

February 23, 2018

Jeffrey M. Wasileski, Counsel  
Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
601 Commonwealth Avenue, Suite 6200  
Harrisburg, PA 17106-2635  
criminalrules@pacourts.us

**RE: Public Comment on Proposed Rules Re Indigent Incarceration for  
Failure to Pay in Summaries**

Dear Mr. Wasileski and members of the Criminal Procedural Rules Committee,

We thank the Criminal Procedural Rules Committee (“Committee”) for the opportunity to comment on the amendments to the Pennsylvania Rules of Criminal Procedure regarding Indigent Incarceration for Failure to Pay in Summaries (“Proposed Rules”). While Juvenile Law Center strongly supports changes to criminal procedure rules that ensure individuals are not punished because of their inability to pay, we write to urge the Committee to further amend the Proposed Rules to create additional protections for children charged with summary offenses. Because young people have no meaningful resources of their own, assessing fines to youth when they are charged with summary offenses provides no useful penological purpose, and may increase youth recidivism. We urge the Committee to amend the Proposed Rules to presume children are indigent and unable to pay the fines and fees associated with summary offenses and instead require jurisdictions to create alternative diversion programs for kids charged with summary offenses.

Juvenile Law Center advocates for rights, dignity, equity and opportunity for all youth in the child welfare and justice systems. Founded in 1975, Juvenile Law Center is the first non-profit, public interest law firm for children in the country. Through litigation, appellate advocacy and submission of amicus (friend-of-the-court) briefs, policy reform, public education, training, consulting, and strategic communications, we fight for children who come into contact with the child welfare and justice systems.

Juvenile Law Center published a report in 2016, “[Debtor’s Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System](#)” which highlights the significant problems that the imposition of costs and fees in the justice system have for youth and their families. Further, a 2016 [study](#) of justice system costs imposed on a cohort of youth from Alleghany County, Pennsylvania demonstrated that when young people were assessed costs by the justice system,

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their likelihood of recidivism increased.<sup>1</sup> Minority youth were also more likely to have costs still owed when their cases closed, indicating that costs and fees increase racial disparities in the juvenile justice system.<sup>2</sup> Juvenile costs and fees are inapposite to the rehabilitative goals of the juvenile justice system, lead to inherently unequal treatment for youth in poverty, and exacerbate racial disparities. Fines associated with summary offenses can especially be problematic when imposed on youth in Pennsylvania, because Pennsylvania statute allows juvenile court judges to prosecute youth in the juvenile justice system simply because they did not meet the financial conditions of a summary offense.<sup>3</sup>

Considering the significant consequences that costs and fees have on youth, Juvenile Law Center submits four additional amendments to the Proposed Rules to provide youth with necessary protections. First, the Proposed Rules should explicitly state that courts must presume youth are indigent and have no ability to pay, and therefore should not be assessed fines and costs when charged with summary offenses. Second, the Proposed Rules should clarify that a parent's financial condition should not be used to determine that a child has ability to pay. Third, as an alternative to fines and costs, the Proposed Rules should direct counties and/or courts to create alternative diversion programs at no cost to youth, that provide rehabilitative supports to youth who have committed a summary offense without pushing them further into poverty or the justice system. Finally, the Proposed Rules should prohibit further prosecution of youth in the juvenile or criminal justice systems because they did not comply with the sentencing requirements for a summary offense.

### **Children Must be Presumed Indigent**

Courts must presume children are indigent and not assess them fines and costs when they commit a summary offense. Young people do not have resources necessary to pay such costs. Children are often too young to work, too young to enter into contracts, and of compulsory school age—thus cannot get jobs to pay off their fines. Even though some teenagers may be able to secure part-time employment, requiring them to work can lead to negative educational outcomes as they struggle to balance the competing demands of school and work. Unavailability of transportation creates additional concerns, as children often do not have independent means of getting to their jobs. Each of these factors make children, as a class, unable to pay costs and fees and it is futile for the courts to assume children can pay or conduct any sort of ability to pay determination so they can fine them.

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<sup>1</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>2</sup> *Id.*

<sup>3</sup> See 42 Pa. Stat. and Consol. Stat. Ann § 6304.1(a).

The Proposed Rule Comments note that “in determining whether a defendant is without the financial means immediately to pay the fine, costs, and restitution,” the issuing authority should consider contributions to the household, such as support from parents.<sup>4</sup>, requiring parents or other family members to pay kids’ summary offense costs also does not alleviate our concerns. Not only do financial burdens from the juvenile court system significantly increase the likelihood of recidivism, the difficulties families face while trying to pay such costs prevent them from supporting positive outcomes for the future.<sup>5</sup> Paying costs associated with the justice system can lead to families not having funds for groceries, rent, or other children in the family.<sup>6</sup>

### **Proposed Changes:**

Based on the unique financial status of children, and the burdens that justice system cost and fees have on their children and their families, we recommend adding the following language to the Proposed Rules and Comments in each instance where ability to pay is discussed:

When a defendant is under eighteen years of age, courts must presume that the defendant does not have financial means and refrain from ordering any monetary sanctions including fines, costs, or restitution.

Comment: Youth under the age of 18 do not have meaningful opportunities to gather financial resources necessary to pay fines, costs, and restitution associated with summary offenses. Courts therefore must not require any additional demonstrations that such youth do not have the ability to pay and assume they are indigent.

