

September 22, 2023

**Juvenile Law Center's Support Letter for House Bill 1381**

Dear Chairman Briggs and House Judiciary Committee,

Thank you for considering House Bill 1381, which takes a vital step toward making Pennsylvania's juvenile legal system a safer and fairer place for youth. We write to express our enthusiastic support for the legislation. Many of the reforms in House Bill 1381 were suggested by the bipartisan Juvenile Justice Task Force convened in 2020, and more importantly, these reforms have been championed by youth and advocates for years.<sup>1</sup>

For 48 years, Juvenile Law Center has fought for rights, dignity, equity, and opportunity for youth. We work to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. We stand with youth to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

Kids for Cash, Wordsworth, Glen Mills, Devereaux, the Delaware County Juvenile Justice Center, and the Philadelphia Juvenile Justice Services Center (PJJSC); Pennsylvania has repeatedly failed to protect its youth. Failures such as these led Former Governor Tom Wolf to appoint the bipartisan Juvenile Justice Task Force which comprehensively studied each stage of Pennsylvania's juvenile legal system. Members of the Task Force included Juvenile Court Judges, an Assistant District Attorney, representatives from the Juvenile Court Judges Commission, Majority and Minority leaders from the Pennsylvania Legislature, and representatives from other system agencies. The data the Task Force uncovered only underscored the severity of the problems affecting the system. Key takeaways were: (1) youth are brought into the system for minor offenses; (2) Pennsylvania prioritizes out-of-home placement instead of serving youth in their communities where they are safer and better able to be supported to thrive; (3) diversion is underutilized despite having an 80% or greater completion rate<sup>2</sup>; and most importantly, (4) there are racial disparities at every stage of the system with Black and Brown youth being more likely to be arrested, less likely to receive diversion, less likely to receive probation, more likely to receive detention, more likely to be sent to placement and spend more time in placement once there.<sup>3</sup>

After studying this data, the Task Force broke into subgroups and proposed 35 reform recommendations for all areas and stages of the system and set them forth in the [Task Force's Final Report](#) released in June 2021. Regrettably, none of the Task Force recommendations have been enacted into law, but that can change with HB 1381. This legislation contains many of the key Task Force recommendations in addition to other important protections for youth in Pennsylvania.

HB 1381 will drastically improve the system by:

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<sup>1</sup> <https://jlc.org/resources/broken-bridges-how-juvenile-placements-cut-youth-communities-and-successful-futures>

<sup>2</sup> The percentage rises to 87% for youth that are deemed low-risk on the Youth Level of Service Risk assessment tool.

<sup>3</sup> [https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajuvenilejusticetaskforcereportandrecommendations\\_final.pdf](https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajuvenilejusticetaskforcereportandrecommendations_final.pdf)

- a. **Mandating the use of pre-petition diversion**
- b. **Limiting out-of-home placement;**
- c. **Limiting the use of pre-adjudication detention;**
- d. **Raising the minimum age of juvenile court jurisdiction;**
- e. **Ending the practice of direct file;**
- f. **Eliminating fines and fees.**

### **Increasing the Use of Diversion**

Expanding diversion is a key strategy to reducing the juvenile justice population, addressing overcrowding, and saving the money now spent on out-of-home placement. Diversion refers youth to community programs instead of formal case adjudication. There are two types of diversion, pre-petition (informal adjustment) which allows youth to avoid formal court processing, and post-petition (consent decrees) which occurs after a youth has been formally charged, but before adjudication of their cases. In some instances, decisions as to whether youth should receive diversion options are influenced by the Youth Level of Service (YLS) risk assessment tool which evaluates a youth's risk of recidivism.<sup>4</sup> The YLS tool evaluates factors such as prior and current offenses, personality/behavior, substance use, family/parenting, and education/employment.<sup>5</sup> However, juvenile probation officers/judges/assistant district attorneys make final decisions as to whether youth are diverted.

**According to peer reviewed research, diversion is more effective at reducing recidivism than conventional court interventions such as placement.** Youth assessed as low risk are 45% less likely to recidivate than comparable youth who undergo formal court proceedings who are assessed as low-risk.<sup>6</sup> Diversion also shields youth from the mental and physical abuses, disruption of education, trauma, and hindrances to appropriate psychosocial development that youth experience in the juvenile justice system.<sup>7</sup> Further, youth in diversion programs can remain in their communities close to their support systems and families.<sup>8</sup>

Diversion allows the Commonwealth to save money that would otherwise be spent moving youth through the juvenile justice system and sending youth to out-of-home placements. Pennsylvania spends 80% of its juvenile justice expenditure on out-of-home placement.<sup>9</sup>

Data shows that diversionary efforts have an 80% success rate in Pennsylvania, and among youth who score low risk to reoffend, that rate rises to 87%.<sup>10</sup> Despite the great success of

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<sup>4</sup> <https://www.pacourts.us/Storage/media/pdfs/20210508/160415-file-9741.pdf>. The Task Force obtained data that is usually not publicly available through MOU's for that process, as a result, the data in this letter is from the Task Force process.

