

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 611

Session of
1977

INTRODUCED BY WHITE, IRVIS, BERSON, RICHARDSON, RHODES,
STAPLETON, PRATT, GREENLEAF AND DONATUCCI, MARCH 15, 1977

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 15, 1977

AN ACT

1 Amending the act of December 6, 1972 (P.L.1464, No.333),
2 entitled "An act relating to the care, guidance, control,
3 trial, placement and commitment of delinquent and deprived
4 children," providing for certain rights and changing certain
5 procedures relating to the custody of deprived or delinquent
6 children.

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

9 Section 1. The definition of "deprived child" in section 2,
10 act of December 6, 1972 (P.L.1464, No.333), known as the
11 "Juvenile Act," is amended to read:

12 Section 2. Definitions.--As used in this act:

13 * * *

14 (4) "Deprived child" means a child: [who: (i) is without
15 proper parental care or control subsistence, education as
16 required by law, or other care or control necessary for his
17 physical, mental, or emotional health, or morals;] (i) whose
18 parent or adult responsible for his welfare (A) inflicts or
19 intentionally and maliciously allows to be inflicted upon him
20 nonaccidental physical injury which significantly impairs the

1 functioning of any bodily organ temporarily or permanently, or
2 which causes or creates a substantial risk of death, serious or
3 protracted disfigurement, or protracted impairment or loss of
4 any bodily organ; (B) willfully and wantonly fails to provide
5 such child food, clothing, shelter, medical care and other
6 essentials of life resulting in a physical condition which
7 endangers the child's life, significantly threatens the child's
8 safety, or significantly impairs the child's physical
9 functioning, provided that environmental factors which are
10 beyond the control of the person responsible for the child's
11 welfare such as inadequate housing, furnishings, income,
12 clothing and medical care shall not constitute deprivation; (C)
13 has abandoned such child for periods of time in excess of one
14 day or has repeatedly abandoned a child not old enough to care
15 for himself, provided that a child left in the care of a
16 responsible teenager or adult shall not be considered abandoned;
17 (D) is unwilling to provide, when financially able, or to
18 permit, necessary treatment when that child is suffering serious
19 emotional damage evidenced by the child's being chronically or
20 severely anxious, agitated, or depressed, or exhibiting extreme
21 aggressive behavior towards others; or (ii) who has been placed
22 for care or adoption in violation of law; or (iii) who has been
23 abandoned by his parents, guardian, or other custodian; or (iv)
24 who is without a parent, guardian, or legal custodian able to
25 provide protection, supervision, or care for him so that the
26 child's life is endangered, the child's safety is significantly
27 threatened, or the child's physical functioning is significantly
28 impaired; or (v) who while subject to compulsory school
29 attendance is habitually and without justification truant from
30 school.

1 * * *

2 Section 2. Subsection (b) of section 15 of the act is
3 amended and a subsection is added to read:

4 Section 15. Release from Detention or Shelter Care; Hearing;
5 Conditions of Release.--* * *

6 (b) An informal [detention] hearing shall be held promptly
7 by the court or the master and not later than seventy-two hours
8 after he is placed in detention or shelter care to determine
9 whether his detention or shelter care is required under section
10 12. Reasonable notice thereof, either oral or written, stating
11 the time, place, and purpose of the detention or shelter care
12 hearing shall be given to the child and if they can be found, to
13 his parents, guardian, or other custodian. Prior to the
14 commencement of the hearing the court or master shall inform the
15 parties, both orally and in writing in a language each party
16 understands, of their right to counsel and to the availability
17 of free legal services, if any, in their county and to appointed
18 counsel if they are needy persons, or to the existence of a
19 local agency which can refer them to an attorney, and of the
20 child's right to remain silent with respect to any allegations
21 of delinquency. If an unrepresented party so requests, the
22 detention or shelter care hearing shall be continued for up to,
23 but not more than, three days in order that the requesting party
24 may obtain counsel.

25 * * *

26 (d) A decision to detain a child or to place him in shelter
27 care shall not be based solely upon hearsay. If the child is to
28 be detained or placed in shelter care based upon medical
29 evidence to which a lay person cannot competently testify, an
30 examining, treating, or supervising licensed physician, dentist,

osteopath, optometrist, chiropractor, interne registered nurse,
or psychologist shall be required to testify. If the child is to
be detained or placed in shelter care based upon statements of
the child made to other persons and the child is seven years of
age or older and is otherwise competent, the child shall
testify, provided that no child shall testify if unable to do so
for medical reasons. The court shall give appropriate weight to
the testimony of a child according to his or her age and
apparent understanding of the nature and consequences of the
proceedings.

Section 3. Section 17 of the act is amended to read:

Section 17. Petition.--(a) A petition, which shall be
verified and may be on information and belief, may be brought by
any person including a law enforcement officer. It shall set
forth plainly:

(1) The facts which bring the child within the jurisdiction
of the court and this act, with a statement that it is in the
best interest of the child and the public that the proceeding be
brought and, if delinquency is alleged, that the child is in
need of treatment, supervision or rehabilitation.