We also recommend additional language in the Comments to the Proposed Rule regarding determining a defendant’s ability to pay clarifying that parental income and financial resources cannot be used to determine that children have an ability to pay. Our additional proposed language is underlined.

(5) Other contributions to household support from spouse, parents, children or others; However, parental income or other financial resources should not be used to impute the ability to pay of a youth who has been assessed a fine, cost, or restitution associated with a summary offense. Requiring families to pay for their children’s justice system fines creates significant financial burdens for all family members.

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<sup>4</sup> See e.g. Proposed Rule 409 Comments

<sup>5</sup> Juv. Law Center, *Debtor’s Prison for Kids? Costs, Fines, and Restitution in the Juvenile Justice System* 7(2016)(citing Jeffrey Selbin & Stephanie Campos, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-In-Come Families in Alameda County, California* 15-17(2016) and Alexes Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for Poor* (2016).

<sup>6</sup> See *id.*

## **Jurisdictions Should Create Alternative Programs**

As an alternative to assessing children costs and fees when they have committed a summary offense, the Proposed Rules should direct courts and/or counties to create alternative diversion programs that provide rehabilitative support to young people. Across the country, juvenile justice systems are using thoughtful and innovative approaches that hold youth accountable without relying on financial obligations. For example, Philadelphia has instituted a Police School Diversion [program](#) for summary and other minor offenses committed in school. Instead of arresting students who commit summary offenses, school police officers refer qualifying students<sup>7</sup> to Philadelphia's Department of Human Services. Department of Health Services social workers discuss the underlying issues that may be influencing the student's conduct with the students and their families and provide a support program for the youth. In the first year that the Police School Diversion Program was in place, there was a 54% reduction in the number of arrests within schools and 75% reduction in expulsions and school disciplinary numbers.<sup>8</sup> There was also a 17% reduction in number of school-based behavioral incidents, indicating that the school climate improved even with fewer arrests.<sup>9</sup>

Philadelphia provides one example of how a non-monetary approach can be used to ensure youth are held accountable for their actions and receive additional supports to help overcome the background issues and concerns that their behaviors. Similar programs can be created by jurisdictions to ensure children are either not being arrested for summary offenses, or that they are being given the opportunity to attend diversion programs instead of being assessed costs after being charged with a summary offense.

## **Children Should Not Be Punished for Inability To Pay**

If the Rules Committee does not prohibit charging kids when they have committed summary offenses, then the Proposed Rules should at a minimum clarify that because children, as a class do not have ability to pay, they cannot be subject to further punishment in the juvenile or adult criminal justice systems because of non-payment of summary offense fines. As mentioned previously, Pennsylvania statute allows juvenile court judges to prosecute children in juvenile court when they have failed to comply with their summary judgement sentences, including paying their fines.<sup>10</sup> Prosecution in juvenile court is a significantly more serious consequence than simply being charged with a summary offense. Youth subject to juvenile court jurisdiction

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<sup>7</sup> Only students without a previous delinquency finding may qualify for the diversion program.

<sup>8</sup> *Keeping Kids In School and Out of Court: Philadelphia Police School Diversion Program*, pg. 8, <https://stoneleighfoundation.org/wp-content/uploads/2018/02/Philadelphia-Police-School-Diversion-Program.pdf>

<sup>9</sup> *Id.*

<sup>10</sup> See 42 Pa. Stat. and Consol. Stat. Ann § 6304.1(a).

face harsher sentences and significant collateral consequences that can impact their future employment, education and many other opportunities. It is unconstitutional to subject youth to these further punishments solely because they could not make required payments because children do not have ability to pay.

Courts must consider inability to pay before punishing failure to satisfy financial obligations. *See Bearden v. Georgia*, 461 U.S. 660, 668 (1983). While *Bearden* specifically prohibited imprisonment of an adult for failure to pay, its holding must provide additional protections when applied to juveniles. The Supreme Court of the United States has repeatedly held recognized the special vulnerabilities of children<sup>11</sup>, and required that criminal procedure laws take into account a “defendant’s youthfulness.”<sup>12</sup> Extending additional *Bearden* protections to youth not only requires that courts recognize youth innately do not have an ability to pay and that punishments other than imprisonment can also be problematic.

**Proposed Rule:**

If a defendant is under the age of 18, no juvenile or adult court may commence further proceedings based on the child’s failure to pay any fines or costs associated with the summary offense.

The Proposed Rules are a step in the right direction for adults; to ensure that they are effective for youth, and reflect constitutional requirements for youth, they should explicitly acknowledge that special protections are required for youth who are charged with summary offenses. Youth do not have an ability to pay the fines associated with summary offenses, and jurisdictions must create alternative programs to ensure youth are being held accountable without being punished for their inability to pay.

We would be happy to provide further information upon request.

Sincerely,

/s/ Nadia Mozaffar  
Nadia Mozaffar  
Staff Attorney  
Juvenile Law Center

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<sup>11</sup> *See, e.g., Graham v. Florida*, 560 U.S. 48, 82, 130 S. Ct. 2011, 176 L. Ed. 2d. 825 (2010) (“Developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.”)

<sup>12</sup> *Id.* At 76.