court denies the motion filed under section
30 6322.

1 (iii) The] the child attains 18 years of age. This
2 [subparagraph] paragraph does not apply if:

3 [(A)] (i) the court has granted the motion filed
4 under section 6322; or

5 [(B)] (ii) the child is otherwise under order of
6 commitment to the secure detention facility pursuant
7 to the jurisdiction of the court in a delinquency
8 matter.

9 (d) Transfer of child subject to criminal proceedings.--If a
10 case is transferred for criminal [prosecution] proceedings and
11 the child is 18 years of age or older, the child [may] shall be
12 transferred to the appropriate officer or detention facility in
13 accordance with the law governing the detention of persons
14 charged with crime. [The court in making the transfer may order
15 continued detention as a juvenile pending trial if the child is
16 unable to provide bail.] Secure detention ordered under this
17 subsection shall not affect a child's eligibility for or ability
18 to post bail.

19 (e) Detention of dependent child.--A child alleged to be
20 dependent may be detained or placed only in a Department of
21 [Public Welfare] Human Services approved shelter care facility
22 as stated in subsection (a) (1), (2) and (4), and shall not be
23 detained in a jail or other facility intended or used for the
24 detention of adults charged with criminal offenses, but may be
25 [detained] housed in the same shelter care facilities with
26 alleged or adjudicated delinquent children.

27 (f) Development of approved shelter care programs.--The
28 Department of [Public Welfare] Human Services shall develop or
29 assist in the development in each county of this Commonwealth
30 approved programs for the provision of shelter care for children

1 needing these services who have been taken into custody under
2 section 6324 (relating to taking into custody) and for children
3 referred to or under the jurisdiction of the court.

4 Section 4. Title 42 is amended by adding a section to read:
5 § 6329. Confinement in juvenile treatment facilities.

6 (a) Confinement.--

7 (1) A staff member from the Bureau of Juvenile Justice
8 Services within the Department of Human Services, the Bureau
9 of Human Services Licensing within the Department of Human
10 Services, a facility operated primarily for the detention of
11 children who have been adjudicated delinquent or any other
12 secure facility may not subject a child to room confinement
13 for the purposes of discipline, punishment, retaliation,
14 coercion, convenience or any other reason as a result of:

15 (i) An adjudication of delinquency or disposition of
16 the child.

17 (ii) Detention of the child prior to the
18 adjudication of delinquency or disposition of the child.

19 (2) Paragraph (1) shall not apply if room confinement is
20 used as a temporary response to a child's behavior which
21 poses a serious and immediate risk of physical harm to the
22 child or another individual.

23 (b) Techniques.--Before a child is placed in room
24 confinement under this section, a staff member shall attempt to
25 use less restrictive techniques, including:

26 (1) Conversing with the child to de-escalate the serious
27 and immediate risk of physical harm to the child or another
28 individual.

29 (2) Permitting a qualified mental health professional to
30 converse with the child to de-escalate the serious and

1 immediate risk of physical harm to the child or another
2 individual.

3 (c) Explanation.--If a less restrictive technique under
4 subsection (b) fails to de-escalate the serious and immediate
5 risk of physical harm to the child or another individual, prior
6 to placing the child in room confinement, a staff member shall
7 inform the child of the following:

8 (1) The reasons why the child will be placed in room
9 confinement.

10 (2) That the child will be released from room
11 confinement immediately when the child's behavior conforms to
12 subsection (d) (1) or not later than after the expiration of
13 the time period specified under subsection (d) (2), whichever
14 occurs first.

15 (d) Confinement period.--If a child is placed in room
16 confinement, the child shall be released either:

17 (1) upon a staff member determining that the child does
18 not pose a serious and immediate risk of physical harm to the
19 child or another individual; or

20 (2) if the child does not control the child's behavior,
21 not later than:

22 (i) three hours after being placed in room
23 confinement in the case of a child who poses a serious
24 and immediate risk of physical harm to others; or

25 (ii) thirty minutes after being placed in room
26 confinement in the case of a child who poses a serious
27 and immediate risk of physical harm to self.

28 (e) Transfers.--If the time period under subsection (d) (2)
29 has expired and the child continues to pose a serious and
30 immediate risk of physical harm to the child or another

1 individual, the child shall be timely transferred to another
2 juvenile facility or internal location where services can be
3 provided to the child without relying on room confinement.

4 (f) Consecutive periods.--A child may not be subject to
5 consecutive periods of room confinement.

6 (g) Notice to attorney.--If a child is placed in room
7 confinement, the child's attorney shall be given notice of the
8 room confinement by the next business day.

9 (h) Definitions.--As used in this section, the term "room
10 confinement" means the involuntary placement of a child alone in
11 a cell, room or other area.

12 Section 5. Section 6336.1(b)(3) introductory paragraph and
13 (xii) of Title 42 are amended to read:

14 § 6336.1. Notice and hearing.

15 * * *

16 (b) Permanency hearings.--

17 * * *

18 (3) The Department of [Public Welfare] Human Services
19 shall develop a form for use by a foster parent or parents,
20 preadoptive parent or relative providing care for the child,
21 including, but not limited to, the following information:

22 * * *

23 (xii) Description of educational status, grades,
24 existing Individualized Education Plan or 504 plan,
25 attendance and behavior of child in school or child's
26 experience in a child day-care setting or early childhood
27 development program.

28 * * *

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

30 § 6338.1. Questioning and interrogating a child.