<sup>5</sup> *Id.*

<sup>6</sup> Annie E. Casey Foundation, What is Diversion in Juvenile Justice, October 22, 2020: <https://www.aecf.org/blog/what-is-juvenile-diversion>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> <https://www.pacourts.us/Storage/media/pdfs/20210508/154427-file-9928.pdf>.

<sup>10</sup> [www.pacourts.us/assets/files/page-1316/file-9741.pdf?cb=1612449264297](http://www.pacourts.us/assets/files/page-1316/file-9741.pdf?cb=1612449264297)

diversion programs, they are only used in 35% of cases.<sup>11</sup> Moreover, 66% of youth assessed as low-risk offenders did not receive pre-petition diversion, and half of misdemeanor charges do not receive pre-petition diversion.<sup>12</sup>

Diversion is underutilized mainly because of the discretion given to juvenile probation officers, district attorneys, and the court regarding diversion decisions. In many counties in Pennsylvania, district attorney's offices oversee admission into diversion programs, often with unclear standards as to which youth can enter the program. Additionally, the criteria juvenile court judges use to determine informal adjustment eligibility also varies with consideration given to factors such as court history, offense, assessed risk level, and victim input.<sup>13</sup>

HB 1381 solves this issue by statutorily requiring diversion/informal adjustment for specific offenses, which will both increase its use and ensure greater equity in its use. Specifically, HB 1381 has the following provisions related to diversion:

- Requires that a child referred for a misdemeanor or nonviolent felony be offered pre-petition diversion unless the child has been previously diverted three or more times in the past three years;
- Limits pre-petition diversion to four months, and allows an extension of two additional months. Pre-petition diversion cannot include any fees or costs. Financial obligations of pre-petition diversion are limited to restitution and a contribution to a restitution fund up to \$10.
- Limits consent decrees to no more than four months, and allows an extension of three additional months for the completion of an evidence-based program;
  - Prohibits extensions solely for nonpayment of financial obligations unless the Commonwealth proves that the child was able to pay and failed to do so;
- Prohibits the revocation of a consent decree for failure to fulfill the financial terms of the consent decree; and
- Prohibits financial obligations other than restitution and a contribution to a restitution fund up to \$10 as part of the terms of pre-petition diversion or of a consent decree.

### **Limiting the Use of Pre-Adjudication Detention**

The overuse of detention before a youth has even been found delinquent creates harm to children and stress on the system. In Pennsylvania, youth over 10 can be detained in facilities prior to adjudication “to protect the person or property of others or of the child or because the child may abscond.”<sup>14</sup> Youth can be detained for any offense, even misdemeanors.<sup>15</sup> Some juvenile probation officers (JPOs) and juvenile court judges use the Pennsylvania Detention Risk Assessment Instrument (PaDRAI) to evaluate whether a youth should be detained pre-

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<sup>11</sup> *Id.*; In 2022, pre-petition diversion (informal adjustment) was only used in 21% of cases, and post-petition diversion (consent decree) is only used in 23% of cases; <https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2022%20Juvenile%20Court%20Annual%20Report.pdf>

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 42 Pa. C.S. § 6325.

<sup>15</sup> 42 Pa. C.S. § 6302.

adjudication.<sup>16</sup> However, courts can and do override the PaDRAI based on their evaluation of the circumstances.<sup>17</sup> The lack of clear standards for detention has resulted in its overuse.

Detention separates children from their homes, communities, and primary supportive services and causes a myriad of harms. Studies show that teens in detention have higher rates of depression, anxiety, and other mental health conditions such as post-traumatic stress disorder and suicidal thoughts.<sup>18</sup> Many teens who enter the juvenile justice system have experienced some form of trauma which contributed to their behavior, and incarceration can exacerbate that trauma.<sup>19</sup> Teens in detention also lose access to quality educational opportunities and are more likely to disengage from school and become system-involved in the future.<sup>20</sup> They are also particularly unlikely to earn academic credit for all schoolwork completed while in detention.<sup>21</sup> Nationally, only about one third of teens returning from residential facilities re-enroll in school.<sup>22</sup> Further, detention has immediate, and long-term negative consequences on a teens employment and economic outcomes.<sup>23</sup>

Detention also undermines public safety. Studies have found that pretrial juvenile detention stays, regardless of the length, increase a youth's likelihood of felony recidivism by 33% and misdemeanor recidivism by 11%.<sup>24</sup> They also reveal that when a young person spends additional days in detention pretrial, their risk of recidivism jumps by 1% a day.<sup>25</sup> It is also the most expensive type of care; in 2019, detention had an annual cost of \$220,193 per youth.<sup>26</sup>

