

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL**

**No. 1092** Session of  
2007

INTRODUCED BY A. WILLIAMS, RAFFERTY, MUSTO, ERICKSON AND  
C. WILLIAMS, SEPTEMBER 17, 2007

REFERRED TO JUDICIARY, SEPTEMBER 17, 2007

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for liability  
3 of parents and guardians and for pretrial diversion.

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

6 Section 1. Title 42 of the Pennsylvania Consolidated  
7 Statutes is amended by adding sections to read:

8 § 6312. Liability of parents and guardians.

9 (a) Liability.--Every person who commits any act or omits  
10 the performance of any duty, which act or omission causes or  
11 tends to cause or encourage any person under the age of 18 years  
12 to come within the provisions of section 6341 (relating to  
13 adjudication), 23 Pa.C.S. § 6315 (relating to taking child into  
14 protective custody) or section 1327 of the act of March 10, 1949  
15 (P.L.30, No.14), known as the Public School Code of 1949, or  
16 which act or omission contributes thereto, or any person who, by  
17 any act or omission, or by threats, commands or persuasion,  
18 induces or endeavors to induce any person under the age of 18

1 years to fail or refuse to conform to a lawful order of the  
2 juvenile court, or to do or to perform any act or to follow any  
3 course of conduct or to so live as would cause or manifestly  
4 tend to cause that person to become or to remain a person within  
5 the provisions of section 6341, 23 Pa.C.S. § 6315, or section  
6 1327 of the Public School Code of 1949, is guilty of a  
7 misdemeanor of the third degree and shall, upon conviction, be  
8 sentenced to pay a fine not exceeding \$2,500 or to imprisonment  
9 in the county jail for not more than one year, or both, or may  
10 be released on probation for a period of not more than five  
11 years.

12 (b) Standard of care.--For purposes of this section, a  
13 parent or legal guardian to any person under the age of 18 years  
14 shall have the duty to exercise reasonable care, supervision,  
15 protection and control over the minor child.

16 § 6313. Pretrial diversion program.

17 (a) Review and approval.--Every prosecutor with jurisdiction  
18 to prosecute violations of section 6312 (relating to liability  
19 of parents and guardians) shall review annually any diversion  
20 program established pursuant to this section, and no program  
21 shall commence or continue without the approval of the  
22 prosecutor. No person shall be diverted under a program unless  
23 it has been approved by the prosecutor. Nothing in this  
24 subsection shall authorize the prosecutor to determine whether a  
25 particular defendant shall be diverted.

26 (b) Applicability.--This section shall apply whenever a case  
27 is before any court upon an accusatory pleading alleging a  
28 parent or legal guardian to have violated section 6312 with  
29 respect to his or her minor child, and all of the following  
30 apply to the defendant:

1           (1) The defendant's record does not indicate that  
2           probation or parole has ever been revoked without thereafter  
3           being completed.

4           (2) The defendant's record does not indicate that he or  
5           she has previously been diverted pursuant to this section.

6           (c) Waiver.--If the defendant consents and waives his or her  
7           right to a speedy trial, the case shall be referred to the  
8           county probation department. The county probation department  
9           shall conduct an investigation as is necessary to determine  
10           whether the defendant qualifies for diversion under this  
11           section, and whether he or she is a person who would be  
12           benefited by education, treatment or rehabilitation. The county  
13           probation department shall also determine which education,  
14           treatment or rehabilitative plan would benefit the defendant.  
15           The county probation department shall report its findings and  
16           recommendations to the court. If the recommendation includes  
17           referral to a community service program, the report shall  
18           contain a statement regarding the program's willingness to  
19           accept the defendant and the manner in which the services they  
20           offer can assist the defendant in completing the diversion  
21           program successfully.

