

Senate Judiciary Committee and Law and Justice Committee Hearing on Ensuring Accountability & Equality in Law Enforcement and the Criminal Justice System

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For 45 years, Juvenile Law Center has fought for rights, dignity, equity, and opportunity for youth in the child welfare and justice systems. We stand with youth 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. Black and Brown youth are disproportionately targeted by law enforcement, treated unfairly in the justice system, and incarcerated at higher rates than their white peers. Fourth Amendment law that presumes a reasonable person would not flee when stopped by police disregards the realities of Black youth in America. A reasonable Black child¹ has justifiable fear for their life when stopped by police, based on the widespread brutalization of Black people at the hands of police. The presence of school police officers, consistent surveillance of Black communities, and laws that criminalize minor offenses result in greater numbers of youth of color being brought into the juvenile justice system. Once in the system, youth are exposed to harsh conditions of confinement, fees and fines, and collateral consequences. And, the disparities increase at each stage of the delinquency system. The systemic failures by the institutions responsible for the care and protection of children continue to harm youth—especially Black youth.

We appreciate the Senate Judiciary and Law and Justice Committees for bringing attention to the inequities and lack of accountability in our law enforcement and criminal justice system. Following the Interbranch Commission on Juvenile Justice recommendations and subsequent legislative reform, the Pennsylvania juvenile justice system was seen as a model across the country for its balanced approach to youth justice. But, its unequal application on Black and Brown youth persists. We are honored to participate in this important conversation and to provide the Committee with a better understanding of how the inequities of our criminal system permeate the juvenile justice system.

Black communities have historically been subject to over-policing and as a result, Black youth are swept into the juvenile system for minor offenses, including loitering, curfew violations, and jaywalking. Data from the FBI shows that over a three-year period, 85% of arrests in Philadelphia for these minor offenses were of Black teens.² In fact, across the Commonwealth in 2015, Black youth were 9 times as likely to be

¹ Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 Am. U. L. Rev. 1513 (2018).

² John Kelly and Pete Madden, *As loitering and curfew arrests decline nationwide, Philadelphia’s use of the tactic stands out*, ABC NEWS (June 11, 2020) at <https://abcnews.go.com/US/loitering-arrests-decline-nationwide-philadelphias-tactic-stands-crowd/story?id=71204573>.

incarcerated, with Latinx and Native American youth experiencing a 2 to 1 and 3 to 1 disparity respectively.

The Juvenile Court Judges Commission reports that while Black Non-Hispanic youth constitute 14.1% of the state population, they make up 36.4% of delinquency dispositions.³ This number refers to the youth whose cases went to court and does not account for any dismissed cases. The number of Black youth who are alleged to have committed a delinquency offense is even higher – 38.1%. Excluding Philadelphia and Allegheny Counties, Black Non-Hispanic youth make up only 8.9% of the population but 28.9% of delinquency allegations.

Once adjudicated delinquent, Black youth are more likely to be confined outside their home. Black youth make up 43.1% of placements and 59.5% of all secure placements. And, Black youth are treated more harshly when placed in confinement, more likely to be subject to solitary confinement and unlawful use of restraints.

Notably, when cases are dealt with outside juvenile court and do not require confinement, the numbers look different—for informal adjustments, consent decrees, and probation as a final disposition, 50% of cases are of white youth while 35% are of Black youth. Finally, as Pennsylvania law allows the prosecution of youth in the adult system through direct file or through prosecutorial discretion, the disparity is even more pronounced. 29% of youth transferred to the adult system are white while 65.5% are Black. While this data is stark, it is unsurprising given the institutional racism deeply entrenched in the justice system.

Because racial disparities pervade every facet of our juvenile justice system, race-equity solutions should be considered at every decision point in system reform. Without directly addressing race, our policies and practices will continue to have a disproportionate impact. Key strategies that have been effective around the country include:

- reducing the use of police in schools
- requiring racial impact analyses for any new policies
- increasing workforce diversity in the juvenile justice workforce
- addressing bias in decision-making
- enhancing accountability of the players in the juvenile system—including prosecutors, defense attorneys, judges, probation officers, and service providers
- gathering needed data to improve accountability

We also recommend additional reform measures set forth below to address inequity in the juvenile justice system:⁴

³ The Pennsylvania data on juvenile court allegations, dispositions, and confinement can be found in the 2018 Annual Report of the Juvenile Court Judges' Commission. See Pennsylvania Juvenile Court Judges' Commission, 2018 Juvenile Court Annual Report, at:

<https://www.jcjc.pa.gov/ResearchStatistics/Disposition%20Reports/2018%20Juvenile%20Court%20Annual%20Report.pdf>.