Pennsylvania sets no statutory maximum for time in pre-adjudication detention. As of 2020, when detention was ordered, youth were detained for an average of 17 days, and in 25% of those instances, youth were held longer than 24 days.<sup>27</sup> Detention rates also reflect significant racial disparities.<sup>28</sup> youth made up 62% of pre-adjudication detention admissions while only making up 38% of written allegations.<sup>29</sup> In contrast, white youth only made up 20% of detention admissions, despite comprising 45% of written allegations.<sup>30</sup>

This legislation is especially timely because the overuse of detention has resulted in the overcrowding of detention centers. Philadelphia's local detention facility, Philadelphia Juvenile Justice Services Center (PJJSC) has a capacity of 184 but has housed upwards of 240 youth at

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<sup>16</sup> <https://www.pacourts.us/Storage/media/pdfs/20210508/160700-file-9667.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> Justice Policy Institute, *The Dangers Of Detention 6* (2006), [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf).

<sup>19</sup> <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>

<sup>20</sup> *Id.* at 9; Kareem L. Jordan, U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Program, *Preventive Detention and Out-of-Home Placement: A Propensity Score Matching and Multilevel Modeling Approach* (Fall 2012).

<sup>21</sup> Mozaffar, Nadia, et al., Juvenile Law Center, *Credit Overdue: How States Can Mitigate Academic Transfer Issues for Youth in the Juvenile Justice System* (2019), <https://jlc.org/resources/credit-overdue>.

<sup>22</sup> *Education for Youth Under Formal Supervision of the Juvenile Justice System* (2019). U.S. Office of Juvenile Justice and Delinquency Prevention.

<sup>23</sup> *Id.* at 14.

<sup>24</sup> Sarah Cusworth Walker and Jerald R. Herting, *The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison Study*, *Crime & Delinquency* 2020, Vol. 66(13-14) 1865–1887.

<sup>25</sup> *Id.*

<sup>26</sup> <https://www.pacourts.us/Storage/media/pdfs/20210508/154427-file-9928.pdf>.

<sup>27</sup> <http://www.pacourts.us/assets/files/page-1316/file-9667.pdf?cb=1616160976533>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

times this year.<sup>31</sup> As the population of youth has risen, the facility has also experienced a staffing shortage.<sup>32</sup> This has resulted in abhorrent conditions where children experience violence, lack of food, and lack of bed space (at times youth sleep on mattresses in administrative offices).<sup>33</sup> Children also receive minimal, and at times no, educational services because of a lack of teachers.<sup>34</sup> Despite this, the facility continues to hold youth charged with low-level offenses, held on technical violations, or awaiting other placements.

Many young people at PJJSC have already been adjudicated delinquent and are awaiting transfer to a treatment facility.<sup>35</sup> Some have been awaiting transfer for months, and the time spent at the PJJSC detention facility typically does not count toward the court-ordered length of treatment.<sup>36</sup> For example, if a youth is adjudicated delinquent and ordered to spend three months at a placement facility but spends two months at the PJJSC awaiting transfer to the placement facility, the youth still has to complete three months at the placement facility upon transfer.<sup>37</sup>

A key driver of the overuse of detention is the lack of clear standards on who can be detained. HB 1381 will help with the over-incarceration of youth and eliminate overcrowded facilities by imposing strict limits on detention. Specifically, this legislation has the following provisions related to detention:

- Prohibits detention in the following cases:
  - For children who:
    - Are under 14 years of age;
    - Are charged with a nonviolent felony, misdemeanor, summary offense, probation violation, or nonpayment;
    - Are pregnant or the parent of an infant; or
    - Do not pose a specific risk of harm to another person;
  - If the only issue is:
    - A lack of supervision alternatives;
    - A parent/guardian avoiding legal responsibilities;
    - A risk of self-harm;
    - Contempt of court;
    - Violations of a court order; or

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<sup>31</sup> <https://why.org/articles/philadelphia-sues-state-reduce-youth-justice-overcrowding/>

<sup>32</sup> *Id.*

<sup>33</sup> <https://www.inquirer.com/politics/philadelphia/philadelphia-considers-suing-wolf-over-juvenile-detention-center-20221020.html>

<sup>34</sup> [https://www.phillytrib.com/news/local\\_news/city-council-pushes-lawsuit-over-juvenile-justice-center/article\\_1fcc22c1-58d8-58e5-bf61-1fcb723edcc8.html](https://www.phillytrib.com/news/local_news/city-council-pushes-lawsuit-over-juvenile-justice-center/article_1fcc22c1-58d8-58e5-bf61-1fcb723edcc8.html)

<sup>35</sup> <https://www.inquirer.com/politics/philadelphia/philadelphia-considers-suing-wolf-over-juvenile-detention-center-20221020.html>

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

- Technical violations of probation without specific risk of harm; and
  - Unless the court finds at a detention hearing that:
    - The child has scored as detention eligible on a risk assessment; and
    - Community-based alternatives won't ensure the child's presence at the next hearing or the protection of others.
- Limits the amount of time a child may spend in pre-adjudication detention to 20 cumulative days, unless an extension is requested by the child's counsel or if the court finds the child poses an immediate or substantial risk of harm to others.

