

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 815 Session of 2011

INTRODUCED BY BAKER, YUDICHAK, ARGALL, BROWNE, COSTA, ERICKSON, FERLO, FONTANA, GREENLEAF, McILHINNEY, RAFFERTY, SMUCKER, WASHINGTON, WOZNIAK, YAW, ORIE, WILLIAMS AND FARNESE, MARCH 11, 2011

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 26, 2012

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 right to counsel; AND PROVIDING FOR RIGHT TO COUNSEL IN  
4 DEPENDENCY AND DELINQUENCY PROCEEDINGS. ←

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

7 Section 1. Section 6337 of Title 42 of the Pennsylvania  
8 Consolidated Statutes is amended to read:

9 § 6337. Right to counsel.

10 Except as provided ~~herein~~ UNDER THIS SECTION and in section ←  
11 6311 (relating to guardian ad litem for child in court  
12 proceedings), a party is entitled to representation by legal  
13 counsel at all stages of any proceedings under this chapter and  
14 if he is without financial resources or otherwise unable to  
15 employ counsel, to have the court provide counsel for him.

16 ~~Although a child alleged to be delinquent may appear with~~ ←  
17 ~~counsel at the intake conference conducted by a juvenile~~

1 ~~probation officer following the submission of a written~~  
2 ~~allegation, counsel is not mandatory at this proceeding.~~ If a  
3 party other than a child appears at a hearing without counsel  
4 the court shall ascertain whether he knows of his right thereto  
5 and to be provided with counsel by the court if applicable. The  
6 court may continue the proceeding to enable a party to obtain  
7 counsel. [Counsel] EXCEPT AS PROVIDED UNDER SECTION 6337.1 ←  
8 (RELATING TO RIGHT TO COUNSEL FOR CHILDREN IN DEPENDENCY AND  
9 DELINQUENCY PROCEEDINGS), COUNSEL must be provided for a child ←  
10 [unless his parent, guardian, or custodian is present in court  
11 and affirmatively waive it. However, the parent, guardian, or  
12 custodian may not waive counsel for a child when their interest  
13 may be in conflict with the interest or interests of the child] ←  
14 ~~who appears at a hearing without counsel, and counsel for the~~ ←  
15 ~~child cannot be waived.~~ If the interests of two or more parties ←  
16 may conflict, separate counsel shall be provided for each of  
17 them.

18 SECTION 2. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ: ←  
19 § 6337.1. RIGHT TO COUNSEL FOR CHILDREN IN DEPENDENCY AND  
20 DELINQUENCY PROCEEDINGS.

21 (A) CHILDREN IN DEPENDENCY PROCEEDINGS.--LEGAL COUNSEL SHALL  
22 BE PROVIDED FOR A CHILD WHO IS ALLEGED OR HAS BEEN FOUND TO BE A  
23 DEPENDENT CHILD IN ACCORDANCE WITH THE PENNSYLVANIA RULES OF  
24 JUVENILE COURT PROCEDURE.

25 (B) CHILDREN IN DELINQUENCY PROCEEDINGS.--

26 (1) IN DELINQUENCY CASES, ALL CHILDREN SHALL BE PRESUMED  
27 INDIGENT. IF A CHILD APPEARS AT ANY HEARING WITHOUT COUNSEL,  
28 THE COURT SHALL APPOINT COUNSEL FOR THE CHILD PRIOR TO THE  
29 COMMENCEMENT OF THE HEARING. THE PRESUMPTION THAT A CHILD IS  
30 INDIGENT MAY BE REBUTTED IF THE COURT ASCERTAINS THAT THE

1 CHILD HAS THE FINANCIAL RESOURCES TO RETAIN COUNSEL OF HIS  
2 CHOICE AT HIS OWN EXPENSE. THE COURT MAY NOT CONSIDER THE  
3 FINANCIAL RESOURCES OF THE CHILD'S PARENT, GUARDIAN OR  
4 CUSTODIAN WHEN ASCERTAINING WHETHER THE CHILD HAS THE  
5 FINANCIAL RESOURCES TO RETAIN COUNSEL OF HIS CHOICE AT HIS  
6 OWN EXPENSE.

7 (2) ALTHOUGH A CHILD ALLEGED TO BE DELINQUENT MAY APPEAR  
8 WITH COUNSEL AT THE INTAKE CONFERENCE CONDUCTED BY A JUVENILE  
9 PROBATION OFFICER FOLLOWING THE SUBMISSION OF A WRITTEN  
10 ALLEGATION, COUNSEL SHALL NOT BE MANDATORY AT THE PROCEEDING.

11 (3) NOTWITHSTANDING PARAGRAPH (1), A CHILD WHO IS 14  
12 YEARS OF AGE OR OLDER MAY WAIVE THE RIGHT TO COUNSEL IF THE  
13 COURT HAS DETERMINED THAT THE WAIVER IS KNOWINGLY,  
14 INTELLIGENTLY AND VOLUNTARILY MADE AFTER HAVING CONDUCTED A  
15 COLLOQUY WITH THE CHILD ON THE RECORD IN ACCORDANCE WITH THE  
16 PENNSYLVANIA RULES OF JUVENILE COURT PROCEDURE, AND THE  
17 HEARING FOR WHICH WAIVER IS SOUGHT IS NOT ONE OF THE  
18 FOLLOWING:

19 (I) AN INFORMAL DETENTION OR SHELTER HEARING UNDER  
20 SECTION 6332 (RELATING TO INFORMAL HEARING).

21 (II) A HEARING TO CONSIDER TRANSFER TO CRIMINAL  
22 PROCEEDINGS UNDER SECTION 6355 (RELATING TO TRANSFER TO  
23 CRIMINAL PROCEEDINGS).

24 (III) A HEARING TO CONSIDER EVIDENCE ON THE PETITION  
25 OR ACCEPT AN ADMISSION TO AN ALLEGED DELINQUENT ACT UNDER  
26 SECTION 6341 (RELATING TO ADJUDICATION).

27 (IV) A HEARING TO CONSIDER EVIDENCE AS TO WHETHER  
28 THE CHILD IS IN NEED OF TREATMENT, SUPERVISION OR  
29 REHABILITATION UNDER SECTION 6341.

30 (V) A DISPOSITION HEARING UNDER SECTION 6341 OR 6352

1           (RELATING TO DISPOSITION OF DELINQUENT CHILD).

2           (VI) A HEARING TO MODIFY OR REVOKE PROBATION OR  
3           OTHER DISPOSITION ENTERED UNDER 6352.

4           (4) THE COURT MAY ASSIGN STAND-BY COUNSEL IF THE CHILD  
5           WAIVES COUNSEL AT ANY HEARING.

6           (5) IF A CHILD WAIVES COUNSEL FOR ANY HEARING, THE  
7           WAIVER SHALL ONLY APPLY TO THAT HEARING AND THE CHILD MAY  
8           REVOKE THE WAIVER OF COUNSEL AT ANY TIME. AT ANY SUBSEQUENT  
9           HEARING, THE CHILD SHALL BE INFORMED OF THE RIGHT TO COUNSEL.

10          Section 2 3. This act shall take effect in 60 days.

