



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: Letter in Support of, Proposing Amendments to Senate Bill (“SB”) 752 (Expanding Diversion; Focusing Detention and Out-of-Home Placements; Related Juvenile Justice Reforms)

Dear Chair Baker,

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness (the “Interbranch Commission”), we write to offer support for and several amendments to SB 752. Among other things, this legislation is designed to accomplish four primary functions within the juvenile justice system: (1) expanding diversion programs for youth; (2) reducing the length of time that a young person can spend in detention; (3) reserving out-of-home placements of youth for only the most serious cases; and (4) eliminating continued system involvement due solely to a juvenile’s socioeconomic status. Senators Camera Bartolotta (R-46) and Anthony H. Williams (D-8) are the Prime Sponsors of SB 752. 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

As we stated in our preceding letter in support of SB 751, the Interbranch Commission was established in 2005 by the three branches of Pennsylvania government and is tasked with promoting equal application of the law. Since the publication in 2003 of the Final Report of the Supreme Court Committee on Racial and Gender Bias in the Justice System, the Interbranch Commission has worked to improve access to justice for youth and to reduce bias within the juvenile justice system. Following the publication in 2021 of the Juvenile Justice Task Force Report,¹ the Interbranch Commission has advocated for legislative and other reforms responsive to the Report’s findings. As part of its review of the juvenile justice system in Pennsylvania, the Task Force reported myriad findings, the most relevant of which are the following:

¹ 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.

1. Most young people become involved in the juvenile justice system for low-level behavior, with at least two-thirds of youth entering the system for misdemeanors or contempt from Magisterial District Courts for failure to pay fines.²
2. Despite its success, diversion is underutilized in Pennsylvania: most written allegations against juveniles do not lead to diversionary programs, even for young people who are deemed low risk to commit another offense or are entering the juvenile justice system for the first time.³
3. Because no statewide criteria exist to guide responses to youth behavior by offense, risk, or prior history, a youth may be removed from home for any delinquent act. As a result, youth with low-level cases frequently end up on probation and in residential placement, and technical violations of supervision (such as failure to pay fines) drive youth deeper into the system.⁴
4. Legal financial obligations (“LFOs”), which can be part of any informal or formal resolution of a case, are among the most burdensome conditions for youth. The share of cases where financial obligations are assessed has nearly doubled in the past ten years.⁵
5. Out-of-home placements consume **80%** of taxpayer spending on delinquency services, despite evidence that services for youth living at home are generally more effective.⁶
6. Outcomes for youth show large disparities by race and geography, even for identical charges. “Some of the largest racial disparities exist for Black, non-Hispanic [boys,] who receive the most punitive system responses: removal from the home and prosecution as adults.”⁷ Furthermore, while Black youth “make up 14 percent of the statewide youth population, they represent 62% of youth held in detention prior to adjudication” and “47% of youth sent to residential placement.”⁸

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

1. Expand and standardize informal adjustment⁹ and other pre-petition diversion, and tailor criteria for post-petition diversion.¹⁰
2. Prohibit written allegations for failure to pay a fine in Magisterial District Court.¹¹
3. Prioritize restitution payments to victims and prevent unnecessary system involvement by eliminating the imposition of fines and most court fees and costs.¹²

² 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.

³ *Id.*

⁴ *Id.*

⁵ *Task Force Report supra* note 1, at 23.

⁶ *Task Force Report supra* note 1, at 24.

⁷ *Task Force Executive Summary supra* note 2, at 1.

⁸ *Task Force Report supra* note 1, at 26.

⁹ An “informal adjustment” is a period of informal supervision for six to nine months which does not require a court hearing and under whose terms the juvenile may be referred for community-based treatment and/or counseling. See *Juvenile Justice Definitions*, Cumberland County, Pennsylvania.

¹⁰ *Task Force Report supra* note 1, at 34.

¹¹ *Task Force Executive Summary supra* note 2, at 2.