(2) The name, age, and residence address, if any, of the
child on whose behalf the petition is brought.

(3) The names and residence addresses, if known to the
petitioner, of the parents, guardian, or custodian of the child
and of the child's spouse, if any. If none of his parents,
guardian, or custodian resides or can be found within the State,
or if their respective places of residence address are unknown,
the name of any known adult relative residing within the county,
or if there be none, the known adult relative residing nearest
to the location of the court.

1 (4) If the child is in custody and, if so, the place of his
2 detention and the time he was taken into custody.

3 (5) The right of all parties to legal counsel and, if such
4 party is needy, of the availability of free legal services in
5 the county, if any, or of the duty of the court to appoint free
6 counsel or of the existence of a local agency which can refer a
7 party to an attorney.

8 (b) The Rules of Civil Procedure governing the form and
9 content of petitions and pleadings shall apply to petitions
10 alleging that a child has been deprived. If a party does not
11 answer a petition, all allegations contained therein shall be
12 deemed to be denied.

13 Section 4. Section 19 of the act is amended to read:

14 Section 19. Conduct of Hearings.--(a) Preliminary
15 objections in proceedings in which a child is alleged to be
16 deprived shall be of the nature, type, and form provided by the
17 Rules of Civil Procedure. They may be filed by any party prior
18 to the hearing. Answers to preliminary objections shall be filed
19 within five days of receipt thereof. The court shall rule upon
20 preliminary objections within ten days of their being filed.

21 (b) Hearings under this act shall be conducted by the court
22 without a jury, in [an informal but orderly] a formal manner,
23 and separate from other proceedings not included in section 3.
24 The rules of evidence applicable in criminal trials shall be
25 applied to delinquency hearings. The rules of evidence
26 applicable in civil trials shall be appointed to deprivation
27 hearings.

28 ~~[(b)]~~ (c) The district attorney, upon request of the court,
29 shall present the evidence in support of the petition and
30 otherwise conduct the proceedings on behalf of the State.

1 [(c)] (d) If requested by the party or ordered by the court
2 the proceedings shall be recorded by appropriate means. If not
3 so recorded, full minutes of the proceedings shall be kept by
4 the court.

5 [(d)] (e) Except in hearings to declare a person in contempt
6 of court, the general public shall be excluded from hearings
7 under this act. Only the parties, their counsel, witnesses, and
8 other persons accompanying a party for his assistance, and any
9 other persons as the court finds have a proper interest in the
10 proceeding or in the work of the court may be admitted by the
11 court. The court may temporarily exclude the child from the
12 hearing except while allegations of his delinquency are being
13 heard.

14 (f) In judicial districts in which there are more than five
15 sitting judges, the judge who has presided over the detention or
16 shelter care hearings shall not preside over the adjudicatory
17 hearing in any proceeding under this act. From smaller judicial
18 districts, a party shall be granted a change of venue to an
19 adjacent judicial district upon request for the adjudicatory
20 hearing if the judge who presided at the detention or shelter
21 care hearing sits at the adjudicatory hearing.

22 Section 5. Section 21 of the act is amended by adding
23 subsections to read:

24 Section 21. Other Basic Rights.--* * *

25 (c) The petitioning party must reveal to all other parties
26 any exculpatory evidence it has in its possession at least four
27 days prior to any hearing on a petition.

28 (d) Psychological, psychiatric, or medical reports prepared
29 for or at the request of, and medical records to be introduced
30 by the petitioning party, a governmental authority that is a

1 party to a proceeding under this act, or the court shall be made
2 available for inspection and reproduction by any party or
3 counsel representing any party, upon demand, as soon as they are
4 available, but no later than four days prior to any adjudicatory
5 or dispositional hearing.

6 Section 6. Section 24 of the act is amended to read:

7 Section 24. Disposition of Deprived Child.--(a) [If the
8 child is found to be a deprived child the court may make any of
9 the following orders of disposition best suited to the
10 protection and physical, mental, and moral welfare of the child:

11 (1) Permit the child to remain with his parents, guardian,
12 or other custodian, subject to conditions and limitations as the
13 court prescribes, including supervision as directed by the court
14 for the protection of the child.

15 (2) Subject to conditions and limitations as the court
16 prescribes transfer temporary legal custody to any of the
17 following: (i) any individual in or outside Pennsylvania who,
18 after study by the probation officer or other person or agency
19 designated by the court, is found by the court to be qualified
20 to receive and care for the child; (ii) an agency or other
21 private organization licensed or otherwise authorized by law to
22 receive and provide care for the child or (iii) a public agency
23 authorized by law to receive and provide care for the child.

