



# The Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness

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September 13, 2024

The Honorable Lisa Baker  
Chair, Senate Judiciary Committee  
Senate Box 203020  
Harrisburg, PA 17120-3020  
Room: 173 Main Capitol

## **RE: Support for Senate Bill (“SB”) 751 (Eliminating Practice of Direct File; Other Reforms)**

Dear Chair Baker,

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness (the “Interbranch Commission”), we write to convey our support for SB 751. Among other things, this legislation would eliminate the practice of automatically charging youth as adults without judicial review (“direct file”) and would limit the instances in which juveniles may be transferred from juvenile court to adult criminal court. Senators Camera Bartolotta (R-46) and Anthony H. Williams (D-8) are the Prime Sponsors of SB 751. Since the bipartisan bill’s introduction into the Senate Judiciary Committee on June 6, 2023, the Committee has neither convened a hearing nor reported on the bill. We respectfully urge the Judiciary Committee to consider this legislation and take the appropriate measures to facilitate its passage.

### **A. Background**

The Interbranch Commission was established in 2005 by the three branches of Pennsylvania government. The purpose of the Interbranch Commission is to promote equal application of the law. We fulfill that purpose by: (1) implementing the findings and recommendations of the Final Report published by the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System in 2003 (the “Final Report”);<sup>1</sup> (2) investigating new initiatives that may not have been addressed by the Supreme Court Committee; (3) suggesting ways to reduce bias in the legal profession and in all three branches of government; and (4) increasing public confidence in Pennsylvania government.

The Final Report covers fourteen individual topics, including, in Chapter 13, the topic of Racial, Ethnic, and Gender Bias in the Juvenile Justice System. In this chapter, the Supreme Court Committee

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<sup>1</sup> See Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, available at <https://pa-interbranchcommission.com/wp-content/uploads/2022/01/FinalReport.pdf>.

identified as among its primary concerns the overrepresentation of people of color within this system.<sup>2</sup> The Committee noted that disparities are greatest for African American youth, and that while such overrepresentation occurs in confinement, it is “clear that the problem affects the entire juvenile justice system, from arrest through detention, diversion, or referral, adjudication, disposition, *and prosecution as an adult*” (emphasis added).<sup>3</sup>

Since the Final Report’s publication, the Interbranch Commission has worked to improve access to justice for youth and to reduce bias within the juvenile justice system. In 2016, the Commission surveyed Pennsylvania’s judicial districts to learn about the policies and procedures they have implemented to expunge juvenile records. Based on survey results, the Commission produced a model record expungement procedure designed to reduce barriers for juveniles seeking to get their lives back on track following involvement with the system. The requirements contained in the model procedures we produced are mirrored substantially in the provisions of SB 170, which would establish a standardized, uniform expungement process for juveniles in our Commonwealth. The Interbranch Commission has also submitted a letter in support of SB 170.

Following the publication in 2021 of the Juvenile Justice Task Force Report,<sup>4</sup> the Interbranch Commission has also advocated for legislative and other reforms responsive to the Report’s findings. The bipartisan Task Force was comprised of experts and advocates from across the state, including several current and former Interbranch Commission members.<sup>5</sup> As part of its review of the juvenile justice system in Pennsylvania, the Task Force reported myriad findings. Key among them was the determination that outcomes for youth show large disparities by race and geography, even for identical charges.<sup>6</sup> Indeed, the Task Force found that “[s]ome of the largest racial disparities exist for Black, non-Hispanic youth (especially boys), who receive the most punitive system responses: removal from the home and prosecution as adults.”<sup>7</sup>

To redress these disparities, the Task Force issued thirty-five evidence-based policy recommendations, among which is the following:

1. Narrow the criteria for trying young people as adults in criminal court, by:
  - a. Eliminating the “direct file” provisions from the Juvenile Act, which exclude designated felonies allegedly committed by juveniles (e.g., murder and similar charges) from the statutory definition of “delinquent act,” thus subjecting youth automatically to original criminal court jurisdiction.
  - b. Raising the minimum age at which a youth may be transferred to criminal court for certain serious offenses to 16.

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<sup>2</sup> See Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System 1, 530 (2003), available at <https://pa-interbranchcommission.com/wp-content/uploads/2022/01/FinalReport.pdf>.

<sup>3</sup> *Id.* at 532.

<sup>4</sup> The Pa. Juv. Just. Task Force Report and Recommendations (June 2021) [hereinafter *Task Force Report*], [https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajuvenilejusticetaskforcereportandrecommendations\\_final.pdf](https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajuvenilejusticetaskforcereportandrecommendations_final.pdf).

<sup>5</sup> *Task Force Report supra* note 4, at 7.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> Pa. Juvenile Just. Task Force Report: Executive Summary 1, 1 (June 2021) [hereinafter *Task Force Executive Summary*], [https://www.pacourts.us/Storage/media/pdfs/20210622/152646-pajuvenilejusticetaskforcereportexecutivesummary\\_final.pdf](https://www.pacourts.us/Storage/media/pdfs/20210622/152646-pajuvenilejusticetaskforcereportexecutivesummary_final.pdf).