1 (a) Consultation with counsel.--A child shall be provided
2 secure and private access to in-person, telephone or video
3 conference meetings with an attorney for consultation before the
4 child waives a constitutional right if a law enforcement
5 officer:

6 (1) questions a child during a custodial interrogation;

7 (2) detains a child based on probable cause of
8 involvement in criminal activity; or

9 (3) requests that the child provide consent to an
10 evidentiary search of the child or the child's property,
11 dwellings or vehicle under the child's control.

12 (b) Prohibition.--A consultation required under subsection
13 (a) may not be waived by the child.

14 (c) Statements made by child.--Statements made by a child to
15 a law enforcement officer in a manner described under subsection
16 (a) are not admissible in a juvenile offender or adult criminal
17 court proceeding, unless:

18 (1) the child has been provided with access to an
19 attorney for consultation and the child provides an express
20 waiver knowingly, intelligently and voluntarily after the
21 child has been fully informed of the rights being waived;

22 (2) the statement is for impeachment purposes; or

23 (3) the statement was made spontaneously.

24 (d) Exception.--Under the following circumstances, a law
25 enforcement officer may question a child without the
26 requirements of this section. The questioning shall be truthful
27 and without deception ~~or use of patently false assertions~~ if: <--

28 (1) the law enforcement officer believes the child is a
29 victim of trafficking and information obtained from the child
30 under this paragraph may not be used in the prosecution of

1 the child;

2 (2) all of the following are thought to be true:

3 (i) the law enforcement officer believes that the
4 information sought is necessary to protect an
5 individual's life from an imminent threat;

6 (ii) a delay to allow legal consultation would
7 impede the protection of an individual's life from an
8 imminent threat; and

9 (iii) the questioning by the law enforcement officer
10 is limited to matters reasonably expected to obtain
11 information necessary to protect an individual's life
12 from an imminent threat; or

13 (3) the law enforcement officer needs to establish a
14 child's or suspected child's name, address, age, guardian
15 information or health-related concerns and the questions are
16 limited in scope to reasonably obtain only that information.

17 (e) Instructions.--

18 (1) If the requirements of subsection (a) are satisfied
19 or an exception under subsection (d) applies, a law
20 enforcement officer shall SLOWLY AND CLEARLY read the <--
21 simplified instructions below relating to a child's
22 constitutional rights:

23 You have the right to remain silent, which means it
24 is okay if you do not want to talk with me. If you
25 talk to me, I can tell people what you said and it
26 could be used against you and it might get you into
27 trouble. You have the right to get help from a
28 lawyer. If your family cannot afford a lawyer, the
29 court will give you one for free who will work just
30 for you. If you start to answer my questions, you can

1 change your mind and stop at any time and I will not
2 ask you any more questions.

3 (2) Once the simplified instructions have been read, the
4 law enforcement officer questioning the child shall ask the
5 following questions of the child:

6 (i) Do you understand? If the child answers yes, the
7 law enforcement officer shall ask the question under
8 subparagraph (ii).

9 (ii) Do you want help from a lawyer before we talk?
10 If the child answers no, the law enforcement officer
11 shall ask the question under subparagraph (iii).

12 (iii) Do you want to answer my questions? If the
13 child answers yes, the law enforcement officer may
14 proceed with questioning.

15 Section 7. Section 6340(c), (c.1) and (d) of Title 42 are
16 ~~amended and the section is amended by adding a subsection to~~ <--
17 read:

18 § 6340. Consent decree.

19 * * *

20 (c) Duration of decree.--A consent decree [shall] may remain
21 in force for [six] up to four months [unless] and the child [is]
22 may be discharged sooner by probation services with the approval
23 of the court. ~~Any evidence based programs, community service or~~ <--
24 ~~other conditions of a consent decree shall be designed to be~~
25 ~~completed within the consent decree time frame.~~ Upon application
26 of the probation services or other agency supervising the child,
27 made before expiration of the [six-month period] consent decree,
28 a consent decree may be extended by the court for an additional
29 [six months.] three months to allow for the completion of the <--
30 ~~evidence based program assessed as necessary for that child or~~

1 ~~to complete community service.~~ FURTHER PROGRESS ON MEETING THE <--
2 CONDITIONS OF A CONSENT DECREE. No extensions shall be granted
3 solely for nonpayment of financial obligations unless the
4 Commonwealth proves that the child was able to pay and failed to
5 do so.

6 (c.1) Terms and conditions.--Consistent with the protection
7 of the public interest, the terms and conditions of a consent
8 decree may include payment by the child of reasonable amounts of
9 money as [~~costs, fees or~~] restitution, including a [~~supervision~~
10 ~~fee and~~] contribution not to exceed \$10 to a restitution fund
11 established by the president judge of the court of common pleas
12 pursuant to section 6352(a) (5) (relating to disposition of
13 delinquent child), AND A CONTRIBUTION NOT TO EXCEED \$25 TO THE <--
14 CRIME VICTIMS SERVICES AND COMPENSATION FUND and shall, as
15 appropriate to the circumstances of each case, include
16 provisions which provide balanced attention to the protection of
17 the community, accountability for offenses committed and the
18 development of competencies to enable the child to become a
19 responsible and productive member of the community. AN ADMISSION <--
20 OF GUILT MAY NOT BE REQUIRED AS A PREREQUISITE FOR A CONSENT
21 DECREE AND NO OTHER MONETARY OBLIGATION SHALL BE AUTHORIZED.