¹² *Id.*

4. Focus the use of pre-adjudication detention by, among other things, limiting the amount of time a youth may spend in detention prior to adjudication and precluding technical violations of probation from serving as the basis for detaining youth.¹³
5. Focus the use of residential placement on young people who pose a threat to community safety and keep youth out of home no longer than the timeframe supported by research.¹⁴

B. Support for and Suggested Amendments to SB 752 (Printer’s No. 848)

The Interbranch Commission supports SB 752, which implements in a comprehensive fashion the bipartisan, evidence-based recommendations above. The bill amends statutory provisions related to four main facets of the juvenile justice system in Pennsylvania: diversion, detention, out-of-home placements/commitments, and LFOs. These categories are addressed in turn.

1. Diversion

As the Task Force notes in its Final Report, diversion from juvenile court for low-level and first-time offenses is often highly successful.¹⁵ Indeed, “[m]ore than 80 percent of youth who receive diversion complete it with no further escalation in the case” – a figure that rises to 87% percent among those who score as low-risk to reoffend.¹⁶ Despite its success, diversion is underutilized. 64% of youth assessed as low risk do not receive diversion and are instead petitioned into court.¹⁷ Additionally, more than half of misdemeanor charges do not result in pre-petition diversion, even among young people encountering the system for the first time.¹⁸

While these statistics demonstrate the under-utilization of diversion, they obscure the differing degrees to which the practice is used in different localities within the Commonwealth. The Task Force found that while some counties use diversion frequently, others do so rarely, if at all. While only about “two percent of written allegations receive pre-petition diversion in Monroe County,” 69 percent of such allegations receive diversion in York County.¹⁹ All told, “in more than half of Pennsylvania’s counties, fewer than 25 percent of written allegations . . . result in diversion from formal court proceedings,” even though “[j]uvenile probation officers are authorized under the law to extend diversion offers to nearly any youth.”²⁰

These figures demonstrate that whether a case is diverted largely depends on where a young person happens to live. They also underscore the direct link between disparate geographic outcomes and the fact that there are no uniform, statewide requirements in Pennsylvania regarding the conditions under which youth should be diverted. While youth in certain parts of the Commonwealth may receive and benefit from diversionary measures, others will be formally processed before a judge, a result shown to render youth more likely to be re-arrested, to engage in violence, to affiliate more

¹³ *Task Force Report supra* note 1, at 35.

¹⁴ *Task Force Executive Summary supra* note 2, at 2.

¹⁵ *Task Force Report supra* note 1, at 14.

¹⁶ *Id.* at 15.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 16.

²⁰ *Id.* at 15, 16.

frequently with delinquent peers, and to experience significant academic hurdles.²¹ Therefore, existing Pennsylvania law not only precludes equal application of the law and access to justice for Pennsylvania’s youth; it also reduces both public safety and the promise of adolescents’ potential as they develop into adults.

To improve and standardize outcomes for youth, SB 752 expands pre-petition diversion and clarifies the parameters of post-petition diversion. Pursuant to the bill, youth who are referred to juvenile court for an alleged misdemeanor or nonviolent felony must be presented with an informal adjustment or other pre-petition diversionary program unless they have previously received two or more diversions or adjustments. In addition, if the post-petition disposition of a child’s case results in a consent decree, the bill reduces the length of time by which that decree may (in some instances) be extended by the court, from six months to three months. The bill permits such extensions only so that a youth may complete community service or an evidence-based program that is already underway and which is “assessed as necessary . . . by a validated risk and needs assessment.”²² In sum, the bill seeks to expand access to diversionary programs, whose success is demonstrated by the statistics above. At the same time, SB 752 ensures that those programs do not become more onerous or lengthy than needed.

While the Interbranch Commission supports SB 752’s provisions regarding diversion, we note that the bill implicitly requires judicial districts in Pennsylvania to adopt the use of a validated risk and needs assessment tool, both to determine if one’s consent decree may be extended, as referenced above, and to determine the appropriate conditions to assign when a young person is placed on probation. Despite including this requirement, SB 752 does not specify the permissible factors that such risk assessment tools may consider when analyzing a youth’s individualized threat to public safety or risk of reoffending. As we explained in our [testimony](#) before the Pennsylvania Commission on Sentencing in 2018, risk assessments may be prone to baking racial and other biases into assessment results, particularly when they fail to distinguish between re-arrests and new convictions or between technical violations of conditions and new criminal activity.