### **Limiting Out-of-Home Placement**

In addition to overusing detention, Pennsylvania also overuses out-of-home residential placement for youth. Once a juvenile court judge adjudicates a youth delinquent, the court holds a disposition hearing to determine the appropriate disposition. Disposition options include offering a diversion program, ordering probation, or ordering placement. A judge must provide the reasons for the disposition, along with the goals, terms, and conditions of that disposition. If a judge sends a youth to an out-of-home placement, the judge must state why that placement is the least restrictive option and why it is best suited for the youth's rehabilitation. However, no concrete standards govern when placement can be ordered, which contributes to its overuse.

Placements harm youth, interfere with positive transitions into adulthood, are ineffective, and are used inequitably in Pennsylvania. The stories of youth at Glen Mills, Wordsworth, and the Delaware County Juvenile Justice Center illustrate the inhumane treatment our youth receive at these facilities. Youth are routinely subject to aggression from staff, lack of privacy, discrimination, and seclusion and restraint. During a Care, Not Control Townhall held in December of 2020, a youth advocate testified to the physical abuse he suffered at a placement facility to which he was sent, and another youth advocate explained his experiences with discrimination in placement as an LGBTQIA youth. Youth also shared their experiences of abuse and harm in facilities in Broken Bridges, a report by Advocates for Youth Justice (formerly called Juveniles for Justice).

These placements also have long-term effects on the physical and mental health of those within the system. A 2017 study found that even short periods of youth incarceration less than one month were associated with depressive symptoms as adults.<sup>38</sup> Similarly, the study found that youth incarcerated up to one year had worse general health outcomes as adults. Youth incarceration longer than one year was associated with suicidal thoughts, depressive symptoms, and functional limitations in adulthood.<sup>39</sup> Juvenile justice system involvement, and particularly placement in justice facilities, also disrupts youth psychosocial development.<sup>40</sup> Adolescence and young adulthood are a vital time for brain development.<sup>41</sup> Removing youth from their communities, families, and other caring adults and restricting their ability to have age-

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<sup>38</sup> Elizabeth S. Barnert, Rebecca Dudovitz, Nelson B. Bergen, et al. *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, PEDIATRICS (Feb. 2017),

<sup>39</sup> *Id.*

<sup>40</sup> Laurence Steinberg et al., *Reentry Of Young Offenders From The Justice System: A Developmental Perspective*, YOUTH VIOLENCE JUV. JUST. (Jan. 1, 2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2813457/>.

<sup>41</sup> The Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration* (Oct. 4, 2011), <https://www.aecf.org/resources/no-place-for-kids-full-report/>

appropriate experiences and opportunities during this time can delay, limit, or otherwise inhibit their normal development.<sup>42</sup>

Youth in the juvenile justice system have high rates of past exposure to violence. These placements can trigger or exacerbate traumatic stress symptoms.<sup>43</sup> The consequences can be particularly problematic for youth who are already suffering from Post-Traumatic Stress Disorder.<sup>44</sup>

Out-of-home placements disrupt processes that typically help youth transition into adulthood. The services a youth receives in placement, such as educational or vocational services, generally do not provide youth with the necessary skills to succeed; youth miss out on key opportunities for psychosocial growth by being separated from their families and communities.<sup>45</sup> Additionally, the quality of education in out-of-home placements typically falls far below the level of community schools and fail to meet the special educational needs of confined youth, further setting them on a harmful trajectory.<sup>46</sup>

Out-of-home placements do not decrease recidivism and rather are a poor use of public funds. In 2015, Pew Charitable Trusts reviewed expansive federal research including longitudinal research on “serious adolescent offenders” in Pennsylvania and concluded that placing youth in correctional-style facilities does not decrease recidivism rates.<sup>47</sup> and may actually be associated *increased* recidivism.<sup>48</sup> Data from several states also indicate that secure residential placements are much more expensive than community-based care and thus are a poor return on public investment.<sup>49</sup> For instance, in 2019, Pennsylvania state-run placements had an annual cost of \$192,720 per youth, and private secure residential facilities had an annual cost of \$125,842 per youth.<sup>50</sup>

The Task Force data also underscores how inequitably placement is used: most youth are sent to out-of-home placement for non-felony, non-person offenses.<sup>51</sup> Equally egregiously, the data shows significant racial disparities in placement decisions.<sup>52</sup> Black youth account for 38% of

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<sup>42</sup> *Id.*

<sup>43</sup> Erica J. Adams, *Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense*. Justice Policy Institute (July, 2010), [http://www.justicepolicy.org/images/upload/10-07\\_REP\\_HealingInvisibleWounds\\_JJ-PS.pdf](http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf).