22 ~~(c.2) No monetary obligations other than restitution~~ <--
23 ~~authorized. Notwithstanding any other provision of law, the~~
24 ~~court, juvenile probation or other officer of the court may not~~
25 ~~incorporate fines, fees, costs or other monetary obligations~~
26 ~~other than restitution in a consent decree.~~

27 (d) Reinstatement of petition.--If prior to discharge by the
28 probation services or expiration of the consent decree, a new
29 petition is filed against the child, or the child otherwise
30 fails to fulfill express nonfinancial terms and conditions of

1 the decree, the petition under which the child was continued
2 under supervision may, in the discretion of the district
3 attorney following consultation with the probation services, be
4 reinstated and the child held accountable as if the consent
5 decree had never been entered.

6 * * *

7 Section 8. Title 42 is amended by adding a section to read:
8 § 6343. School stability for certain students.

9 ~~(a) Before adjudication. Before a court rules that a child <--~~
10 ~~is delinquent or a child has been adjudged to have committed a~~
11 ~~crime under an adult criminal proceeding that is likely to~~
12 ~~affect the child's school placement, the court shall consider~~
13 ~~the child's educational needs and stability. The court shall~~
14 ~~determine on the record the school placement that is in the~~
15 ~~child's best interest and protective of the community,~~
16 ~~prioritizing in the following order:~~

17 ~~(1) The child remaining in the child's school of origin~~
18 ~~in the community.~~

19 ~~(2) The child participating virtually in the child's~~
20 ~~school of origin.~~

21 ~~(3) The child attending the least restrictive school~~
22 ~~setting that is in the child's best interest and protective~~
23 ~~of the community.~~

24 ~~(b) Child's best interest. In determining the best interest~~
25 ~~of the child under subsection (a), the court shall consider how~~
26 ~~the school placement will address the child's needs, including a~~
27 ~~504 plan or an individualized education plan.~~

28 ~~(c) Transition and graduation plan. The following shall~~
29 ~~occur at least 30 days prior to the release of a delinquent~~
30 ~~child ordered to an out of home placement or adjudged to have~~

1 ~~committed a crime under an adult criminal proceeding:~~

2 ~~(1) The child, the child's parent or guardian or~~
3 ~~educational decision maker, the child's attorney, a~~
4 ~~representative of the child's school of origin and a~~
5 ~~representative of probation shall participate in a best~~
6 ~~interest determination meeting to discuss school placement~~
7 ~~options and make a recommendation to the court that~~
8 ~~prioritizes education in the least restrictive setting with~~
9 ~~appropriate support. Additional interested parties to the~~
10 ~~child's case, including, if applicable, a victim or victim's~~
11 ~~representative and any other advocates for the child, may~~
12 ~~also provide input or participate in the meeting.~~

13 ~~(2) The child's school of origin shall develop a~~
14 ~~transition and graduation plan for the child, subject to the~~
15 ~~requirements of section 1331.1 of the act of March 10, 1949~~
16 ~~(P.L.30, No.14), known as the Public School Code of 1949, and~~
17 ~~any individualized education plan or 504 plan. The transition~~
18 ~~and graduation plan shall include academic goals and~~
19 ~~information on credit transfers, identify school and~~
20 ~~community services appropriate to the needs of the child and~~
21 ~~establish any other remaining graduation requirements.~~

22 ~~(3) The court shall hold a hearing to determine the~~
23 ~~appropriate educational placement for the child upon the~~
24 ~~student's release from out of home placement, subject to the~~
25 ~~requirements under subsection (d).~~

26 ~~(d) Return to school of origin. A delinquent child~~
27 ~~returning from placement or who has been adjudged to have~~
28 ~~committed a crime under an adult criminal proceeding shall be~~
29 ~~returned directly to the child's school of origin unless the~~
30 ~~court finds, by clear and convincing evidence and enters those~~

~~1 findings in the record orally and in writing, that returning to
2 the school of origin is not in the best interest of the child or
3 protective of the community. If the court finds that it is not
4 in the best interest of the child or protective of the community
5 for the child to return to the child's school of origin, the
6 court shall order the child to be enrolled in the least
7 restrictive school setting that best meets the child's needs.
8 The child shall be permitted to attend a public school if the
9 child so chooses, unless the court finds that a public school is
10 not in the best interest of the child or protective of the
11 community. Factors guiding a determination under this subsection
12 shall include:~~

~~13 (1) The recommendation resulting from the best interest
14 determination meeting under subsection (c)(1).~~

~~15 (2) The transition and graduation plans developed under
16 subsection (c)(2).~~

~~17 (3) The appropriateness of the current educational
18 setting considering the child's needs, including any needs
19 identified as part of a 504 plan or an individualized
20 education plan.~~

~~21 (4) The proximity of the school of origin relative to
22 the location of the child's residence after returning from
23 placement.~~

~~24 (5) The protection of the community.~~

~~25 (e) School disciplinary action. A child may not be subject
26 to any school disciplinary action upon returning to the child's
27 school of origin for conduct that occurred prior to the child
28 entering placement.~~

~~29 (A) EDUCATIONAL STABILITY.--AT EVERY COURT HEARING IN A
30 DELINQUENCY MATTER, INCLUDING AT ANY DETENTION HEARING, THE~~

<--

1 COURT SHALL CONSIDER THE CHILD'S EDUCATIONAL STABILITY. IF AT
2 ANY POINT IN A DELINQUENCY PROCEEDING THE COURT ORDERS A CHILD
3 REMOVED FROM THE CHILD'S HOME, THE ORDER SHALL ADDRESS THE
4 EDUCATIONAL STABILITY OF THE CHILD. THE COURT SHALL DETERMINE ON
5 THE RECORD THE SCHOOL PLACEMENT THAT IS IN THE CHILD'S BEST
6 INTEREST AND PROTECTIVE OF THE COMMUNITY DURING ANY PERIOD OF
7 OUT-OF-HOME PLACEMENT, PRIORITIZING THE FOLLOWING:

8 (1) THE CHILD REMAINING IN THE CHILD'S SCHOOL OF ORIGIN.

