

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 21 EM 2019

THE PHILADELPHIA COMMUNITY BAIL FUND, by and through its Trustees,
Candace McKinley and Lauren Taylor,

THE YOUTH ART & SELF-EMPOWERMENT PROJECT, by and through its
Trustees, Sarah Morris and Joshua Glenn,

M.W., an individual being held on bail he cannot afford,

P.R., an individual being held on bail he cannot afford,

G.T., an individual being held on bail he cannot afford,

T.J., an individual being held on bail he cannot afford,

S.T., an individual being held on bail he cannot afford,

D.M., an individual being held on bail he cannot afford,

K.B., an individual being held on bail she cannot afford,

J.H., an individual being held on bail he cannot afford,

H.J., an individual being held on bail he cannot afford,

Z.L., a minor being held on bail he cannot afford, by and through his mother A.B.,

Petitioners,

v.

ARRAIGNMENT COURT MAGISTRATE FRANCIS BERNARD of the
Commonwealth of Pennsylvania,

ARRAIGNMENT COURT MAGISTRATE JANE RICE of the Commonwealth of
Pennsylvania,

ARRAIGNMENT COURT MAGISTRATE SHELIA BEDFORD of the
Commonwealth of Pennsylvania,

ARRAIGNMENT COURT MAGISTRATE KEVIN DEVLIN of the
Commonwealth of Pennsylvania,

ARRAIGNMENT COURT MAGISTRATE JAMES O'BRIEN of the
Commonwealth of Pennsylvania,

ARRAIGNMENT COURT MAGISTRATE ROBERT STACK of the
Commonwealth of Pennsylvania,

Respondents.

BRIEF OF JUVENILE LAW CENTER, YOUTH SENTENCING AND
REENTRY PROJECT, NATIONAL JUVENILE DEFENDER CENTER, AND
JUVENILE DEFENDERS ASSOCIATION OF PENNSYLVANIA AS *AMICI*
CURIAE IN SUPPORT OF PETITIONERS THE PHILADELPHIA
COMMUNITY BAIL FUND ET AL.

Marsha L. Levick, ID No. 22535
Jessica R. Feierman, ID No. 95114
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
(215) 625-0551
mlevick@jlc.org

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STATEMENT OF INTEREST OF AMICI CURIAE¹

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children’s unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

The **Youth Sentencing & Reentry Project** (YSRP) is a nonprofit organization based in Philadelphia that uses direct service and policy advocacy to transform the experiences of children prosecuted in the adult criminal justice system, and to ensure fair and thoughtful resentencing and reentry for individuals who were sentenced to life without parole as children (“juvenile lifers”). YSRP partners with court-involved youth and juvenile lifers, their families, and lawyers to develop holistic, humanizing narratives that mitigate the facts of each case; get cases

¹ Pursuant to Rule 531, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

transferred to the juvenile system or resentenced; and make crucial connections to community resources providing education, healthcare, housing, and employment. YSRP also provides trainings on mitigation, and recruits, trains and supervises students and other volunteers to assist in this work. YSRP's ultimate goals are to keep children out of adult jails and prisons and to enhance the quality of representation juvenile lifers receive at resentencing, and as they prepare to reenter the community.

The **National Juvenile Defender Center** (NJDC) was created to ensure excellence in juvenile defense and promote justice for all children. NJDC responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. NJDC gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. NJDC provides support to public defenders, appointed counsel, child advocates, law school clinical programs, and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. NJDC has participated as Amicus

Curiae before the United States Supreme Court, as well as federal and state courts across the country.

The **Juvenile Defenders Association of Pennsylvania** (JDAP) was founded in 2005 by a small group of passionate juvenile justice defenders. The JDAP continues to strive for improved outcomes for delinquent and disadvantaged youth across Pennsylvania by promoting quality and ethical representation for all juveniles charged with delinquent acts. The JDAP's mission is to provide training and technical assistance to juvenile defenders in all 67 of Pennsylvania's counties.

SUMMARY OF ARGUMENT

For the reasons presented by Petitioners, *Amici* urge the Court to grant the Application for Leave to File Original Process to permit proceedings on the Petition for a Writ of *Mandamus*. *Amici* write separately to underscore the grave risks that youth face in Philadelphia's bail proceedings. Youth as a class cannot pay for bail. They also lack the experience, legal knowledge, and literacy levels to participate effectively in bail proceedings. The resulting deprivation of liberty then imposes unique harms on youth, who are at a heightened risk of pleading guilty to avoid the harms of adult jail. The Court should therefore grant the application to ensure fair treatment for all criminal defendants and to ensure necessary protections for vulnerable youth.