24 (3) Without making any of the foregoing orders transfer
25 custody of the child to the juvenile court of another state if
26 authorized by and in accordance with section 32.] In deciding
27 whether, and how, to intervene at any dispositional hearing, the
28 court should have available and should consider a social report,
29 prepared by the investigating agency. The report should contain
30 at least the following information:

1 (1) A statement of the specific deprivation suffered by the
2 child, as defined by statute, that intervention is designed to
3 alleviate.

4 (2) A description of the specific programs for both the
5 parents and the child that are needed in order to prevent
6 further deprivation to the child; the reason why such programs
7 are likely to be useful; the availability of proposed services;
8 the agency's overall plan for insuring that the services will be
9 delivered.

10 (3) If removal is recommended, a full description of the
11 reasons why the child cannot be protected adequately in the
12 home, including a description of any previous efforts to work
13 with the parents and child in the home; the in-home treatment
14 programs which have been considered and rejected; and the
15 parents' attitude toward placement of the child.

16 (4) A statement of the likely harms a child will suffer as a
17 result of removal. This section of the report should include an
18 exploration of the nature of the parent-child attachment and the
19 meaning of separation and loss to both the parents and the
20 child.

21 (5) A statement of the steps that will be taken to minimize
22 the harm to the child that may result if separation occurs.

23 (6) A statement of the conditions that should be established
24 and changes in parental behavior that should occur to render
25 supervision of the family or placement no longer necessary.

26 (b) The goal of all dispositions shall be to protect the
27 child from the deprivation justifying intervention. In choosing
28 a program, the court should choose those services that least
29 interfere with family autonomy, provided that those services are
30 adequate to protect the child. The court must consider

dispositions in the following order and state for the record,
orally or in writing, the reasons why it has rejected every
disposition on the list which precedes the alternative chosen.

(1) Dismiss the petition.

(2) Refer the child and the child's parents or guardians to
a community agency for the needed assistance and dismiss the
petition.

(3) Permit the child to remain with his parents, guardians,
or other custodian, subject to conditions and limitations as the
court prescribes, which may include supervision as directed by
the court for the protection of the child.

(4) (i) Subject to the conditions and limitations as the
court prescribes transfer temporary legal custody to a person
other than the child's parent, guardian, or custodian or to an
agency. When transferring temporary legal custody the court
shall consider the transfer in the following sequence and state
for the record, orally or in writing the reasons why it has
rejected any transfer which precedes the one chosen: (A) a
relative, (B) a friend of the family, (C) a foster family, (D)
any person in or outside of Pennsylvania who, after study by the
probation officer or other person or agency designated by the
court, is found by the court to be qualified to receive and care
for the child, (E) an agency or other private organization
licensed or otherwise authorized by law to receive and provide
care for the child, or (F) a public agency authorized by law to
receive and provide care for the child.

(ii) If the court transfers temporary legal custody of the
child from a parent, guardian, or custodian it shall set forth
in writing those conditions that person must fulfill in order to
regain custody of the child and the scope of assistance and

1 services that person can expect to receive from a public agency
2 and/or a private agency which is to provide care for the child.
3 In such cases the court shall set a time no later than six
4 months from the original disposition, at which it will review
5 the progress of the parent, guardian, or custodian in meeting
6 the conditions it established. If that person has substantially
7 fulfilled the conditions the court established and if that
8 person has not previously been adjudged to have deprived a child
9 or not entered a consent decree in a proceeding in which he had
10 been alleged to have deprived a child in a petition filed
11 pursuant to this act, the court shall return the child to him.
12 If that person has partially fulfilled the conditions so
13 established, the court shall reconsider returning the child to
14 that person. The court may then set the matter for review
15 thereafter as it sees fit and the circumstances of the case
16 warrant.

17 (iii) The agency charged with supervising a minor in
18 placement shall be required to facilitate the maximum parent-
19 child contact possible, including regular visitation and
20 participation by the parents in the care of the child while he
21 is in placement.

22 (iv) The agency charged with supervising a minor in
23 placement shall be responsible for assuming that all services
24 are provided. It shall report to the court if it is unable to
25 provide such services for whatever reason. The agency may
26 perform services other than those ordered, as necessitated by
27 the case situation.

28 (5) Without making any of the foregoing orders transfer
29 custody of the child to the juvenile court of another state if
30 authorized by and in accordance with section 32.

1 [(b)] (c) Unless a child found to be deprived is found also
2 to be delinquent he shall not be committed to or confined in an
3 institution or other facility designed or operated for the
4 benefit of delinquent children.

5 (d) The court shall not remove a child from his or her home
6 if the provision of social services to the child, family members
7 and/or other persons remaining in the home would provide
8 adequate protection for the child from further deprivation. Any
9 public welfare agency that is a party to a deprivation
10 proceeding shall be required to provide the social services
11 specified by the court necessary to enable the child to reside
12 in his or her home.

13 Section 7. This act shall take effect in 60 days.