9 (2) THE CHILD VIRTUALLY ATTENDING THE CHILD'S SCHOOL OF
10 ORIGIN IF IN-PERSON ATTENDANCE IS NOT FEASIBLE DUE TO
11 DISTANCE OR OTHERWISE NOT IN THE CHILD'S BEST INTEREST.

12 (3) THE CHILD ATTENDING THE LEAST-RESTRICTIVE SCHOOL
13 SETTING THAT IS IN THE CHILD'S BEST INTEREST AND PROTECTIVE
14 OF THE COMMUNITY.

15 (B) CHILD'S BEST INTEREST.--IN DETERMINING THE BEST INTEREST
16 OF THE CHILD UNDER SUBSECTION (A), THE COURT SHALL CONSIDER ON
17 THE RECORD HOW A SCHOOL PLACEMENT WILL ADDRESS THE CHILD'S
18 LEARNING NEEDS, INCLUDING THE NEEDS DOCUMENTED IN A 504 PLAN OR
19 AN INDIVIDUALIZED EDUCATION PLAN.

20 (C) EDUCATIONAL STABILITY TEAM.--AN EDUCATIONAL STABILITY
21 TEAM SHALL BE CREATED FOR EVERY CHILD WHO DOES NOT ALREADY HAVE
22 AN EDUCATIONAL STABILITY TEAM AND WHO, AT A DISPOSITIONAL
23 HEARING, IS ORDERED REMOVED FROM THE CHILD'S HOME AND WILL
24 LIKELY REMAIN IN THE OUT-OF-HOME PLACEMENT FOR MORE THAN 20
25 CALENDAR DAYS DURING A SCHOOL YEAR. AN EDUCATIONAL STABILITY
26 TEAM MAY BE CREATED BY THE COURT AT ANY TIME. THE FOLLOWING
27 SHALL APPLY:

28 (1) THE EDUCATIONAL STABILITY TEAM SHALL INCLUDE, AT A
29 MINIMUM, THE CHILD, THE CHILD'S PARENT OR GUARDIAN OR
30 EDUCATION DECISION MAKER, THE CHILD'S ATTORNEY, A

1 REPRESENTATIVE OF THE CHILD'S SCHOOL OF ORIGIN, THE POINT OF
2 CONTACT FROM THE CHILD'S SCHOOL OF ORIGIN UNDER SECTION
3 1331.1 OF THE ACT OF MARCH 10, 1949 (P.L.30, NO.14), KNOWN AS
4 THE PUBLIC SCHOOL CODE OF 1949, AND ANY OTHER PARTICIPANT
5 DEEMED NECESSARY BY THE COURT.

6 (2) THE COURT MAY CONVENE THE EDUCATIONAL STABILITY TEAM
7 IN ANY MANNER AND AT ANY TIME, BUT AN EDUCATION TRANSITION
8 PLAN MUST BE SUBMITTED TO THE COURT BY THE SCHOOL OF ORIGIN
9 NO LATER THAN 10 BUSINESS DAYS FROM THE ORDER TO CONVENE THE
10 EDUCATIONAL STABILITY TEAM, WHICH AT A MINIMUM SHALL INCLUDE
11 EDUCATION RECOMMENDATIONS, LEARNING SUPPORT, INSTRUCTION
12 GUIDES, DISABILITY OR MENTAL HEALTH ACCOMMODATIONS AND
13 EDUCATION RECORDS. A MEETING OF THE EDUCATION STABILITY TEAM
14 SHALL OCCUR PRIOR TO THE SUBMISSION OF THE TRANSITION PLAN
15 AND NOTE TEAM ATTENDANCE, NOTIFICATION EFFORTS AND ANY
16 ADDITIONAL FEEDBACK PROVIDED. FOR ANY HIGH SCHOOL STUDENT IN
17 THEIR FINAL YEAR OF SCHOOL, ADDITIONAL INFORMATION SHALL BE
18 PROVIDED REGARDING GRADUATION REQUIREMENTS TO INCLUDE STATE
19 TESTING AND COMMUNITY SERVICE GOALS.

20 (D) PLACEMENT AFTER RELEASE.--THE COURT SHALL HOLD A HEARING
21 DURING WHICH THE COURT SHALL ELICIT TESTIMONY REGARDING THE
22 APPROPRIATE EDUCATIONAL PLACEMENT FOR THE CHILD UPON THE
23 STUDENT'S RELEASE FROM OUT-OF-HOME PLACEMENT, SUBJECT TO THE
24 REQUIREMENTS UNDER SUBSECTION (F).

