

## PA Senate Judiciary Hearing on Youth Justice Reforms

May 23, 2022

Good morning. My name is Keisha Hudson, Chief Defender of the Defender Association of Philadelphia. Thank you for inviting me to speak today about the legislation arising from the Juvenile Justice Task Force Report and the areas of children and youth justice that most require the focus of the legislature and system stakeholders at this time.

In 1855, Frederick Douglas, said ‘it is easier to build strong children than to repair broken men.’ After 20 years of criminal law practice, as a line level Defender, a death penalty litigator, policy advocate, and Executive leader in Montgomery County and now Philadelphia’s public defender offices – I am here to tell you the ‘justice’ system is ill equipped to do either.

As we begin this discussion about implementing the Juvenile Justice Task Force recommendations, it is necessary to point out two interrelated assumptions that those of you called to champion these reforms will face:

1. That poor Black and Brown children, particularly boys, are inherently dangerous; and
2. That their involvement with the justice system helps children or promotes public safety.

Both of these assumptions are baked into most of our system processes, and drive the opposition you may face to commonsense, research based, cost effective reforms. And so, as you consider your own position on these proposals, and in your conversations with colleagues, I urge you to rely on the consistent research in the field and your own personal experiences with children you love. Imagine them subjected to the system as it actually exists, and not how we envision it could or should work in a perfect world.

In my practice, I have witnessed shocking instances of institutional harm and every-day cruelty, inefficiency and waste – through brutal separation of children from their families, draconian treatment of children, sometimes held in solitary confinement or subjected to criminal acts of violence, and unnecessary governmental interference in ordinary adolescent development and families’ lives.

One of the most consistent findings in the criminology field, presented to and considered by the Task Force, is that for most children, delinquency peaks at adolescence, but then rapidly declines. Very few children continue those same behaviors into adulthood. But unnecessary involvement in the juvenile justice system can interrupt normal adolescent development and interfere with a child’s shift away from troublesome behaviors. The actions you take in the upcoming months will have significant short- and long-term impacts on individual children and the safety of their communities.

I believe there is considerable doubt about the fundamental fairness and effectiveness of our current system of youth justice. This doubt is sufficient to lead the majority of Task Force members to recommend significant changes to our current system. These current proposals, adopted together, are projected to result in \$81 million in averted state costs for out-of-home placement over five years. More importantly, they are projected to require stakeholders to be more thoughtful about which children and circumstances require a formalized legal system response, narrow the criteria for trying young people as adults, reserve out-of-home placement for behaviors and circumstances that warrant them, and provide young people with meaningful opportunities for expungement so they are not unnecessarily burdened by a youthful mistake. It also begins to address perhaps the **single most significant problem in ensuring a fair and effective youth justice system: inadequately resourced public defender offices.**

## **DEFENDER ASSOCIATION OF PHILADELPHIA**

By way of relevant background, The Defender Association of Philadelphia is a 501(c)3 non-profit organization, that has, without interruption, contracted with the City of Philadelphia to provide legal representation for indigent criminal defendants and other litigants since 1973. Though we have served as court appointed counsel for 49 years, the agency has been in the business of providing indigent defense since our founding 88 years ago in 1934.

Today, Defender provides legal service in nearly 70% of the criminal cases opened in the City of Philadelphia each year. We represent adults and children charged with violations of the Pennsylvania criminal code from arrest through appeal and at violation of probation and county parole hearings. We provide specialty representation to clients who are eligible for early termination of probation or parole and record sealing or expungement. And our work also includes representation of people involved in involuntary mental health proceedings and dependent and neglected children.

We have trial units separately dedicated to adult and child prosecutions and one unit, established in 1987, specially dedicated to representing children charged as adults. The Defender Association has had child advocates on its staff since the early 1970's, but in around 1990, the Child Advocate Unit was established to exclusively represent children who are the victims of neglect and abuse. The office also has a social service unit that connects its clients to services ranging from housing assistance to mental health and addiction treatment. Specially trained social workers are assigned to our Child Advocate Unit, our Children and Youth Justice Unit and our Juvenile Special Defense Division.