<sup>44</sup> *Id.*

<sup>45</sup> Laurence Steinberg et al., *Reentry Of Young Offenders From The Justice System: A Developmental Perspective*, *YOUTH VIOLENCE JUV. JUST.* (Jan. 1, 2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2813457/>.

<sup>46</sup> *See, e.g.*, Hailly T. N. Korman & Lisa Pilnik, *How Does Education in the Juvenile-Justice System Measure Up? It Doesn't*, *EDUCATION WEEK* (Oct. 25, 2018), <https://www.edweek.org/ew/articles/2018/10/26/how-does-education-in-the-juvenile-justice-system.html>; Office of Special Education and Rehabilitative Services, U.S. Department of Education, *Supporting Youth with Disabilities in Juvenile Corrections* (May 23, 2017), <https://sites.ed.gov/osers/2017/05/supporting-youth-with-disabilities-in-juvenile-corrections/>.

<sup>47</sup> The Pew Charitable Trusts, *Re-Examining Juvenile Incarceration: High cost, poor outcomes spark shift to alternatives* (Apr. 2015), [http://www.pewtrusts.org/~media/assets/2015/04/reexamining\\_juvenile\\_incarceration.pdf](http://www.pewtrusts.org/~media/assets/2015/04/reexamining_juvenile_incarceration.pdf).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> <https://www.pacourts.us/Storage/media/pdfs/20210508/154427-file-9928.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> [www.pacourts.us/assets/files/page-1316/file-9942.pdf?cb=1608055829240](http://www.pacourts.us/assets/files/page-1316/file-9942.pdf?cb=1608055829240).

written allegations, but 47% of placement decisions.<sup>53</sup> Hispanic males account for 10% of written allegations, and 13% of placement dispositions.<sup>54</sup> White males, in contrast, account for 34% of written allegations, but only 28% of placement dispositions.<sup>55</sup>

HB 1381 creates clear standards for who can be sent to placement that will quell the over-incarceration of youth. Specifically, this legislation has the following provisions related to placement:

- Requires that a child may not be removed from home unless one of the following applies:
  - The child poses a significant risk to the safety of a victim;
  - The child needs residential drug, alcohol, or mental health services based on assessment, or;
  - The child has been adjudicated delinquent for a sexual offense and needs residential treatment based on assessment.
- Prohibits out-of-home placement for:
  - Technical probation violations, excluding violations of a no contact order or repeat violations for violent or firearm offenses
  - Lack of outpatient options in the community
  - Concerns exclusively about the welfare, safety, neglect, or health of the child, which must be referred to a child welfare agency
- Limits the initial period of commitment to four months, which the court can extend for an additional three months if it finds that an extension is necessary to complete an ongoing evidence-based program that is not available in the community, or if the child is adjudicated for murder or a first-degree felony sex offense and poses a threat to the community or victim.
- Requires dispositional review hearings to be held every three months (currently held every 6-9 months, depending on the offense).
- Prohibits out-of-state placements unless medically needed services are recommended by assessment are not available in state.
- Requires kids who work while in custody to be paid at least the state minimum wage (currently there is no minimum wage for children working in out-of-home placement).

### **Eliminating Direct File**

Many youth in Pennsylvania are forced to experience the grievous harms stemming from being charged in the adult system. This occurs in two ways: direct file, where youth bypass the juvenile justice system entirely and are charged directly in adult court, or transfer from the juvenile system to the adult system. Under the direct file process, youth who meet certain statutory criteria are automatically excluded from juvenile court jurisdiction and tried in adult court.<sup>56</sup> Under the transfer process, youth 14 or older who are charged with a felony can be transferred from juvenile court to adult court pending a transfer hearing.<sup>57</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> 42 Pa. C.S. §6302.

<sup>57</sup> 42 Pa. C. S. §6355.