25 (E) INDIVIDUALIZED EDUCATION PROGRAM.--IF A CHILD'S
26 EDUCATION WHILE IN AN OUT-OF-HOME DELINQUENCY PLACEMENT IS
27 PROVIDED BY AN ON-GROUNDS SCHOOL, AND THE STUDENT ENTERED THE
28 PLACEMENT WITH AN INDIVIDUALIZED EDUCATION PROGRAM, THE SCHOOL
29 MUST NOTIFY THE COURT, PROBATION AND THE CHILD'S ATTORNEY IN
30 WRITING, IN ADDITION TO THE PARENT, GUARDIAN OR OTHER EDUCATION

1 DECISION MAKER, OF ANY PROPOSED MATERIAL CHANGE TO THE CHILD'S
2 INDIVIDUALIZED EDUCATION PROGRAM OTHER THAN TO THE LOCATION OF
3 THE STUDENT'S PROGRAM. THE FOLLOWING SHALL APPLY:

4 (1) MATERIAL CHANGES INCLUDE CHANGES TO RELATED
5 SERVICES, EXTENDED SCHOOL YEAR ELIGIBILITY, POSITIVE BEHAVIOR
6 SUPPORT PLANS OR TO THE AMOUNT OR TYPE OF SPECIAL EDUCATION
7 SUPPORTS TO BE PROVIDED.

8 (2) THE NOTICE SHALL INCLUDE OR CAN CONSIST OF A COPY OF
9 THE NOTICE OF RECOMMENDED EDUCATIONAL PLACEMENT/PRIOR WRITTEN
10 NOTICE AND DOCUMENTATION THAT IT WAS PROVIDED TO THE PARENT,
11 GUARDIAN OR OTHER EDUCATIONAL DECISION MAKER.

12 (3) NO FEDERAL OR STATE EDUCATIONAL RIGHTS ARE WAIVED OR
13 LIMITED DUE TO OUT-OF-HOME PLACEMENT.

14 (F) RETURN TO SCHOOL OF ORIGIN.--A DELINQUENT CHILD
15 RETURNING FROM PLACEMENT OR WHO HAS BEEN ADJUDGED TO HAVE
16 COMMITTED A CRIME UNDER AN ADULT CRIMINAL PROCEEDING SHALL HAVE
17 THE RIGHT TO BE RETURNED DIRECTLY TO THE CHILD'S SCHOOL OF
18 ORIGIN, SUBJECT TO OTHER STATUTORY LIMITATIONS.

19 (G) SCHOOL DISCIPLINARY ACTION.--A CHILD MAY NOT BE SUBJECT
20 TO ANY SCHOOL DISCIPLINARY ACTION UPON RETURNING TO THE CHILD'S
21 SCHOOL OF ORIGIN FOR CONDUCT THAT OCCURRED PRIOR TO THE CHILD
22 ENTERING PLACEMENT.

23 Section 9. Sections 6352, 6353(a) and 6355(a) (1) and (4)
24 (iii), (e) and (g) of Title 42 are amended to read:

25 § 6352. Disposition of delinquent child.

26 (a) General rule.--If the child is found to be a delinquent
27 child the court may make any of the following orders of
28 disposition determined to be consistent with the protection of
29 the public interest and best suited to the child's treatment,
30 supervision, rehabilitation and welfare, which disposition

1 shall, as appropriate to the individual circumstances of the
2 child's case, provide balanced attention to the protection of
3 the community, the imposition of accountability for offenses
4 committed and the development of competencies to enable the
5 child to become a responsible and productive member of the
6 community:

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

9 (2) Placing the child on probation under supervision of
10 the probation officer of the court or the court of another
11 state as provided in section 6363 (relating to ordering
12 foreign supervision), under conditions and limitations the
13 court prescribes[.] in accordance with the following:

14 (i) For misdemeanors, a term of probation may not
15 exceed ~~four~~ 12 months per petition or course of conduct. <--
16 A term of probation may be extended up to an additional
17 ~~four~~ THREE months in order to complete an evidence-based <--
18 program or court-approved program.

19 (ii) For felonies, a term of probation may not
20 exceed ~~eight~~ 18 months per petition or course of conduct. <--
21 A term of probation may be extended up to an additional
22 ~~four~~ THREE months to complete an evidence-based program <--
23 or court-approved program.

24 (iii) Upon completion of the original probation term
25 or extension, the court shall close probation. The court
26 may refer the child to dependency if warranted.

27 (3) [**Committing**] In accordance with subsection (a.1),
28 committing the child to an institution, youth development
29 center, camp, or other facility for delinquent children
30 operated under the direction or supervision of the court or

1 other public authority and approved by the Department of
2 [Public Welfare] Human Services.

3 (4) [If] In accordance with subsection (a.1), if the
4 child is [12] 13 years of age or older, committing the child
5 to an institution operated by the Department of [Public
6 Welfare] Human Services.

7 (5) Ordering payment by the child of reasonable amounts
8 of [money as fines, costs, fees or] restitution as deemed
9 appropriate as part of the plan of rehabilitation
10 [considering the nature of the acts committed and the earning
11 capacity of the child] and subject to the requirements under
12 subsection (d), including a contribution to a restitution
13 fund not to exceed \$10 AND A CONTRIBUTION TO THE CRIME <--

14 VICTIMS SERVICES AND COMPENSATION FUND NOT TO EXCEED \$25. The
15 president judge of the court of common pleas shall establish
16 a restitution fund for the deposit of all contributions to
17 the restitution fund which are received or collected. The
18 president judge of the court of common pleas shall promulgate
19 written guidelines for the administration of the fund.