⁴ These recommendations and specific citations for the referenced information are contained in the Juvenile Law Center 2019 Transforming Justice Report which can be accessed at:

https://jlc.org/sites/default/files/attachments/2019-10/Transforming_Justice_final.pdf

Address Inequity in the Juvenile Justice System

1. *Racial impact analyses should be conducted before enacting any new legislation or policies, and the State should appoint a race equity taskforce to research disparities and identify solutions.*
 - a. This practice comports with the newly reauthorized Juvenile Justice and Delinquency Prevention Act (JJDP A) that requires states to identify and establish a plan to address racial and ethnic disparities in their justice system.
2. *Increase workforce diversity so that the individuals at every decision point are more reflective of, and from, the communities that they serve.*
 - a. This includes police officers, probation officers, attorneys, correctional staff, and judges.
 - i. Pennsylvania should enact policies and practices that expand diversity and inclusion in recruitment, funding, hiring, promotion, and retention to establish state and county juvenile justice workforces with diversity of race, ethnicity, sexual orientation, gender identity, disability, and system experience.
 - ii. The workforce should also increasingly be from the communities they serve.
3. *Address bias in decision-making:*
 - a. Pennsylvania should proactively work to address bias in decision-making, including developing and implementing training for all persons working in any aspect of the juvenile justice system on: implicit bias, racial and ethnic disparities, de-escalation, diversion of youth from the system, immigration and juvenile justice, and strategies for community engagement.
4. *Ensure system accountability by collecting data, gathering input from impacted individuals and other stakeholders, ensuring oversight, and making needed adjustments.*
5. *Rely on youth and family leadership, by establishing a statewide youth and family advisory group and supporting county-level advisory groups.*
 - a. Authentic community engagement recognizes that young people with lived experience and their family members are experts in the justice system whose experience and insights are essential to reform.
 - i. Pennsylvania should create a state-level commission or advisory board that will advise on the juvenile justice reform and implementation.
 - ii. Members should help design both the process for their involvement and the strategies to improve transparency and communication with families around the state.
 - iii. Members should also provide substantive input into all state level juvenile justice reforms.
 - iv. The board membership should consist of youth and young adults with system involvement and their families.

Limit entry points for placement or delinquency jurisdiction

Limiting entry points for placement will help curb the disproportionate amount of Black and Brown youth who are currently in placement

- 1. *Limit commitment and detention to specified circumstances:***
 - a.** Nationally, a disproportionate number of Black and Brown youth (two-thirds) receive placements technical violations of probation.
 - b.** Pennsylvania should place limits on detention and placement for:
 - i.** youth age 14 and under;
 - ii.** youth charged with a status offense technical probation violation, misdemeanor, nonviolent offense, or non-payment of fines, fees or restitution;
 - iii.** youth who are low-risk according to a risk instrument validated and reviewed to ensure that it is reducing placement and disparities; and
 - iv.** youth who are pregnant or who have given birth in the past 6 months.
 - c.** Young people under juvenile court supervision for truancy should not be placed in secure detention or removed from their parents for any purpose other than education.
 - d.** Prohibit detention unless there is a finding on the record that the youth is likely to fail to appear as evidenced by prior failures to appear in court or to commit a new violent offense prior to adjudication.
- 2. *Raise the minimum age for juvenile court jurisdiction.***
 - a.** We also advocate raising the minimum age for juvenile court jurisdiction from 10, in line with states like Nebraska (minimum age of 11; and, California and Massachusetts (minimum age of 12).
- 3. *Reduce the number of youth who are charged as adults.***
 - a.** Repeal Act 33 and eliminate mandatory charging of certain children as adults, and give discretion back to judges
 - i.** Allow any children charged as adults to be served in the community or at least in juvenile facilities, not in adult jails.
- 4. *Ensure high-quality representation for youth in juvenile court proceedings.***
 - a.** Pennsylvania should elevate the quality of defense representation by establishing a state-based funding stream for juvenile defense by creating a state-level oversight mechanism to ensure adherence to state and national standards of juvenile representation.
 - b.** Pennsylvania should provide adequate compensation rates to support zealous advocacy supported by full investigation and social work support.
 - c.** Tying into our previous points on workplace diversity, having defense attorneys that look like the youth they are serving and come from their communities, helps to ensure that they can adequately understand and relate to the youth to provide them better representation.
- 5. *Transform probation so that it is only imposed for youth who pose a significant risk for serious reoffending; all other cases should be diverted without ongoing court supervision.***
 - a.** When probation is imposed, legislation or court rules should clarify that any youth should have no more than three probation and court terms. Pennsylvania should provide sufficient resources and training so that probation departments can shift to intensive and supportive services for youth.

