

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 114 Session of  
1999

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BATTISTO AND CIVERA, JANUARY 25, 1999

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, OCTOBER 5, 1999

## AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for the  
3 definition of "delinquent ~~act,~~" ACT" AND for transfer from <—  
4 criminal proceedings ~~and for transfer to criminal~~ <—  
5 ~~proceedings.~~

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

8 Section 1. The definition of "delinquent act" in section  
9 6302 of Title 42 of the Pennsylvania Consolidated Statutes is  
10 amended to read:

11 § 6302. Definitions.

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

15 \* \* \*

16 "Delinquent act."

17 (1) The term means an act designated a crime under the

1 law of this Commonwealth, or of another state if the act  
2 occurred in that state, or under Federal law, or under local  
3 ordinances or an act which constitutes indirect criminal  
4 contempt under 23 Pa.C.S. Ch. 61 (relating to protection from  
5 abuse).

6 (2) The term shall not include:

7 (i) The crime of murder.

8 (ii) 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 a deadly weapon as defined in 18  
11 Pa.C.S. § 2301 (relating to definitions) was used during  
12 the commission of the offense which, if committed by an  
13 adult, would be classified as:

14 (A) Rape as defined in 18 Pa.C.S. § 3121  
15 (relating to rape).

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

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

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

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

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

29 (G) Kidnapping as defined in 18 Pa.C.S. § 2901  
30 (relating to kidnapping).

1 (H) Voluntary manslaughter.

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

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

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

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

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

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

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

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

22 (G) Voluntary manslaughter.

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

26 (iv) Summary offenses, unless the child fails to  
27 comply with a lawful sentence imposed thereunder, in  
28 which event notice of such fact shall be certified to the  
29 court.

30 (v) A crime committed by a child who has been found

1 guilty in a criminal proceeding for other than a summary  
2 offense.

3 (vi) Prohibited conduct which, if committed by an  
4 adult, would be classified as homicide while driving  
5 under the influence as defined in 75 Pa.C.S. § 3735  
6 (relating to homicide by vehicle while driving under  
7 influence).

8 ~~(vii) Prohibited conduct which, if committed by an~~ <—  
9 ~~adult, would be classified as aggravated assault by~~  
10 ~~vehicle while driving under the influence as defined in~~  
11 ~~75 Pa.C.S. § 3735.1 (relating to aggravated assault by~~  
12 ~~vehicle while driving under the influence).~~

13 \* \* \*

14 ~~Section 2. Sections 6322 and 6355 of Title 42 are amended to~~ <—

15 SECTION 2. SECTION 6322 OF TITLE 42 IS AMENDED TO read: <—

16 § 6322. Transfer from criminal proceedings.

17 (a) General rule.--Except as provided in 75 Pa.C.S. § 6303  
18 (relating to rights and liabilities of minors) or in the event  
19 the child is charged with murder or any of the offenses excluded  
20 by paragraph (2)(ii) [or (iii)], (iii), (vi) or (vii) OR (VI) of <—  
21 the definition of "delinquent act" in section 6302 (relating to  
22 definitions) or has been found guilty in a criminal proceeding,  
23 if it appears to the court in a criminal proceeding that the  
24 defendant is a child, this chapter shall immediately become  
25 applicable, and the court shall forthwith halt further criminal  
26 proceedings, and, where appropriate, transfer the case to the  
27 division or a judge of the court assigned to conduct juvenile  
28 hearings, together with a copy of the accusatory pleading and  
29 other papers, documents, and transcripts of testimony relating  
30 to the case. If it appears to the court in a criminal proceeding

1 charging murder or any of the offenses excluded by paragraph  
2 (2)(ii) [or (iii)], (iii), ~~(vi) or (vii)~~ OR (VI) of the  
3 definition of "delinquent act" in section 6302, that the  
4 defendant is a child, the case may similarly be transferred and  
5 the provisions of this chapter applied. In determining whether  
6 to transfer a case charging murder or any of the offenses  
7 excluded from the definition of "delinquent act" in section  
8 6302, the child shall be required to establish by a  
9 preponderance of the evidence that the transfer will serve the  
10 public interest. In determining whether the child has so  
11 established that the transfer will serve the public interest,  
12 the court shall consider the factors contained in section  
13 6355(a)(4)(iii) (relating to transfer to criminal proceedings).

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

21 (c) Expedited review of transfer orders.--The transfer order  
22 shall be subject to the same expedited review applicable to  
23 orders granting or denying release or modifying the conditions  
24 of release prior to sentence, as provided in Rule 1762 of the  
25 Pennsylvania Rules of Appellate Procedure.

26 (d) Effect of transfer order.--Where review of the transfer  
27 order is not sought or where the transfer order is upheld the  
28 defendant shall be taken forthwith to the probation officer or  
29 to a place of detention designated by the court or released to  
30 the custody of his parent, guardian, custodian, or other person

1 legally responsible for him, to be brought before the court at a  
2 time to be designated. The accusatory pleading may serve in lieu  
3 of a petition otherwise required by this chapter, unless the  
4 court directs the filing of a petition.

5 (e) Transfer of convicted criminal cases.--If in a criminal  
6 proceeding, the child is found guilty of a crime classified as a  
7 misdemeanor, and the child and the attorney for the Commonwealth  
8 agree to the transfer, the case may be transferred for  
9 disposition to the division or a judge of the court assigned to  
10 conduct juvenile hearings.

