

April 29, 2019

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

RE: Public Comment on Proposed Rules Re Indigent Incarceration 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 in Summaries (“Proposed Rules”).

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 specifically advocates for the elimination of costs and fees imposed on youth in the justice system. In 2016, we published “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. Since that time, we have engaged in numerous advocacy efforts around the country to ensure young people are protected from the harmful consequences of fines and fees.

Juvenile Law Center supports changes to criminal procedure rules that ensure individuals are not punished for their inability to pay.

We also urge the Committee to include additional rules that protect children under 18 who are charged with summary offenses. Young people usually lack the financial resources to pay for summary offense citations. Monetary sanctions create significant burdens for young people and their families<sup>1</sup> and may

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<sup>1</sup> See Juv. Law Center, Debtor’s Prison for Kids? Costs, Fines, and Restitution in the Juvenile Justice System 7(2016).

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increase youth recidivism.<sup>2</sup> Summary offenses may also drive youth deeper into the justice system because Pennsylvania statute allows juvenile court judges to adjudicate youth delinquent simply because they did not meet the financial conditions of a summary offense.<sup>3</sup>

For these reasons, the Committee should create a new rule specifically articulating the additional protections outlined below for young people who are charged with summary offenses. Alternatively, we have noted where in the current rules additional language should be added. The Criminal Procedure Rules should:

1. **Provide Alternatives to Monetary Sanctions for Summary Offenses:** Young people, due to their lack of employment and their educational obligations do not have money to pay for summary offense citations. As an alternative to assessing youth costs and fees when they have committed a summary offense, the Proposed Rules should direct courts and/or counties to rely on alternative diversion programs that provide rehabilitative support. 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, the school police refer students to social workers and other services that help address the underlying issues that may be influencing a student's conduct. Similar programs across the state can ensure children are held accountable for their actions without requiring monetary penalties that they likely will not be able to pay.

Language directing alternatives to the imposition of monetary sanctions on young people should be added in each Rule that assesses any costs against those receiving summary offense citations including:

- a. Rules 403, 408, 413, 423: Clarifying that youth should be connected to diversion opportunities as alternatives to paying a collateral in order to plead not guilty.
  - b. Rule 409, 414, 424: Clarifying that youth should be connected to diversion opportunities as alternatives to a monetary sanction when they plead guilty.
  - c. Rule 454: Clarifying that youth should be connected to diversion opportunities as alternatives to fines at a summary offense hearing.
2. **Establish that Children are Presumed Indigent:** If courts do assess monetary sanctions, several procedural protections must be put in place. The Proposed Rules provide guidance to courts regarding the determination of a defendant's ability to pay—almost all the factors that the Committee recommends courts review are inapplicable to children—young people generally do

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<sup>2</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>3</sup> See 42 Pa. Stat. and Consol. Stat. Ann § 6304.1(a).

not have jobs, other forms of income, or own property. 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. Each of these factors make children, as a class, unable to pay costs and fees. Court should not assume children can pay.

Language establishing that children are presumed indigent should be added in the Comments of each rule where the ability to pay assessment is discussed, including the comments to Rules 409, 414, 424, 454, 456, and 470.

- 3. Clarify that Courts May Not Consider Parent’s Financial Contributions:** The Proposed Rule Comments recommend that courts determining a person’s ability to pay consider contributions the household such as support from parents.<sup>4</sup> Requiring parents or other family members to pay a youth’s summary offense costs may be harmful for families and the young people themselves. The difficulties families face while trying to pay such costs prevent them from focusing on positive supports for youth. Paying costs associated with the justice system can lead to families not having funds for groceries, rent, or other children in the family. Additionally, requiring parents to pay for a young person’s summary offense charge further limits any penological purpose of the financial obligation. Therefore, parental financial resources should not be used in calculating the ability to pay of a youth who has been assessed a fine or cost associated with a summary offense.

Language establishing that courts may not consider parent’s financial contributions should be added in the Comments of each rule where the ability to pay assessment is discussed, including the comments to Rules 409, 414, 424, 454, 456, and 470.

The Proposed Rules are a step in the right direction for adults. With these additions, the Committee will ensure that vulnerable youth are protected as well.

We would be happy to provide further information upon request.

Sincerely



Nadia Mozaffar  
Staff Attorney  
Juvenile Law Center

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<sup>4</sup> See e.g. Rule 409 Comment