We also observe that not every judicial district in Pennsylvania has experience using or the resources to administer a validated assessment tool. In its Final Report, the Task Force found that “[w]hile some counties use the Pennsylvania Detention Risk Assessment Instrument . . . to help guide which youth should be [detained], released, or sent to an alternative, many do not.”²³

Therefore, so long as SB 752 predicates the extension of a consent decree or the assignment of probationary conditions on the results of a validated risk assessment, we recommend that the legislature amend the bill in several ways. First, we recommend the inclusion of a provision explicitly requiring validated tools to distinguish between technical violations of probation and new criminal activity, as only the latter implicates public safety.²⁴ Similarly, we suggest that SB 752

²¹ *Id.* at 14.

²² A “validated risk and needs assessment” is defined in Section 1 of SB 752 as a “standard instrument administered to children to identify specific risk factors and needs shown to be statistically related to a child’s risk of reoffending, and when properly addressed, capable of reducing a child’s risk of reoffending.”

²³ *Task Force Report supra* note 1, at 26.

²⁴ Pa. Interbranch Comm’n for Gender, Racial, and Ethnic Fairness, *Ending Debtors’ Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform* 1, 8 (Jul. 2017), <https://pa->

explicitly preclude risk assessments' consideration of re-arrests when analyzing youth's risk of recidivism, as this metric is not necessarily representative of future violence and is instead a demonstrably more likely outcome for a person of color or an otherwise marginalized person.²⁵ Third, so long as SB 752 requires all judicial districts to utilize a validated assessment tool when making certain decisions, we recommend that the General Assembly ensures districts have access to the resources needed to adopt, administer, and periodically re-validate such tools.

2. Detention

In its report, the Juvenile Justice Task Force details significant racial disparities in the detention of youth in Pennsylvania. Specifically, it found that "Black Non-Hispanic young people make up 62 percent of youth held in detention prior to adjudication," even though such youth make up just 14% of the statewide population and just 38% of written allegations coming into the system.²⁶ The Task Force reported similar disparities along geographic lines. Whether a young person is detained for a technical violation of supervision "may depend on the [juvenile probation officer] overseeing their case."²⁷ In questionnaires submitted to the Task Force, half of such officers reported that they use detention as a response to technical violations, while half do not.²⁸

To reduce these disparities, SB 752 sets forth standardized criteria that focus the use of detention. Consistent with the provisions of Recommendation 14 of the Juvenile Justice Task Force Report, SB 752 limits the permissible detention²⁹ of youth to those who:

- Are 14 years of age or older;
- Are alleged delinquent for a violent felony (and not a lesser offense);
- Are not pregnant or the parent of a child born within the past 12 months;
- Are not before the court for a technical violation of probation, such as failure to pay outstanding fines, costs, or fees; and
- Have been determined, by clear and convincing evidence by the court, to pose an immediate risk of physical harm to a specific person if released.

SB 752 also reduces the length of time that youth may spend in juvenile detention facilities. Section 5 of the bill specifies that the court must hold an informal hearing within 72 hours of the child being placed in detention to determine whether the child's detention is "warranted" and if it may continue. Such detention is only warranted if the child meets the five criteria outlined in the paragraph above. The child may only continue to be detained if at least one of the following are found: (1) there is no nonresidential alternative that would be sufficient to secure the child's presence at the next hearing, or (2) the child poses a "specific, immediate, and substantial risk of harm to others, and there is no alternative to reduce [that] risk of harm."

interbranchcommission.com/ending-debtors-prisons-in-pennsylvania-current-issues-in-bail-and-legal-financial-obligations-a-practical-guide-for-reform/

²⁵ *Task Force Report supra* note 1, at 26.

²⁶ *Id.*

²⁷ *Id.* at 20.

²⁸ *Id.*

²⁹ "Detention" is a temporary holding facility for juveniles while they await a hearing for a delinquent act or a violation of probation. See *Juvenile Justice Definitions supra* note 9.