11 ~~§ 6355. Transfer to criminal proceedings.~~ <—

12 ~~(a) General rule. After a petition has been filed alleging~~  
13 ~~delinquency based on conduct which is designated a crime or~~  
14 ~~public offense under the laws, including local ordinances, of~~  
15 ~~this Commonwealth, the court before hearing the petition on its~~  
16 ~~merits may rule that this chapter is not applicable and that the~~  
17 ~~offense should be prosecuted, and transfer the offense, where~~  
18 ~~appropriate, to the division or a judge of the court assigned to~~  
19 ~~conduct criminal proceedings, for prosecution of the offense if~~  
20 ~~all of the following exist:~~

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

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

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

28 ~~(4) The court finds:~~

29 ~~(i) that there is a prima facie case that the child~~  
30 ~~committed the delinquent act alleged;~~

1           ~~(ii) that the delinquent act would be considered a~~  
2           ~~felony if committed by an adult;~~

3           ~~(iii) that there are reasonable grounds to believe~~  
4           ~~that the public interest is served by the transfer of the~~  
5           ~~case for criminal prosecution. In determining whether~~  
6           ~~the public interest can be served, the court shall~~  
7           ~~consider the following factors:~~

8                   ~~(A) the impact of the offense on the victim or~~  
9                   ~~victims;~~

10                   ~~(B) the impact of the offense on the community;~~

11                   ~~(C) the threat to the safety of the public or~~  
12                   ~~any individual posed by the child;~~

13                   ~~(D) the nature and circumstances of the offense~~  
14                   ~~allegedly committed by the child;~~

15                   ~~(E) the degree of the child's culpability;~~

16                   ~~(F) the adequacy and duration of dispositional~~  
17                   ~~alternatives available under this chapter and in the~~  
18                   ~~adult criminal justice system; and~~

19                   ~~(G) whether the child is amenable to treatment,~~  
20                   ~~supervision or rehabilitation as a juvenile by~~  
21                   ~~considering the following factors:~~

22                           ~~(I) age;~~

23                           ~~(II) mental capacity;~~

24                           ~~(III) maturity;~~

25                           ~~(IV) the degree of criminal sophistication~~  
26                   ~~exhibited by the child;~~

27                           ~~(V) previous records, if any;~~

28                           ~~(VI) the nature and extent of any prior~~  
29                   ~~delinquent history, including the success or~~  
30                   ~~failure of any previous attempts by the juvenile~~

1 ~~court to rehabilitate the child;~~

2 ~~(VII) whether the child can be rehabilitated~~  
3 ~~prior to the expiration of the juvenile court~~  
4 ~~jurisdiction;~~

5 ~~(VIII) probation or institutional reports,~~  
6 ~~if any;~~

7 ~~(IX) any other relevant factors; and~~

8 ~~(iv) that there are reasonable grounds to believe~~  
9 ~~that the child is not committable to an institution for~~  
10 ~~the mentally retarded or mentally ill.~~

11 ~~(b) Chapter inapplicable following transfer. The transfer~~  
12 ~~terminates the applicability of this chapter over the child with~~  
13 ~~respect to the delinquent acts alleged in the petition.~~

14 ~~(c) Transfer at request of child. The child may request~~  
15 ~~that the case be transferred for prosecution in which event the~~  
16 ~~court may order this chapter not applicable.~~

17 ~~(d) Effect of transfer from criminal proceedings. No~~  
18 ~~hearing shall be conducted where this chapter becomes applicable~~  
19 ~~because of a previous determination by the court in a criminal~~  
20 ~~proceeding.~~

21 ~~(e) Murder and other excluded acts. Where the petition~~  
22 ~~alleges conduct which if proven would constitute murder, or any~~  
23 ~~of the offenses excluded by paragraph (2)(ii) [or (iii)], (iii),~~  
24 ~~(vi) or (vii) of the definition of "delinquent act" in section~~  
25 ~~6302 (relating to definitions), the court shall require the~~  
26 ~~offense to be prosecuted under the criminal law and procedures,~~  
27 ~~except where the case has been transferred pursuant to section~~  
28 ~~6322 (relating to transfer from criminal proceedings) from the~~  
29 ~~division or a judge of the court assigned to conduct criminal~~  
30 ~~proceedings.~~



~~(f) Transfer action interlocutory. The decision of the court to transfer or not to transfer the case shall be interlocutory.~~

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

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

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

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

~~(3) there is a prima facie case that the child engaged in prohibited conduct which, if committed by an adult, would be classified as homicide while driving under the influence~~

1 ~~as defined in 75 Pa.C.S. § 3735 (relating to homicide by~~  
2 ~~vehicle while driving under influence); or~~

3 ~~(4) there is a prima facie case that the child engaged~~  
4 ~~in prohibited conduct which, if committed by an adult, would~~  
5 ~~be classified as aggravated assault by vehicle while driving~~  
6 ~~under the influence as defined in 75 Pa.C.S. § 3735.1~~  
7 ~~(relating to aggravated assault by vehicle while driving~~  
8 ~~under the influence).~~

9 ~~If [either] any of the four preceding criteria are met, the~~  
10 ~~burden of establishing by a preponderance of the evidence that~~  
11 ~~retaining the case under this chapter serves the public interest~~  
12 ~~and that the child is amenable to treatment, supervision or~~  
13 ~~rehabilitation as a juvenile shall rest with the child.~~

14 Section 3. This act shall take effect immediately.