ARGUMENT

I. PHILADELPHIA BAIL PROCEEDINGS ARE INAPPROPRIATE FOR YOUTH BECAUSE ADOLESCENTS AS A CLASS CANNOT AFFORD BAIL

Not surprisingly, youth typically have no way to obtain the money to make bail payments. Some youth in the justice system are not old enough to work at all, or at least cannot work full time under state and federal law. Indeed, the Fair Labor Standards Act sets 14 as the minimum age for most non-agricultural work. 29 C.F.R. § 570.2; *see also* U.S. DEPT. LABOR, FACT SHEET # 43: CHILD LABOR PROVISIONS OF THE FAIR LABOR STANDARDS ACT (FLSA) FOR NONAGRICULTURAL OCCUPATIONS (2016), <https://www.dol.gov/whd/regs/compliance/whdfs43.pdf>. Youth under 14 may work in a few designated jobs (such as babysitting or having a paper route), the vast majority of youth under 14 simply can't earn the money they would need to pay off even minimal fees and costs. Pennsylvania law imposes further time restrictions on youth employment. *See* 43 PA. STAT. ANN. § 40.3, 40.4.

While older teenagers may be legally capable of work, recent reports show that they are increasingly unable to access employment. One recent study found that the number of jobs held by teenagers between ages 14 and 18 shrank by 33% between 2001 and 2014. CAREER BUILDER, THE CHANGING FACE OF U.S. JOBS: COMPOSITION OF OCCUPATIONS BY GENDER, RACE, AND AGE FROM 2001-2004 13 (2015), <http://www.ebony.com/wp-content/uploads/2016/04/changing-face-of-us->

jobs.pdf. Another study found that the youth employment rate in 2011 was 26%, the lowest since World War II. JP MORGAN CHASE & CO., BUILDING SKILLS THROUGH SUMMER JOBS: LESSONS FROM THE FIELD 4 (2015), <https://www.jpmorganchase.com/corporate/Corporate-Responsibility/document/54887-jpmc-summeryouth-aw2.pdf>. Teens seeking jobs are now in competition with college graduates, workers over 55, and others competing for the same entry-level roles. Andrew Soergel, *Why Teens are Getting Shut out of the Workforce: They're Seeing Increased Competition, But That's Not the Only Reason*, U.S. NEWS & WORLD REP. (Mar. 26, 2015), <https://www.usnews.com/news/blogs/data-mine/2015/03/26/studies-suggest-teens-getting-shut-out-of-workforce>.

This is particularly true of youth from families living in poverty, who tend to have more difficulty finding employment than their more affluent peers. According to a report from the Center for Labor Market Studies at Northeastern University, only 21% of teenagers from low-income families worked at all, while 38% of wealthier teens had jobs. ANDREW SUM ET AL., CTR. LABOR MKT. STUDIES AT NORTHEASTERN UNIV., *THE DISMAL STATE OF THE NATION'S TEEN SUMMER JOB MARKET, 2008-2012, AND THE EMPLOYMENT OUTLOOK FOR THE SUMMER OF 2013* 4 (2013), available at https://repository.library.northeastern.edu/downloads/neu:m0406v58n?datastream_

id=content.

Ensuring opportunities to work, however—even if feasible—wouldn't wholly solve the problem. Pushing youth to work too much, too soon may lead to long-term negative consequences, including lower grades and increased school drop-out rates. According to one study, youth who work more than 20 hours a week “may have lower grade point averages and are more likely to drop out of school than those who work fewer hours.” CHILD TRENDS DATA BANK, YOUTH EMPLOYMENT: INDICATORS ON CHILDREN AND YOUTH 2 (2015), http://www.childtrends.org/wp-content/uploads/2012/05/120_Youth_Employment.pdf. The study notes that “Overall, the negative effects of employment appear to be linked, not to whether students work, but how often and how long.” *Id.*

II. DEVELOPMENTAL IMMATURITY PUTS YOUTH IN PHILADELPHIA'S BAIL PROCEEDINGS AT RISK OF GRAVE HARM

Youth are uniquely susceptible to coercion and at the same time lack the knowledge and experience to navigate Philadelphia's bail system. This puts them at risk of facing insurmountably high bail and also of pleading guilty once placed in adult jail.