22           (d) Admissibility.--No statement or any information made by  
23           the defendant to any county probation officer, during the course  
24           of any investigation conducted by the county probation  
25           department pursuant to subsection (a) and prior to the reporting  
26           of the county probation department's findings and  
27           recommendations to the court, shall be admissible in any action  
28           or proceeding brought subsequent to the investigation. No  
29           statement or any information, with respect to the specific  
30           offense with which the defendant is charged which is made to any

1 county probation officer subsequent to the granting of  
2 diversion, shall be admissible in any action or proceeding. In  
3 the event that diversion is either denied or is subsequently  
4 revoked once it has been granted, neither the probation  
5 investigation nor statements or information divulged during that  
6 investigation shall be used in any pretrial sentencing  
7 procedures.

8 (e) Hearing.--The court shall hold a hearing and after  
9 consideration of the county probation department's report, and  
10 any other relevant information, shall determine if the defendant  
11 consents to further proceedings under this section and waives  
12 his or her right to a speedy trial. If the court orders a  
13 defendant to be diverted, the court may make inquiry into the  
14 financial condition of the defendant, and upon a finding that  
15 the defendant is able, in whole or in part, to pay the  
16 reasonable cost of diversion, the court may order him or her to  
17 pay all or part of the expense. The reasonable cost of diversion  
18 shall not exceed the amount determined to be the actual average  
19 cost of diversion services.

20 (f) Finding that diversion is not beneficial.--If the court  
21 does not deem the defendant to be a person who would be  
22 benefited by diversion or if the defendant does not consent to  
23 participate, the proceedings shall continue as in any other  
24 case. At the time that a defendant's case is diverted, any bail  
25 bond or undertaking or deposit in lieu thereof, on file by or on  
26 behalf of the defendant shall be exonerated, and the court shall  
27 enter an order so directing. The period during which the further  
28 criminal proceedings against the defendant may be diverted shall  
29 be for the length of time required to complete and verify the  
30 diversion program but in no case shall be more than two years.

1       (g) Unsatisfactory progress or other conviction.--If it  
2 appears to the county probation department that the divertee is  
3 performing unsatisfactorily in the assigned program or that the  
4 divertee is not benefiting from education, treatment or  
5 rehabilitation, or that the divertee is convicted of a  
6 misdemeanor in which force or violence was used, or if the  
7 divertee is convicted of a felony, after notice to the divertee,  
8 the court shall hold a hearing to determine whether the criminal  
9 proceedings should be reinstated. If the court finds that the  
10 divertee is not performing satisfactorily in the assigned  
11 program, or that the divertee has been convicted of a crime as  
12 indicated above, the criminal case shall be referred back to the  
13 court for resumption of the criminal proceedings. If the  
14 divertee has performed satisfactorily during the period of  
15 diversion, the criminal charges shall be dismissed.

16       (h) Indication of disposition.--Any record filed with the  
17 Pennsylvania State Police shall indicate the disposition in  
18 those cases diverted pursuant to this section. Upon successful  
19 completion of a diversion program, the arrest upon which the  
20 diversion was based shall be deemed to have never occurred. The  
21 divertee may indicate in response to any question concerning his  
22 or her prior criminal record that he or she was not arrested or  
23 diverted for that offense, except as specified in subsection  
24 (b). A record pertaining to an arrest resulting in successful  
25 completion of a diversion program shall not, without the  
26 divertee's consent, be used in any way that would result in the  
27 denial of any employment, benefit, license or certificate.

28       (i) Disclosure.--The divertee shall be advised that,  
29 regardless of his or her successful completion of diversion, the  
30 arrest upon which the diversion was based may be disclosed by

1 the Pennsylvania State Police in response to any peace officer  
2 application request and that, notwithstanding subsection (a),  
3 this section does not relieve him or her of the obligation to  
4 disclose the arrest in response to any direct question contained  
5 in any questionnaire or application for employment.

6 (j) Definition.--As used in this section, the term "pretrial  
7 diversion" means the procedure of postponing prosecution either  
8 temporarily or permanently at any point in the judicial process  
9 from the point at which the accused is charged until  
10 adjudication.

11 Section 2. This act shall take effect in 60 days.