20 Disbursements from the fund shall be made, subject to the
21 written guidelines and the limitations of this chapter, at
22 the discretion of the president judge and used to reimburse
23 crime victims for financial losses resulting from delinquent
24 acts. For an order made under this subsection, the court
25 [shall] may retain jurisdiction until there has been full
26 compliance with the order or until the delinquent child
27 attains 21 years of age. Any restitution order which remains
28 unpaid at the time the child attains 21 years of age [shall]
29 may continue to be collectible under section 9728 (relating
30 to collection of restitution, reparation, fees, costs, fines

1 and penalties). No restitution may be forgiven without
2 providing a victim with timely notice of a hearing on the
3 forgiveness of restitution and without the court issuing
4 findings on the record.

5 (6) An order of the terms of probation may include [an
6 appropriate fine considering the nature of the act committed
7 or] restitution not in excess of actual damages caused by the
8 child and subject to the requirements under subsection (d),
9 which shall be paid from the earnings of the child received
10 through participation in a constructive program of service or
11 education acceptable to the victim and the court whereby,
12 during the course of such service, the child shall be paid
13 not less than the minimum wage of this Commonwealth. In
14 ordering such service, the court shall take into
15 consideration the age, physical and mental capacity of the
16 child and the service shall be designed to impress upon the
17 child a sense of responsibility for the injuries caused to
18 the person or property of another. The order of the court
19 shall be limited in duration consistent with the limitations
20 in section 6353 (relating to limitation on and change in
21 place of commitment) and in the former act of May 13, 1915
22 (P.L.286, No.177), known as the Child Labor Law. The court
23 order shall specify the nature of the work, the number of
24 hours to be spent performing the assigned tasks, and shall
25 further specify that as part of a plan of treatment and
26 rehabilitation that up to 75% of the earnings of the child be
27 used for restitution in order to provide positive
28 reinforcement for the work performed.

29 In selecting from the alternatives set forth in this section,
30 the court shall follow the general principle that the

1 disposition imposed should provide the means through which the
2 provisions of this chapter are executed and enforced consistent
3 with section 6301(b) (relating to [purposes] short title and
4 purposes of chapter) and when confinement is necessary, the
5 court shall impose the minimum amount of confinement that is
6 consistent with the protection of the public and the
7 rehabilitation needs of the child.

8 (a.1) Removal from home.--

9 (1) A child may not be removed from the child's home as
10 disposition for an adjudication of delinquency under
11 subsection (a), unless the court determines that at least one
12 of the following applies:

13 (i) The child poses a significant risk to the safety
14 of a victim. In determining whether the child poses a
15 significant risk to the safety of a victim, the court
16 shall consider:

17 (A) The community and family supports for the
18 child.

19 (B) All possible community-based services and
20 supports that would lessen the risk of physical harm.

21 (C) Mitigating evidence on behalf of the child.

22 (D) Whether the child used a deadly weapon in
23 the commission of the offense.

24 (E) Whether the child intentionally inflicted
25 serious bodily injury upon another person in the
26 commission of the offense.

27 (F) The nature of the offense.

28 (ii) By assessment, the child is medically in need
29 of residential drug and alcohol treatment or mental
30 health services.

1 (iii) By assessment, residential treatment is the
2 most appropriate and least restrictive setting for a
3 child adjudicated delinquent of a sexual offense.

4 (2) In cases where the court has determined, after
5 consideration, that removal and placement of the child is
6 found to be appropriate and has assigned the least
7 restrictive dispositional option available, the court shall
8 provide the court's reasons for removal and placement of the
9 child on the record and in writing.

10 (a.2) Placement out of home prohibited.--The court may not
11 remove a child from the child's home:

12 (1) For a technical violation of the terms and
13 conditions of an order of probation, which shall not include:

14 (i) The commission of a new offense in which the
15 child is adjudicated delinquent or convicted in a court
16 of record.

17 (ii) The violation of a no-contact order which
18 places the safety of the community or a victim at risk.

19 (iii) Repeated violations of probation for an
20 offense involving the threat to or use or possession of a
21 deadly weapon or the intentional infliction of serious
22 bodily injury to a victim.

23 (2) For lack of outpatient treatment options in the
24 community absent a recommendation to do so through an
25 independent assessment which determines drug, alcohol or
26 mental health services are medically necessary.

27 (3) For concerns related to the welfare, safety, neglect
28 or health of the child. Concerns under this paragraph shall
29 be referred to the appropriate child welfare agency.

30 (a.3) Placement out of State.--A child removed from the

1 child's home under subsection (a.2) may not be placed out of
2 State unless medically needed services recommended by assessment
3 are not available in State.

4 (a.4) Placement not to be extended.--

5 (1) If the court imposes a disposition of out-of-home
6 placement in response to an adjudication of delinquency, the
7 period of commitment shall not exceed ~~four~~ SIX months. The <--
8 court may extend the period of placement for an additional
9 three months if the court finds:

10 (i) An extension is necessary to complete an
11 evidence-based program or a program rated by a
12 standardized tool as effective for reducing recidivism,
13 consistent with the child's assessed criminogenic needs
14 that is already underway, and that the program cannot be
15 completed in the community.

16 (ii) A child adjudicated for murder or a sex offense
17 designated as a felony of the first degree if committed
18 by an adult poses a threat to the safety of the community
19 or a victim in consideration of subsection (a.1)(1)(i),
20 (ii) and (iii).

