

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 733 Session of 2011

INTRODUCED BY WILLIAMS, TARTAGLIONE, ERICKSON, RAFFERTY,
BOSCOLA, GREENLEAF AND WOZNIAK, MARCH 4, 2011

REFERRED TO JUDICIARY, MARCH 4, 2011

AN ACT

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

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

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

9 § 6301.1. Responsibility of parents and guardians.

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

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

19 (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 pursuant to this section, and
14 no program shall commence or continue without the approval of
15 the prosecutor. No person may be diverted under a program unless
16 it 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 he has previously been
21 diverted pursuant to this section.

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

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

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

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

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

6 (g) Unsatisfactory progress or other conviction.--If the
7 court finds after notice to the defendant and a hearing that the
8 defendant is not performing satisfactorily in the assigned
9 program, or that the defendant has been convicted of a
10 misdemeanor in which force or violence was used or is convicted
11 of a felony, the criminal case shall be referred back to the
12 court for resumption of the criminal proceedings.

13 (h) Disposition.--If the defendant has performed
14 satisfactorily during the period of diversion, the criminal
15 charges shall be dismissed.

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

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