6. *Eliminate placements due to poverty by prohibiting the imposition of fees and fines in the juvenile justice system.*
 - a. Eliminate fines and fees assessed for juvenile court⁵ – These costs cause family stress, increase recidivism, and are particularly harmful during the current economic crisis. Recently, New Jersey, Maryland, California, and Nevada have passed legislation to eliminate fines and fees for youth.
 - b. Fines and fees disproportionately affect Black and Brown youth. Administrative costs have no penological justification; fines are not developmentally appropriate.
 - c. Address high rates of referrals from district magisterial and municipal court judges for nonpayment of fines.
 - i. Alternatives to fines should be created for district magisterial and municipal court judges to impose on youth.
 - ii. Such alternatives should be time-limited, such as one-day volunteer opportunities or credits awarded for school or after-school participation, and should take the place of referrals to juvenile court.

Expand the continuum of services, including diversion programs

To further reduce the amount of Black and Brown youth currently incarcerated, Pennsylvania should incentivize programs that keep and rehabilitate youth in their communities.

1. *Adopt policies that manage existing resources to generate savings including reducing detention and placement and reinvest a portion of those savings in community programs that further reduce recidivism and prevent crime.*
2. *Assess needs and services*
 - a. To ensure that they have the continuum of services needed, Pennsylvania counties should assess both their service needs and the services currently available, so that gaps can be identified and filled.
 - b. Pennsylvania should shift its funding structures to support and incentivize community-based services and to recapture funding saved on reducing incarceration for these goals.
3. *Modify the Needs-Based Plan and Budget guidelines to incentivize counties to reduce out-of-home placement through diversion, prevention, and community-based services.*
 - a. Pennsylvania DHS, through its Needs Based Budget and Planning guidelines, should provide incentives—in addition to reimbursement—to counties that reduce out-of-home placement through diversion, prevention and community-based services.
 - b. The budget should also increase funding for special grants, reimbursed at 85-95% depending on the program area, for effective community based programs that decrease reliance on placement.
4. *Incentivize community-based services.*

⁵ Jessica Feierman, *Debtors Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, Juvenile Law Center (2016) at <http://debtorsprison.jlc.org>

- a. Current state law uses a sliding reimbursement scale designed to encourage counties to invest in community-based services. The statute should go further by limiting payment to larger, more secure, and farther from home placements.
- b. Reinvest funds currently being spent on policing and incarcerating youth into rehabilitative services.

Rely on youth and family leadership for system reform.

Authentic community engagement recognizes that young people with lived experience and their family members are experts in the justice system whose experience and insights are essential to reform. Tapping into their knowledge will help the legislature introduce effective legislation and policies that benefit all communities.

1. *Ensure significant youth and family participation in all stakeholder groups and task forces.*
2. *Establish a statewide youth and family advisory group and support county-level advisory groups.*
 - a. Pennsylvania should create a state-level commission or advisory board that will advise on the juvenile justice reform and implementation.
 - b. Members should help design both the process for their involvement and the strategies to improve transparency and communication with families around the state.
 - c. Members should also provide substantive input into all state level juvenile justice reforms.
 - d. The board membership should consist of youth and young adults with system involvement and their families.
3. *Ensure significant youth and family participation in all stakeholder groups and task forces.*
 - a. Any reform councils, state advisory groups, or other task forces working on justice reform should include significant participation by youth in the system or young adults with previous system experience and their family members.
 - b. Youth and families should have the opportunity to participate with peers who can support their full involvement.
4. *Fully support youth and family participation.*
 - a. Stipends and travel costs should be available for any youth or family member participating in justice reform efforts, unless that individual is separately compensated for this work through their employment in another agency or organization.
 - b. Childcare should also be provided to support meeting attendance. Supports should also be put in place to ensure that youth participants have necessary preparation to participate fully.
 - c. The format of the discussion should be designed to maximize input and discussion from individuals with varying backgrounds and experiences.
5. *Implement participatory budgeting.*
 - a. Engage youth and family members in participatory budgeting processes in which directly impacted individuals help to guide juvenile justice investment decisions.

When legislatures and programs place equity at the center of the analysis, they see impressive outcomes. As an example, when the Haywood Burns Institute developed restorative justice approaches to resolving

school fights, they reduced detention of Black youth by 43%. There are countless examples from around the country of reforms that have reduced disparities – Pennsylvania should commit to addressing the issue square on.