

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 48 Session of 2017

INTRODUCED BY WILLIAMS AND RAFFERTY, JANUARY 12, 2017

REFERRED TO JUDICIARY, JANUARY 12, 2017

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and  
 2 Judicial Procedure) of the Pennsylvania Consolidated  
 3 Statutes, in minors, providing for responsibility of parents  
 4 and guardians; and, in juvenile matters, providing for  
 5 pretrial diversion program.

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

8 Section 1. Title 18 of the Pennsylvania Consolidated  
 9 Statutes is amended by adding a section to read:

10 § 6301.1. Responsibility of parents and guardians.

11 (a) Offense defined.--A parent or guardian who intentionally  
 12 and knowingly commits one or more acts or omits the performance  
 13 of one or more duties, which causes the child or the ward under  
 14 18 years of age to come within or remain within the provisions  
 15 of 42 Pa.C.S. § 6341 (relating to adjudication) or 23 Pa.C.S. §  
 16 6315 (relating to taking child into protective custody), commits  
 17 an offense.

18 (b) Grading.--A person who violates subsection (a) commits a  
 19 misdemeanor of the third degree.

20 (c) Diversion program.--A person who violates subsection (a)

1 may be eligible for the pretrial diversion program established  
2 under 42 Pa.C.S. § 6312 (relating to pretrial diversion  
3 program).

4 (d) Standard of care.--For purposes of this section, a  
5 parent or guardian of any person under 18 years of age shall  
6 have the duty to exercise reasonable care, supervision,  
7 protection and control over the minor child.

8 Section 2. Title 42 is amended by adding a section to read:  
9 § 6312. Pretrial diversion program.

10 (a) Review and approval.--Every prosecutor with jurisdiction  
11 to prosecute violations of 18 Pa.C.S. § 6301.1 (relating to  
12 responsibility of parents and guardians) shall review annually  
13 any diversion program established under this section, and a  
14 program may not commence or continue without the approval of the  
15 prosecutor. No person may be diverted under a program unless the  
16 program has been approved by the district attorney.

17 (b) Applicability.--This section shall apply whenever a case  
18 is before a court upon an accusatory pleading alleging a parent  
19 or guardian to have violated 18 Pa.C.S. § 6301.1 and the  
20 defendant's record does not indicate that the defendant has  
21 previously been diverted under this section.

22 (c) Waiver.--If the defendant consents and waives the  
23 defendant's right to a speedy trial, the case shall be referred  
24 to the district attorney who shall conduct an investigation as  
25 is necessary to determine whether the defendant qualifies for  
26 diversion under this section and whether the defendant is a  
27 person who would benefit from education, treatment or  
28 rehabilitation. The district attorney shall also submit findings  
29 and recommendations to the court for approval, which shall  
30 include education, treatment or a rehabilitative plan that would

1 benefit the defendant. If the recommendation includes referral  
2 to a community service program, the report shall contain a  
3 statement regarding the program's willingness to accept the  
4 defendant and the manner in which the services the program  
5 offers can assist the defendant in completing the diversion  
6 program successfully.

7 (d) Admissibility.--No statement or information with respect  
8 to the specific offense with which the defendant is charged,  
9 which is made subsequent to the granting of diversion, may be  
10 admissible in any action or proceeding. In the event that  
11 diversion is denied or is subsequently revoked once it has been  
12 granted, the investigation, statements or information divulged  
13 during that investigation may not be used in any subsequent  
14 action or proceeding.

15 (e) Hearing.--The court shall hold a hearing and, after  
16 consideration of the district attorney's report and any other  
17 relevant information, shall determine if the defendant consents  
18 to further proceedings under this section and waives the  
19 defendant's right to a speedy trial. The period during which the  
20 further criminal proceedings against the defendant may be  
21 diverted shall be for the length of time required to complete  
22 and verify the diversion program but may not exceed two years.  
23 If the court orders a defendant to be diverted, the court may  
24 make inquiry into the financial condition of the defendant and  
25 upon a finding that the defendant is able, in whole or in part,  
26 to pay the reasonable cost of diversion, the court may order the  
27 defendant to pay all or part of the expense. The reasonable cost  
28 of diversion may not exceed the amount determined to be the  
29 actual average cost of diversion services. If the defendant is  
30 determined to be indigent, the defendant may not be ordered to

1 pay the expenses.

2 (f) Finding that diversion is not beneficial.--If the court  
3 does not deem the defendant to be a person who would benefit  
4 from diversion or if the defendant does not consent to  
5 participate, the proceedings shall continue as in any other  
6 case.

7 (g) Unsatisfactory progress or other conviction.--The  
8 criminal case shall be referred back to the court for resumption  
9 of the criminal proceedings if the court finds, after notice to  
10 the defendant and a hearing, that the defendant:

11 (1) is not performing satisfactorily in the assigned  
12 program;

13 (2) has been convicted of a felony; or

14 (3) has been convicted of a misdemeanor in which force  
15 or violence was used.

16 (h) Disposition.--If the defendant has performed  
17 satisfactorily during the period of diversion, the criminal  
18 charges shall be dismissed.

19 (i) Definition.--As used in this section, the term "pretrial  
20 diversion" means the procedure of postponing prosecution either  
21 temporarily or permanently at any point in the judicial process  
22 from the time the accused is charged until adjudication.

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