Youth charged in the adult system experience severe harms because that system is developmentally inappropriate for youth. Youth in adult facilities are often held in solitary confinement and are five times more likely to commit suicide than youth in juvenile facilities.<sup>58</sup> Youth in adult facilities also experience developmental disruption. Adult facilities lack the academic, vocational, and social skill building education that youth need. Instead, youth learn and see reinforced norms of domination, exploitation, and retaliation.<sup>59</sup> Additionally, youth experience substandard educational services in adult facilities, even more than in juvenile justice settings, which set youth further behind in reaching their educational and employment goals.<sup>60</sup>

Youth treated as adults also struggle with mental health. One study found that youth in adult prisons have higher rates of psychiatric symptoms than youth housed in youth facilities.<sup>61</sup> Another study found that youth charged in adult court who received a prison sentence had significantly greater odds than those who received a less restrictive sentence to have a psychiatric disorder (74 percent and 57 percent, respectively).<sup>62</sup>

Involvement in the adult criminal justice system also hampers youth rehabilitation while undermining public safety. Youth prosecuted as adults are a third more likely to commit another, more violent crime than youth treated in the juvenile system.<sup>63</sup> Youth prosecuted as adults also face numerous collateral consequences including an adult criminal record which negatively impact employment, higher education, housing options, military involvement, and voting rights.<sup>64</sup>

Direct file and transfer rates are also rife with racial disparities. Black males make up a disproportionate share of youth charged as adults in general. The Task Force found Black males accounted for 7% of Pennsylvania's youth population (ages 10-17) but 56% of youth charged and convicted as adults.<sup>65</sup> White males accounted for 36% of Pennsylvania's youth population, but only 21% of youth charged and convicted as adults.<sup>66</sup>

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<sup>58</sup> Campaign for Youth Just., Children in Adult Courts, Jails, and Prisons: Basic Facts 1 (Mar. 23, 2020), [http://www.campaignforyouthjustice.org/images/factsheets/BASIC\\_FACTS\\_032320.pdf](http://www.campaignforyouthjustice.org/images/factsheets/BASIC_FACTS_032320.pdf).

<sup>59</sup> James C. Howell, Barry C. Feld, Daniel P. Mears, David P. Farrington, Rolf Loeber, David Petechuk, Bulletin 5: Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know (Study Group on the Transitions between Juvenile Delinquency and Adult Crime), 2013, at 11, available at: <https://www.ojp.gov/pdffiles1/nij/grants/242935.pdf>.

<sup>60</sup> Mahari Simmonds, Education behind Bars: Can Young People Be Taught in Adult Justice System?, JUV. JUST. INFO. EXCHANGE (Jan. 2, 2019), <https://jjie.org/2019/01/02/education-behind-bars-can-young-people-be-taught-in-adultjustice-system/>.

<sup>61</sup> Murrie et al., Psychiatric symptoms among juveniles incarcerated in adult prison *Psychiatric Services* 60(8): 1092, 1094 (2009).

<sup>62</sup> Jason J. Washburn et al., Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court, 59 *PSYCHIATRIC SERVICES* 965, 970 (2008).

<sup>63</sup> Campaign for Youth Just., supra, at 1 (citing Robert Hahn et al., Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Preventive Services, Ctr. for Disease Control & Prevention (2007), <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>)).

<sup>64</sup> Campaign for Youth Just., Children in Adult Courts, Jails, and Prisons: Basic Facts 1 (Mar. 23, 2020), [http://www.campaignforyouthjustice.org/images/factsheets/BASIC\\_FACTS\\_032320.pdf](http://www.campaignforyouthjustice.org/images/factsheets/BASIC_FACTS_032320.pdf).

<sup>65</sup> <https://www.pacourts.us/Storage/media/pdfs/20210508/153954-file-10124.pdf>

<sup>66</sup> *Id.*

Black youth also represent a disproportionate share of cases filed in the Court of Common Pleas. In 2018, Black males represented only 7% of Pennsylvania youth aged 10-17, but 52% of statutory exclusion filings in a Court of Common Pleas.<sup>67</sup> White males represented 36% of Pennsylvania youth aged 10-17, but only 25% of statutory exclusion filings to Minor Courts.<sup>68</sup>

Finally, Black youth are more likely to have their cases transferred to adult court than white youth. In 2018, Black youth were transferred to adult court 69% of the time following a transfer hearing, while white youth were only transferred 50% of the time in those same circumstances.<sup>69</sup>

HB 1381 will significantly reduce the number of youth subject to the harms of the adult system by eliminating the direct file process. Of note, this legislation does not ban transfer entirely – the cases must start in juvenile court and a judge must find transfer to be appropriate, following the criteria set forth in statute. Specifically, HB 1381 contains the following provisions:

- Eliminates direct file so all offenses committed by youth start in juvenile court, with the option to transfer to adult court for eligible offenses.
- Prohibits holding youth under 18 in adult jail.
- Raises the age at which a child may be transferred to adult court for commission of a felony from 14 to 16 years.