- c. Shifting the burden of establishing that the “public interest is served” by the transfer of the case to criminal court to the Commonwealth in *all* cases.
- d. Prohibiting the detention of youth under the age of 18 in county jails, even if the youth is charged as an adult.<sup>8</sup>

## **B. Support for SB 751 (Printer’s No. 847)**

SB 751 effectuates all four of the Task Force’s evidence-based recommendations above.

Section 2 of the bill eliminates the practice of direct file, which has inhibited equal application of the law in several ways. First, as the Task Force notes in its Report, the practice has produced significant racial disparities. In fact, “the largest racial disparities in the juvenile justice system are for youth charged as adults – Black boys make up just 7 percent of the state’s youth population, but account for 56 percent of adult prosecution convictions.”<sup>9</sup> By precluding direct file, SB 751 mitigates the consequences of a practice that has resulted in a disproportionate number of convictions of people of color.

In its Report, the Task Force also found that “nearly 60% of all adult prosecutions of [youth] are returned to juvenile court, dismissed, or withdrawn.”<sup>10</sup> Therefore, the practice of direct file reduces judicial economy, requiring additional proceedings known as “decertification,” in which, following a hearing in adult criminal court, a youth’s case is transferred from criminal to juvenile court.<sup>11</sup> The juggling of juveniles’ cases is an outcome that predictably flows from the rote assignment of such cases to criminal court based solely on the type of offense allegedly committed, rather than on an individualized assessment of the youth’s situation by the juvenile court judge.

SB 751 removes the rigid presumption that attaches in cases of direct file, instead leaving the decision to transfer to criminal court to juvenile court judges, who are in the best position to make the appropriate determination. In conducting stakeholder roundtables for juvenile court judges, the Task Force learned that “the juvenile justice system can handle youth instead of the adult criminal justice system,” because the former “[has] the staff,” whereas “adult probation is overloaded with cases” and is generally “not as trained in evidence-based practices.”<sup>12</sup> Therefore, in addition to promoting individualized determinations of the appropriate venue in which youth’s cases should be adjudicated, the bill’s elimination of direct file also permits judicial machinery to function more efficiently, in a manner consistent with existing allocations of resources.

By eliminating direct file, SB 751 also precludes a practice at odds with adolescent development. As one judge noted in a roundtable hosted by the Task Force, “statutorily excluding youth from the juvenile justice system does not align” with the scientific consensus that the brain is not fully developed until the age of 25.<sup>13</sup> Subjecting youth to a system that is, by definition, designed overwhelmingly for the adjudication of adults’ cases leads predictably to adverse outcomes. Indeed, the practice of direct file

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<sup>8</sup> *Task Force Report supra* note 4, at 33.

<sup>9</sup> *Id.* at 28.

<sup>10</sup> *Id.* at 29.

<sup>11</sup> *Id.* at 45.

<sup>12</sup> *Id.* at 29.

<sup>13</sup> *Id.*

has been shown to *increase* recidivism. A report by the Centers for Disease Control and Prevention found that “transferring juveniles to the adult system is counterproductive as a strategy for preventing or reducing violence.”<sup>14</sup> By prohibiting certain cases from automatically transferring to adult court, SB 751 reduces the downstream expenditure of court resources on youth’s subsequent charges, thus promoting judicial economy.

In sum, SB 751 promotes due process for youth, requiring that all cases against youth, even those involving allegations of more serious offenses, originate in juvenile court. In so doing, SB 751 mitigates racial disparities, promotes judicial economy, and better comports with the development of youth in a manner designed to reduce, rather than increase, recidivism. Importantly, the legislation does not categorically preclude the charging of youth as adults in certain, limited instances. However, rather than setting forth a rigid presumption of direct file for enumerated charges, the legislation leaves the decision to juvenile court judges, subject to narrowed criteria established within the bill.

As amended by SB 751, those narrowed criteria increase the minimum age at which youth may have their case transferred to criminal court for certain offenses from 14 to 16 years of age. They also provide that the burden of establishing that the “public interest is served” by the transfer of the case to criminal court rests exclusively with the Commonwealth. Both of these provisions directly track the recommendations produced by the Task Force in its Final Report.<sup>15</sup>

At present, any youth 14 or older who are charged with a felony can be transferred to criminal court after a transfer hearing in juvenile court.<sup>16</sup> Any party at any time before an adjudication of delinquency can initiate this hearing.<sup>17</sup> Typically, the Commonwealth bears the burden to demonstrate that such a transfer serves the public interest. However, following amendment of the Juvenile Act in 1995, a presumption of transfer attaches when the juvenile has allegedly committed an enumerated felony and either (1) was 14 years old at the time of offense and used a deadly weapon or (2) was at least 15 and had previously been adjudicated delinquent for a felony-grade offense. In these situations of presumptive transfer, the *juvenile* (who is, at most, 15 years old) bears the burden of proof and must show why the transfer would *not* serve the public interest. As a result of the existing statutory scheme, “transfer is now presumptive in many cases.”<sup>18</sup>