## **REPRESENTING YOUTH IN PHILADELPHIA**

Last year, my office represented **1,957 children** in dependency, delinquency or criminal cases.

- **1,397** children had open delinquency cases.
- **637** of them had new delinquency cases opened last year, while the balance had older cases or violations of probation.
- **434** of the children were involved in dependency proceedings, with 268 new dependency petitions filed last year and the balance CAU clients who we continued to represent following petitions opened in earlier years.
- **126** of the children were charged criminally as adults.

Of the children facing delinquency charges for whom we have data about their race and ethnicity, 80% were identified as Black children and 13% as White Latinx. The youngest child we represented was 11. The overwhelming majority (84%) of the children with delinquency cases were aged 16, 17, 18, or 19, with half (50%) of the children at age 18 or 19.

There are frequently misconceptions about the nature of the charges children in delinquency proceedings in Philadelphia face. I often hear talk that Philadelphia's youth are engaged in rampant and widespread acts of serious criminality and crimes of violence. While it is true that our clients more frequently face felony level charges than their peers, I should note that **none of the top five lead charges our children faced last year alleged an act of violence against another person.** Excluding

the approximately 450 children often facing the least serious charges, who were referred for pre-petition diversion at intake, prior to our representation the most common charge our kids face (10% of all cases) allege drug distribution. Unlawful firearm possession, theft, and receiving stolen property account for another 28% of our cases last year.

## **PROPOSED LEGISLATION**

### **1. Funding for Public Defense:**

Currently, as is well known, Pennsylvania provides no state funding for public defense representation and local governments are responsible for the costs of indigent defense services. The [Pennsylvania Indigent Criminal Defense Services Funding and Caseloads Report](#) from October 2021 details high variability in expenditures for indigent defense funding and trial practice between counties. In Pennsylvania, the average defense costs per disposed case was \$1,216,54 with Philadelphia's local government spending on average \$3,799.04 per case and Mifflin County's local government spending on average \$283.84 per case.

National standards call on state appropriations for public defense to avoid these types of disparities, since frequently local jurisdictions most in need of indigent defense services lack the resources to adequately fund them. SB 1229, which proposes a local funding model with state reimbursement does not ensure a baseline level of funding to support indigent defense services across counties because it does not require local governments to appropriate a minimum funds. It also does not clearly articulate whether reimbursement will be formula-based (on population / caseload or average costs) or standards-based and is silent as to whether all local governments would be required to participate, whether the reimbursements would be tied to local governments' that opt in, or require local governments to opt out of reimbursement. And so while we certainly support the reimbursement model as better than our current system, this is a missed opportunity to ensure defendants across the commonwealth have equal access to adequately resourced defense.

The single most important reform we can make to improve the quality of youth justice is not necessarily progressive legislative reforms, but to ensure that defenders have the resources they need to robustly defend their young clients.

### **2. Expungement**

SB 1226 adopts Task Forces Recommendation 23, to create a standardized statewide expungement process. Again, Defender supports this effort as an improvement over current practice but urges the committee to reconsider both the length of time that must pass prior to eligibility for expungement for felony adjudications (currently proposed at 5 years) and to explore an automated and automatic expungement process. While task force recommendations propose extending the age at which family court jurisdiction ends, the courts currently retain jurisdiction over young people until they age of 21. More than ¼ of the children we represented last year were 18 or over. Under these provisions, young people, adjudicated delinquent for felony level thefts, or receiving stolen property charges, who remain under supervision until their 21<sup>st</sup> birthdays, could easily be ineligible for expungement until they were 26 years old.