### **Raising the Minimum Age of Juvenile Court Jurisdiction**

Pennsylvania’s current minimum age of juvenile court jurisdiction is 10, meaning that children as young as 10 can be arrested and forced to navigate legal processes that they are unable to understand and that is not designed to address their needs.<sup>70</sup> Young children often do not have the competency to understand and exercise their legal rights in any meaningful way.<sup>71</sup> A 2003 study found that “juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding.”<sup>72</sup>

Young children are also less accountable for their behavior because their brains have yet to develop. Although young children may understand the difference between right and wrong, they may not be able to conform their behavior to these expectations.<sup>73</sup> A child’s ability to control impulse and resist peer pressure matures slower than their abilities for logical reasoning and

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Commission on Youth Public Safety and Justice, *Final Report of the Governor’s Commission on Youth, Public Safety and Justice*, 37.

<sup>71</sup> Commission on Youth Public Safety and Justice, *Final Report of the Governor’s Commission on Youth, Public Safety and Justice*, 37.

<sup>72</sup> Thomas Grisso, Laurence Steinberg, Jennifer Woolard Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, and Robert Schwartz, “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants,” *Law and Human Behavior* 27(4) (2003): 333–63, 356.

<sup>73</sup> Sara B. Johnson et al., Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy, 45 *J. Adolescent Health* 216, 218 (2009).

navigating moral and social situations.<sup>74</sup> Environmental factors over which children have no control may further influence their behavior.<sup>75</sup>

While in the juvenile justice system, young children experience negative psychological and health consequences.<sup>76</sup> Further, they are most likely to suffer violence when in custody – more than 25% youth under 13 years old were victims of some type of violence while confined, compared to nine percent of 20-year-olds.<sup>77</sup>

There are several effective alternative avenues that can serve youth without the harmful effects of involvement in the justice system. For example, the children’s behavioral health system can provide psychiatric treatment, counseling, intensive home and/or community-based services to address the treatment needs of children with mental health issues.

HB 1381 brings Pennsylvania in the company of states such as California, Massachusetts, Nebraska, and Mississippi that have all raised their minimum age above 10.<sup>78</sup> The most common age of criminal responsibility internationally is 14, and the 2019 United Nations Global Study on Children Deprived of Liberty also advocates for a minimum juvenile court jurisdiction age of 14.<sup>79</sup> HB 1381 contains two relevant provisions:

- Raises the minimum age of juvenile court jurisdiction from 10 to 13 for most offenses.
- Raises the minimum age to 12 for youth found to have committed murder or a first-degree felony sex offense.

### **Eliminating Most Fines and Fees**

Juvenile justice costs, fees, and fines undermine public safety, harm youth and families, and create economic and racial disparities. As background, a juvenile court judge may assess fines, fees, and costs on a youth in several instances. A judge may impose these financial obligations if a youth’s case is diverted or pursuant to probation or placement after a youth is adjudicated delinquent. In Pennsylvania, youth are often assessed hundreds and sometimes thousands of dollars in financial obligations which create significant hurdles to their rehabilitation.

For young people, the consequences of fines and fees can be particularly devastating. Research shows that juvenile justice system fines lead to family tension,<sup>80</sup> undermine youth

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Melissa Sickmund and Charles Puzzanchera (eds.), “Juvenile Offenders and Victims: 2014 National Report” (Pittsburgh, PA: National Center for Juvenile Justice, 2014).

<sup>77</sup> *Id.*

<sup>78</sup> CA Welf & Inst Code § 602; MGL c.119, §§ 52; Neb. Rev. Stat. Ann. § 43-247(1)-(2); and MS Code § 43-21-605.

<sup>79</sup> United Nations Convention on the Rights of the Child (CRC), Committee on the Rights of the Child, General Comment No. 24 (2019) on Children’s Rights in the Child Justice System (2019): 6, CRC/C/GC/24, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?DocTypeID=11&Lang=en&TreatyID=5](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?DocTypeID=11&Lang=en&TreatyID=5).

<sup>80</sup> Leslie Paik & Chiara Packard, *Impact of Juvenile Justice Fines and Fees on Family Life: Case Study in Dane County, WI.* (2019); <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-dane-county.pdf>.

development,<sup>81</sup> and push children deeper into the system.<sup>82</sup> Youth, due to their age and educational responsibilities, rarely have jobs or other sources of financial resources, rendering them unable to pay juvenile justice costs and fees. These financial burdens also increase inequities, as parents who have more resources can ensure their children always have counsel and quickly pay off fines and fees. Youth and families who cannot pay fees face criminal contempt, civil judgments that follow them into adulthood, probation violations, additional fees, and incarceration. Fines and fees also do not make fiscal sense. Pennsylvania derives little, if any, revenue from fees and fines imposed in juvenile court. In 2019, Pennsylvania assessed \$2,068,437.70 in fees and only \$110,241.67 in fines<sup>83</sup> (less than half a percentage of the court's annual budget for that year.)<sup>84</sup> The total number of delinquency allegations decreased by 33.8% between 2019 and 2020.<sup>85</sup>

Additionally, fines and fees increase recidivism. Criminologists Alex Piquero and Wesley Jennings examined the impact of fines and fees on youth, analyzing over 1000 cases.<sup>86</sup> They concluded that youth who had fines and fees imposed on them had higher recidivism rates than those who did not, even when controlling for age, race, gender, and type of offense.<sup>87</sup> Moreover, a study conducted in Allegheny County found that the higher the financial obligation, the more likely a youth was to reoffend.<sup>88</sup> Consequently, fines and fees undermine the juvenile justice system's rehabilitative goals and are also not developmentally appropriate.