By both increasing the age at which transfer is permissible and assigning the burden of proof in all cases to the Commonwealth, SB 751 strikes the proper balance between acknowledging the severity of certain offenses and recognizing that the individuals alleged to have committed them may differ in culpability due in part to their age and corresponding maturity level. As the U.S. Supreme Court has noted, the younger an individual is, the more likely they are to possess a “lack of maturity and an underdeveloped sense of responsibility;” to be “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;” and to possess a character that “is not as well formed

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<sup>14</sup> Robert Hahn et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, Ctrs. for Disease Control and Prevention (Nov. 30, 2007), <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm#:~:text=According%20to%20the%20Community%20Guide's,to%20the%20adult%20system%20is>.

<sup>15</sup> See Recommendation 9 in the *Task Force Report supra* note 4, at 33.

<sup>16</sup> 42 Pa. Cons. Stat. § 6355(a) (1995).

<sup>17</sup> Malik Pickett, *Juvenile Justice Task Force Update: September 30, 2020*, Juv. L. Ctr. (Oct. 2020), <https://jlc.org/news/juvenile-justice-task-force-update-september-30-2020>.

<sup>18</sup> *Task Force Report supra* note 4, at 29.

as that of an adult.”<sup>19</sup> At 14 or 15, a child in Pennsylvania is still unable to acquire a learner’s permit, which allows him or her to drive a vehicle with supervision.<sup>20</sup> Current Pennsylvania law thus precludes youth from engaging in certain adult activities while still potentially subjecting them to legal consequences otherwise reserved for adults. SB 751 ameliorates this legal dissonance by increasing the age at which potential adult criminal liability may attach to 16 years old. In so doing, the bill creates a workable distinction, leaving open the Commonwealth’s ability to prosecute serious offenses committed by individuals 16 and over while assigning to the jurisdiction of juvenile court those acts committed by youth 15 and under.

Finally, consistent with the recommendation of the Task Force *supra*, SB 751 would prohibit the transfer of youth under 18 years of age to an adult jail. In its review of the juvenile justice system in Pennsylvania, the Task Force heard from numerous young people about their experiences in adult jails and prisons. In roundtables, “youth recounted difficult experiences spending time in adult jail awaiting a hearing, in some cases only to have the charges dropped.”<sup>21</sup> Describing the experience, one young man indicated that there are “no resources or things [for youth] to help themselves when they’re in there.” Lacking resources and potentially facing or witnessing violence by older inmates, youth may experience long-term psychological damage. This harm, coupled with the fact that possessing an adult criminal record may limit a young person’s educational and career opportunities later in life, foreseeably increases the likelihood that youth will recidivate.<sup>22</sup>

The risks of being exposed to adult carceral environments are implicitly acknowledged within existing provisions of the statute SB 751 seeks to amend. Pursuant to 42 Pa. Cons. Stat. § 6327(a), “[u]nder no circumstances shall a child [alleged to be delinquent] be detained in any facility with adults.” Subparagraph (b) of the same section requires that the official in charge of a jail or other facility for the detention of adult offenders must “inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility.” SB 751 thus moves to preclude the same risks faced by youth in adult facilities that are already contemplated by existing law. Therefore, even for those youth 16 and older whose cases are transferred to adult criminal proceedings, those individuals may only be detained in a secure facility *for juveniles*.

### **C. Conclusion**

For each of these reasons, we urge you to take the appropriate measures to facilitate the passage of SB 751. By passing this bill, the General Assembly will reduce racial disparities, improve judicial economy, and decrease the likelihood of juvenile recidivism. In so doing, it will effectuate the evidence-based recommendations for which the Juvenile Justice Task Force has advocated since 2021, acknowledging the potential that each young person’s life holds before, during, and following involvement with the juvenile justice system.

If you have any questions concerning this matter, we would be happy to discuss them with you at your convenience.

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<sup>19</sup> *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

<sup>20</sup> *See, e.g.*, 75 Pa. Cons. Stat. § 1503(c) (2011) (establishing the age at which youth in Pennsylvania may apply for a junior driver’s license).

<sup>21</sup> *Task Force Report supra* note 4, at 29.

<sup>22</sup> *Id.*

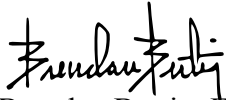
Respectfully,



Carlos Graupera  
Chair, Criminal Justice Committee



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cc: The Hon. Steven J. Santarsiero, Minority Chair, Senate Judiciary Committee  
The Hon. Camera Bartolotta, Prime Sponsor, SB 751  
Members of the Senate Judiciary Committee  
Pennsylvania Interbranch Commission Members  
Interbranch Commission's Criminal Justice Committee