These adjudications could unnecessarily and severely limit their housing, education, and employment options at the earliest stages of adulthood, despite very well intentioned legislation designed to ensure that a juvenile record doesn't prevent young people from successful transition into adulthood. We also would urge the committee to consider exploring automatic and automated expungement for adjudications, similar to the technology employed for Clean Slate, rather than delegating the responsibility to identify and signal cases to the court to the juvenile probation officers.

## **REMAINING PRIORITIES**

### **1. Narrow Criteria for Trying Young People as Adults**

Defender's Juvenile Special Defense Division specializes in representing children who are charged as adults. The unit is led by an attorney with 30 years of trial experience and staffed by specialized social workers and investigators. Currently under Pennsylvania law designated felonies allegedly committed by children age 15 and older are excluded from the Juvenile Act. Children charged with them are automatically, and without exception, subjected to criminal court jurisdiction.

The task force found that, statewide, 60% of cases prosecuting children as adults are either dismissed or returned to family court. Last year, we represented 126 children who were charged as adults. All of whom were black and male.

While our community has worked hard to narrow the circumstances under which a child can be detained pretrial in an adult facility, our experience suggests original jurisdiction for all behaviors that would be crimes if committed by adults should rest firmly in family court. Family court judges receive specialized training and have access to a higher number of social services to support the child and family. They are in a unique position to know what resources are available to a child and whether there is sufficient time and resources to invest in a young person so they can achieve their potential.

This does not mean that the Commonwealth would lose the opportunity to seek criminal prosecution when appropriate. But adult prosecution should be limited only to children aged 16 or older and must be limited to serious offenses. Family court should have the discretion to retain jurisdiction for even the most serious charges. The Family Court's decision to waive jurisdiction, upon the Commonwealth's motion, should be the most significant decision the court makes in a case and children should receive robust representation at the hearing. During this hearing, it should be the Commonwealth's burden to establish probable cause to sustain the eligible charge and clear and convincing evidence that the child cannot be rehabilitated in family court and that the public interest is served by the transfer of the case to criminal court.

This process would require the Commonwealth to review its case immediately upon arrest and would encourage Defense counsel to investigate, prepare mitigation, and connect to community resources promptly – ultimately resulting in a much more efficient and appropriate response to youthful behavior.

2. Reserve out-of-home placement for the most serious cases that pose a threat to community safety

The Task Force discovered that most young people removed from the homes and sent to out-of-home placement in Pennsylvania have committed non-felony and non-person offenses. Their analysis revealed that in Philadelphia, most of the children in placement (57%) were removed from their community for a non-person offense and 42% for a misdemeanor. 96% of all children sent to placements in Philadelphia were Black or Brown.

One of the primary reasons for this, in our experience, is for children sentenced for technical violations of probation. It is impossible for us to tract this information well because there is no formalized process that triggers a violation of probation that we can link to in our data sets. But our attorneys observe children sent to placement for non-compliance with rules of probation at alarming rates.

3. Racial Impact Statements

Racial impact statements are a tool that allows the legislature to evaluate the impact a proposed legislation will have in creating or alleviating racial disparities prior to the legislation becomes law. Like an environmental or fiscal impact statement, these tools allow the legislature to detect consequences that flow from the legislation. And they require us to incorporate the potential for racial and ethnic disparity at the inception of the legislative process – not as a collateral unforeseen event.

Five states (Iowa, Connecticut, Florida, Oregon, and New Jersey) have structures in place for the legislature to prepare and consider racial impact statements. In addition, the Minnesota Sentencing Guidelines Commission develops racial impact statements without statutory guidance. In recent years, legislators from Arkansas, Illinois, Kentucky, Minnesota, Mississippi, New York, Oklahoma, and Wisconsin have introduced legislation to adopt racial impact statement policies.

These tools would be particularly useful in the youth justice context. Racial impact statements could help assess the impact raising the age of prosecution, changing funding structures for community based programming for justice system involved girls, and imposing limits on the use of a detention as a sanction for children serving probationary terms for misdemeanor infractions.