21 (2) In cases where the court has determined that it is
22 necessary and appropriate to extend placement beyond four
23 months, the court shall contemporaneously state the reasons
24 for the continued placement of the child on the record and in
25 writing.

26 (3) The court shall not extend a period of commitment in
27 out-of-home placement, nor remove a child from placement, due
28 to behavior that is a manifestation of the child's
29 disability, unless agreed to by the child or upon court
30 finding that the placement is not able to provide necessary

1 accommodations and support for the child's disability. Under
2 no circumstances shall a manifestation of disability serve as
3 grounds for a probation violation, technical violation or a
4 finding of failure to adjust. The following apply:

5 (i) In cases where a child with a disability's
6 behavior in an out-of-home placement forms a part of an
7 allegation of a probation violation, technical violation
8 or a failure to adjust, the court shall conduct a
9 manifest determination review with the child and the
10 child's parents or guardians, to determine whether the
11 behavior in question reflected a manifestation of the
12 child's disability. At a minimum, the court shall review:

13 (A) Current or most recent Individualized
14 Education Plan, 504 plan, functional behavioral
15 assessment or positive behavioral support plan.

16 (B) Teacher observations, therapist
17 recommendations and most recent assessments.

18 (C) Related information as to whether the
19 conduct in question was caused by, or had a direct
20 and substantial relationship to, the child's
21 disability.

22 (D) Related information as to whether the
23 conduct in question was the direct result of the
24 failure to implement a current Individualized
25 Education Plan, 504 plan or any recommended
26 therapeutic support or reasonable extension of
27 therapeutic support.

28 (ii) If the court determines that the conduct was a
29 manifestation of the child's disability:

30 (A) the court shall:

1 (I) return the child to the placement with
2 proper supports;

3 (II) transfer the child without support to a
4 more appropriate placement if the child agrees;

5 or

6 (III) return the child to the child's home;
7 and

8 (B) the court shall either:

9 (I) ~~conduct~~ ORDER a functional behavioral <--
10 assessment, unless a functional behavioral
11 assessment had occurred before the behavior
12 inquisition and a behavioral intervention plan
13 for the child was implemented; or

14 (II) review the behavioral intervention plan
15 and modify it, as necessary, to address the
16 behavior.

17 (4) Nothing in this subsection is intended to alter or
18 limit related rights under Federal or State law or to limit
19 consideration of matters in any aspect of the dependency or
20 delinquency systems.

21 (b) Limitation on place of commitment.--A child shall not be
22 committed or transferred to a penal institution or other
23 facility used primarily for the execution of sentences of adults
24 convicted of a crime.

25 (c) Required statement of reasons.--Prior to entering an
26 order of disposition under subsection (a), the court shall state
27 its disposition and the reasons for its disposition on the
28 record in open court, together with the goals, terms and
29 conditions of that disposition. If the child is to be committed
30 to out-of-home placement, the court shall also state the name of

1 the specific facility or type of facility to which the child
2 will be committed and its findings and conclusions of law that
3 formed the basis of its decision consistent with subsection (a)
4 and section 6301, including the reasons why commitment to that
5 facility or type of facility was determined to be the least
6 restrictive placement that is consistent with the protection of
7 the public and best suited to the child's treatment,
8 supervision, rehabilitation and welfare. The following apply:

9 (1) Prior to entering an order committing a child with
10 an Individualized Education Plan or 504 plan to an out-of-
11 home placement, the court shall make an independent
12 determination on the record if the child will be provided a
13 free appropriate public education while in the placement,
14 including receiving services prescribed in the child's
15 current Individualized Education Plan or 504 plan.

16 (2) If a child's Individualized Education Plan or 504
17 plan cannot be implemented, followed or measured to provide
18 a free and appropriate public education as required under 20
19 U.S.C. Ch. 33 (relating to education of individuals with
20 disabilities) at an out-of-home placement, the out-of-home
21 placement shall be deemed an inappropriate placement for the
22 child and the child shall not be mandated to that placement.

23 (d) Restitution.--

24 (1) Restitution shall be ordered after a finding that
25 the requested restitution constitutes a material loss and is
26 owed to the actual victim and a hearing is held on the
27 child's ability to pay. In determining whether the child will
28 be able to pay restitution, the court:

29 (i) Shall consider the age of the child and whether
30 the child is able to legally obtain employment.

1 (ii) May not consider the income OR ASSETS of the <--
2 parents of the child.

3 (iii) Shall consider the ability of the court and
4 probation department to assist the child in paying the
5 restitution, including the existence of restitution
6 funds, community service or work programs.

7 (iv) Shall consider whether the victim is willing to
8 accept another form of restorative justice in lieu of
9 payment of money.

10 (v) Shall consider whether the child will be able to
11 pay restitution in the time that the child is reasonably
12 expected to be under supervision.

13 (2) If restitution cannot be paid in full by the child,
14 the court shall implement an installment plan consistent with
15 the probation goals deemed necessary for the child. No child
16 who has the ability to pay shall be ordered to pay a monthly
17 installment amount greater than ~~three~~ FIVE hours of minimum <--
18 wage of this Commonwealth.

19 (3) At every postdisposition review proceeding, the
20 court shall make findings of the progress a child has made
21 toward satisfying the order for restitution and shall inquire
22 as to the assistance given to the child by the probation
23 department and placement providers. A child shall have at
24 least one review hearing every four months. The court may
25 schedule a review hearing at any time or upon motion of a
26 parent or legal guardian.