Currently, youth in Pennsylvania may face fees, fines, and costs for their out-of-home placements if found delinquent or mentally disabled; to cover the costs of court processes such as summons, notices, and subpoenas; to participate in diversion programs or some other informal adjustment; and as a result of a judicial determination or placement on probation.

A particular challenge arises in the context of uncapped restitution fees. (These are distinct from restitution payments to victims, which are still permitted under the proposed legislation.) Currently, youth across the state who commit the same offenses with the same consequences may be assessed widely different restitution fees within their counties, not because of the victims' needs or what is best for accountability and rehabilitation, but simply because counties have different financial concerns and policies. Considering that county restitution funds are administered at the discretion of each president judge, a cap on such fees would be an important check on injustice by geography.

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<sup>81</sup> Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE AND JUVENILE JUSTICE, 325, 325-40 (2016).

<sup>82</sup> Jessica Feierman, et al., Juvenile Law Center, *Debtors' Prison For Kids?: The High Cost of Fines & Fees in the Juvenile Justice System* 10 (2016).

<sup>83</sup> The Pennsylvania Juvenile Justice Task Force, *Report and Recommendations* 51, 53 (June 2021); [https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajjuvenilejusticetaskforcereportandrecommendations\\_final.pdf](https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajjuvenilejusticetaskforcereportandrecommendations_final.pdf).

<sup>84</sup> The 2019 PA Court budget was 483.3 million.

<sup>85</sup> Pennsylvania Juvenile Court Judges' Commission, *2020 Juvenile Court Annual Report* (2020) 5 <https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2020%20Juvenile%20Court%20Annual%20Report.pdf>

<sup>86</sup> Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 1 (2016).

<sup>87</sup> *Id.*

<sup>88</sup> Piquero, *supra*, note 2.

During Care, Not Control's 2020 Townhall, a youth advocate testified that his probation was prolonged much longer than necessary solely because he owed money that he could not pay. Fortunately, a community organization helped him settle his debt, but many youth do not receive such assistance and are consequently left under court supervision because of poverty. At the February 24, 2021 Task Force meeting, another youth advocate testified to having three additional years of probation solely due to court fees that she was unable to pay.

Juvenile Law Center, with partners, is leading a national campaign dedicated to ending the harmful and unjust fees and fines imposed on youth and their families in the justice system.<sup>89</sup> In the past few years, 20 states, Republican and Democrat, have passed legislation to abolish fines and fees in the juvenile justice system. Specifically, neighboring states of Delaware, Maryland and New Jersey and New York do not permit fees and fines in the juvenile justice system. HB 1381 positions Pennsylvania to join those states in guaranteeing these important protections for youth. This legislation:

- Eliminates referrals to the juvenile justice system for contempt on nonpayment of a summary offense fine. (As stated above, the most serious offense for most youth referred to the juvenile justice system is contempt from Magisterial District Court for failing to pay a fine. These fines are issued for minor misbehavior that doesn't lead to juvenile court involvement for young people who can afford to pay timely.)<sup>90</sup>
- Eliminates the imposition of fines, costs, or fees as part of a delinquency adjudication, except restitution and restitution fund contributions capped at \$10.
- Requires that restitution only be ordered for a material loss owed to an actual victim after considering the child's ability to pay. The court may not consider the income of the child's parents in this calculation.
- Amends the court's requirement for continued juvenile court jurisdiction for unpaid restitution. Jurisdiction may be continued, or restitution may be forgiven with appropriate notice to the victim.
- Requires a restitution check-in at each post-dispositional review proceeding, which must occur every four months. The court may modify the order of restitution at any post-dispositional review proceeding with proper notice to the victim. The court is also required to terminate supervision of a child if they have satisfied all other conditions besides payment of restitution in full.

We appreciate the Committee's leadership and consideration. For more information on our recommendations, please contact Malik Pickett at [mpickett@jlc.org](mailto:mpickett@jlc.org).

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<sup>89</sup> <https://debtfreejustice.org/>

<sup>90</sup> [www.pacourts.us/assets/files/page-1316/file-9667.pdf?cb=1612449479147](http://www.pacourts.us/assets/files/page-1316/file-9667.pdf?cb=1612449479147).