The U.S. Supreme Court has also repeatedly recognized that youth are highly susceptible to coercion. In *J.D.B. v. North Carolina*, for example, the Supreme Court explained that “a reasonable child subjected to police questioning will sometimes

feel pressured to submit when a reasonable adult would feel free to go.” 564 U.S. 261, 272 (2011). As a result, to fail to take age into account “and thus to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards” to which they are entitled. *Id.* at 281. Similarly, in *Haley v. Ohio*, the Supreme Court, holding an interrogation unconstitutional, noted that “when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces.” 332 U.S. 596, 599 (1948). *See also Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (holding interrogation unconstitutional and noting that a child is “unable to know how to protest his own interests or how to get the benefits of his constitutional rights”).

Indeed, the U.S. Supreme Court has repeatedly highlighted that youth need additional protections because of their susceptibility to coercion in a variety of legal contexts. *See, e.g., Lee v. Weissman*, 505 U.S. 577, 592 (1992) (holding that a unique standard applies to youth in the First Amendment context because “[a]s we have observed before, there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public

schools” (citing *School Dist. of Abington v. Schempp*, 374 U.S. 203, 307 (1963) (Goldberg, J., concurring); *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987); *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226, 261-262, (1990) (Kennedy, J., concurring))). See also *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (observing that “juveniles are more vulnerable or susceptible to negative influences and outside pressures” and should not therefore be subject to the death penalty); *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion) (finding unconstitutional the death penalty for juveniles under age 15 because “inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult”).

The U.S. Supreme Court has also long recognized that youth make decisions differently from adults in ways that are legally relevant. Thus, the U.S. Supreme Court has explained that youth “lack[] [the] maturity, experience, and capacity for judgment required for making life’s difficult decisions,” *Parham v. J.R.*, 442 U.S. 584, 602 (1979), such that “even in adolescence” they “simply are not able to make sound judgments concerning many decisions.” *Id.* at 603. The Supreme Court has stressed that children “generally are less mature and responsible than adults,” *Eddings v. Oklahoma*, 455 U.S. 104, 115–116 (1982), and that they “often lack the experience, perspective, and judgment to recognize and avoid choices that could be

detrimental to them,” *Bellotti v. Baird*, 443 U.S. 622, 635, (1979) (plurality opinion). More specifically, *Graham v. Florida* recognized that youth are “at a significant disadvantage in criminal proceedings.” 560 U.S. 48, 78 (2010). “Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it. They are less likely than adults to work effectively with their lawyers to aid in their defense.” *Id.* (citing Brief for NAACP Legal Defense & Educational Fund et al. as *Amici Curiae* at 7-12, *Graham v. Florida*, 560 U.S. 48 (2010) (No. 08-7412); K. Henning, Loyalty, Paternalism, And Rights: Client Counseling Theory and The Role of Child’s Counsel In Delinquency Cases, 81 NOTRE DAME L.REV. 245, 272–273 (2005)). Most importantly, a juvenile’s “[d]ifficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel, seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by” a juvenile defendant. *Graham*, 560 U.S. at 78.

Neuroscience confirms these conclusions: as a group, adolescents make decisions differently than adults, in part because of developmental differences in a variety of brain regions. See Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78, 83-92 (2008). The prefrontal cortex, which controls executive functioning, matures late in adolescence. Sarah-Jayne Blakemore & Suparna Choudhury, *Development of the Adolescent*

Brain: Implications for Executive Function and Social Cognition, 47 J. CHILD PSYCHOL. & PSYCHIATRY 296, 301 (2006). Developmental changes within this brain region are essential to developing higher-order cognitive functions, such as foresight, weighing risks and rewards, and making decisions that require the simultaneous consideration of multiple sources of information. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 466 (2009). At the same time, the parts of the brain responsible for social-emotional regulation are highly active during adolescence, leading to reward-seeking impulses and heightened emotional responses. *Id.*; see also Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & HUM. BEHAV. 181, 182 (2014).

Thus, adolescents experience an imbalance in developing brain systems: one highly active system involved in social-emotional processes leads to emotional volatility, while immature executive functioning hinders behavior control and decision making. Steinberg, *Adolescent Development and Juvenile Justice*, *supra*, at 466; see also Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT'L ACAD. SCI. 8174 (2004). Because of the way the brain develops, adolescents have difficulty tempering strong feelings, lack impulse control, have difficulty planning for the future, and lack the ability to compare costs and benefits of

alternative courses of action. Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implication for Adolescent Rights and Responsibilities*, in HUMAN RIGHTS AND ADOLESCENCE 59, 64-65 (Jacqueline Bhabha ed., 2014). As a result, adolescents have difficulty assessing potential long-term consequences and tend to assign less weight to consequences that they have identified. See Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008).