27 (4) The court may modify the order for restitution at
28 any postdispositional proceeding, provided the victim has an
29 opportunity to object by receiving notice of the hearing.

30 (5) If a child has satisfied all conditions of

1 supervision other than payment of restitution in full, the
2 court shall enter an order for termination of supervision,
3 provided the victim has an opportunity to object by receiving
4 notice of the hearing. The court shall make findings on the
5 record with regard to the reason for the termination of
6 supervision AND FORGIVENESS OF OUTSTANDING RESTITUTION. The <--
7 court shall not index a civil judgment against the child.
8 Nothing in this paragraph shall be construed to preclude a
9 victim from pursuing civil judgments against a responsible
10 party.

11 ~~(e) Educational stability.~~ <--

12 ~~(1) An order resulting in the removal of a child from~~
13 ~~the child's home or a change in placement shall address the~~
14 ~~educational stability of the child.~~

15 ~~(2) A child removed from home shall remain in the~~
16 ~~child's school of origin unless the court finds remaining in~~
17 ~~the school of origin is not in the child's best interest or~~
18 ~~protection of the community. If the court finds that it is~~
19 ~~not in the best interest for the child or protection of the~~
20 ~~community to remain in the school of origin, then the court~~
21 ~~may order the child to be enrolled in another school that~~
22 ~~best meets the child's needs.~~

23 ~~(3) If the court orders a child with a disability to be~~
24 ~~enrolled in another school, the best interest determination~~
25 ~~shall include a finding on the record that the school is~~
26 ~~willing and able to provide a free and appropriate public~~
27 ~~education under 20 U.S.C. Ch. 33 to the child, including~~
28 ~~following, monitoring and measuring Individualized Education~~
29 ~~Plan goals.~~

30 ~~(4) If a court orders a child to be enrolled in another~~

1 ~~school under paragraph (2), the child shall attend a public~~
2 ~~school unless the court finds that a public school is not in~~
3 ~~the best interest of the child or protection of the~~
4 ~~community.~~

5 ~~(f)~~ (E) Employment in placement.--A child employed by the <--
6 placement shall not be paid less than the minimum wage under
7 section 4 of the act of January 17, 1968 (P.L.11, No.5), known
8 as The Minimum Wage Act of 1968.

9 § 6353. Limitation on and change in place of commitment.

10 (a) [General rule.--No child shall initially be committed to
11 an institution for a period longer than four years or a period
12 longer than he could have been sentenced by the court if he had
13 been convicted of the same offense as an adult, whichever is
14 less. The initial commitment may be extended for a similar
15 period of time, or modified, if the court finds after hearing
16 that the extension or modification will effectuate the original
17 purpose for which the order was entered. The child shall have
18 notice of the extension or modification hearing and shall be
19 given an opportunity to be heard.] Disposition review hearing.--

20 The committing court shall [review each commitment every six
21 months and shall] hold a disposition review hearing at least
22 every [nine] three months.

23 * * *

24 § 6355. Transfer to criminal proceedings.

25 (a) General rule.--After a petition has been filed alleging
26 delinquency based on conduct which is designated a crime or
27 public offense under the laws, including local ordinances, of
28 this Commonwealth, the court before hearing the petition on its
29 merits may rule that this chapter is not applicable and that the
30 offense should be prosecuted, and transfer the offense, where

1 appropriate, to the division or a judge of the court assigned to
2 conduct criminal proceedings, for prosecution of the offense if
3 all of the following exist:

4 (1) The child was [14] 16 or more years of age at the
5 time of the alleged conduct.

6 * * *

7 (4) The court finds:

8 * * *

9 (iii) that there are reasonable grounds to believe
10 that the public interest is served by the transfer of the
11 case for criminal prosecution. In determining whether the
12 public interest can be served, the court shall consider
13 the Commonwealth's argument of the following factors:

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

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

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

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

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

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

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

28 (I) age;

29 (II) mental capacity;

30 (III) maturity;

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

3 (V) previous records, if any;

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

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

11 (VIII) probation or institutional reports,
12 if any;

13 (IX) any other relevant factors; and

14 * * *

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

24 * * *

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

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

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

8 (2) there is a prima facie case that the child committed
9 a delinquent act which, if committed by an adult, would be
10 classified as rape, involuntary deviate sexual intercourse,
11 aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or
12 (2) (relating to aggravated assault), robbery as defined in
13 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to
14 robbery), robbery of motor vehicle, aggravated indecent
15 assault, kidnapping, voluntary manslaughter, an attempt,
16 conspiracy or solicitation to commit any of these crimes or
17 an attempt to commit murder as specified in paragraph (2)(ii)
18 of the definition of "delinquent act" in section 6302.

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

24 Section 10. The amendment or addition of 42 Pa.C.S. §§
25 6301(b)(1.1), 6302, 6303(b), 6304(a)(5) and (c), 6304.1,
26 6307(b), 6311(b)(2), 6322, 6323, 6324, 6325, 6326(b) and (c),
27 6327, 6329, 6336.1(b)(3) introductory paragraph and (xii),
28 6338.1, 6340(c), (c.1), (c.2) and (d), 6343, 6352, 6353(a) and
29 6355(a)(1) and (4)(iii), (e) and (g) shall apply to all juvenile
30 proceedings initiated on or after the effective date of this

1 section.

2 Section 11. This act shall take effect in six months.