Social science further underscores that youth are more suggestible than adults, see Fiona Jack, Jessica Leov, & Rachel Zajac, *Age-Related Differences in the Free-Recall Accounts of Child, Adolescent, and Adult Witnesses*, 28 APPLIED COGNITIVE PSYCHOL. 30, 30 (2014), and have “a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures.” Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 440 (2012). See also Naomi E. Sevin Goldstein et al., *Juvenile Offenders’ Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 365 (2003) (approximately one quarter of youth, and particularly the youngest adolescents, believe they would definitely falsely confess in response to commonly used interrogation techniques).

Youth also face unique challenges in the legal system because of their lack of

knowledge and experience. In the seminal case of *In re Gault*, the U.S. Supreme Court recognized the challenges youth face in understanding legal proceedings, when it cited, with approval, the conclusions of the President's Crime Commission:

The most informal and well-intentioned of judicial proceedings are technical; few adults without legal training can influence or even understand them; certainly children cannot. Papers are drawn and charges expressed in legal language. Events follow one another in a manner that appears arbitrary and confusing to the uninitiated. Decisions, unexplained, appear too official to challenge.

387 U.S. 1, 39 n. 65 (1967). Similarly, in *Powell v. Alabama*, the U.S. Supreme Court recognized that youth were particularly vulnerable in legal proceedings, and therefore particularly in need of legal representation. According to the Court, the fact that the defendants were “young, ignorant, [and] illiterate,” contributed to the devastating impact of their denial of effective assistance of counsel. *Powell v. Alabama*, 287 U.S. 45, 57-58 (1932).

Because of their developmental status and their lack of legal knowledge, youth in bail hearings are at risk of inappropriately deferring to adult judges and will typically not know how to advocate on their own behalf. Also because of their developmental status, once in adult jail because they cannot pay bail, youth are at heightened risk of coercive pleas. Adult jail is overwhelming and traumatic for youth. Studies suggest that adolescents who enter adult facilities while they are still below the age of 18 are “five times more likely to be sexually assaulted, twice as

likely to be beaten by staff and fifty percent more likely to be attacked with a weapon than minors in juvenile facilities.” IAN M. KYSEL, *GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS IN THE UNITED STATES* (2012), <https://www.hrw.org/report/2012/10/10/growing-locked-down/youth-solitary-confinement-jails-and-prisons-across-united>; *see also* Lacey Levitt, *The Comparative Risk of Mistreatment for Juveniles in Detention Facilities and State Prisons*, 9 *INTERNATIONAL JOURNAL OF FORENSIC MENTAL HEALTH* 44–54 (2010) (youth in adult jails are at higher risk of sexual and physical victimization compared to both adult inmates in the same facilities and youths in juvenile detention centers). And youth in adult jail are five times more likely to commit suicide than youth held in juvenile detention facilities.² When faced with the option to plead guilty and escape the trauma of adult jail, youth, with a developmental proclivity to value immediate rewards over long-term consequences, will be highly likely to plead guilty to reach immediate relief without properly accounting for the long-term harms

² According to the Bureau of Justice Statistics, the suicide rate for youth in adult jails was 36 per 100,000 in 2014. MARGARET E. NOONAN, *MORTALITY IN LOCAL JAILS, 2000-2014 – STATISTICAL TABLES* (2016), <https://www.bjs.gov/content/pub/pdf/mlj0014st.pdf>. The rate of suicides of juveniles in juvenile custody is about the same as the suicide rate of youth in the general population, HOWARD N. SNYDER, *IS SUICIDE MORE COMMON INSIDE OR OUTSIDE OF JUVENILE FACILITIES?* 85 (2005), http://www.ncjj.org/PDF/Howardpubs/Research_Notes_2_05.pdf, and according to the Centers for Disease Control and Prevention, the suicide rate for 16-17 year olds in the general population from 2000-2015 was 6.98 per 100,000 (Generated using the Web-based Injury Statistics Query and Reporting System (WISQARS) at <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html>).

of such a plea.

Youth lack the ability to pay bail. At the same time adolescent susceptibility to coercion and lack of legal understanding place youth in Philadelphia's legal system at high risk of inappropriate bail determinations and coerced guilty pleas. Youth are thus at unique risk of harm from Philadelphia's current bail system.

CONCLUSION

Wherefore, *Amici* respectfully urge this Court to grant the Application for Leave to File Original Process.

Respectfully submitted,

/s/ Marsha L. Levick

Marsha L. Levick, ID No. 22535
Jessica R. Feerman, ID No. 95114
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
(215) 625-0551
mlevick@jlc.org

Counsel for Amici Curiae

Dated: March 26, 2019

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 531 and 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 3,061 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: March 26, 2019

/s/ Marsha L. Levick
Marsha L. Levick