Even for instances in which detention is permitted to continue, the bill does not permit that continuation to be extended indefinitely. Section 6 of SB 752 provides that, unless the child or his or her attorney so requests, the child may not be held in detention for more than 20 days prior to an adjudication for delinquency or pending a violation of probation. The bill also requires the court to articulate in writing the reasons for which the detention of the child was deemed warranted. By setting forth this requirement, the bill solemnizes the tangible impacts that result from detaining a child by encouraging judges to reflect on and formalize their thought process on the record.

3. Out-of-Home Placements (“Commitments”)

The Task Force’s Final Report cites research demonstrating that out-of-home placements³⁰ are “generally not effective at reducing recidivism for most youth – and can instead be counterproductive.”³¹ Despite their ineffectiveness in certain situations, “approximately **80%** of Pennsylvania taxpayer spending on juvenile justice services [e.g., \$280 million]” is dedicated to out-of-home placements.³² This substantial financial commitment reflects the fact that the cost per year to hold a young person at a residential facility is nearly 50 times the cost per participant in Functional Family Therapy and other non-residential alternatives.³³

In addition to disposing of juveniles’ cases ineffectively and expending a significant amount of state resources, out-of-home placements in Pennsylvania also suffer from a lack of statewide criteria guiding whether and how long a young person should remain in that placement. The lack of standardized criteria structuring the usage of placements affords privately-run placement facilities broad authority, permitting them to reject a young person’s admission for any reason and to influence the timing of when that person is released.³⁴ Due in part to this discretion, youth assigned to residential placement in Pennsylvania “cycle through an average of six different facilities . . . over the course of their case,” cumulatively spending “16 months out of home, on average.”³⁵

To redress these structural issues, SB 752 limits reliance on out-of-home placements by reserving such a disposition for only those youth who have committed the most serious offenses. Section 7 of the bill specifies that the court may not commit a child to an out-of-home placement unless the child has been:

- Adjudicated for a crime of violence (such as murder or manslaughter), has three or more prior adjudications, or has been adjudicated delinquent for a sexual offense such that residential treatment is the most appropriate and least restrictive option; *and*
- The child poses a risk to the safety of the community or a victim.

³⁰ A placement, or “commitment,” requires the filing of a petition and a court appearance in which the court finds the child to be in need of treatment, supervision, and/or rehabilitation and thus commits the juvenile to a facility. See [Juvenile Justice Definitions](#) *supra* note 9.

³¹ *Task Force Report supra* note 1, at 17.

³² *Id.* at 24.

³³ *Id.*

³⁴ *Id.* at 20.

³⁵ *Id.* at 20.

Though inferred in the criteria above, the bill also makes explicit that a child may not be committed for a technical violation of probation, such as the failure to pay fines, fees, or costs. If the court determines that an out-of-home placement is appropriate, the court must state the reasoning for its decision on the record in open court. The court must also enter into the *written* record the goals, terms, and conditions of such placement, as well as the reasons for which the commitment was determined to be the least restrictive option consistent with the protection of the public.

SB 752 also limits the permissible period of time for which a child may be committed. Unless the youth is adjudicated for murder, attempted murder, or sexual offenses graded as felonies, that youth cannot be initially committed to an institutional placement for more than six months. This provision significantly reduces the existing statutory scheme, which permits an initial commitment of up to four years and, as detailed above, over-involves and traps youth within the juvenile justice system. Additionally, the bill requires that commitment disposition review hearings be conducted more frequently, to better assess the extent to which the out-of-home placement remains beneficial and appropriate for a young person. While such hearings are presently required to occur every nine months, SB 752 mandates a hearing every three months.

If enacted at the time of the Final Report's publication in 2021, the Task Force projected that the above reforms would reduce the out-of-home placement population in Pennsylvania by 39% by 2026, as compared to projections for the population absent these policy changes.³⁶ In so doing, the reforms would free up "over \$81 million in averted state costs," which could be "reinvested into a range of priority areas, including high-quality nonresidential services across the Commonwealth" and "restitution funds to support victims."³⁷

4. Reducing Juveniles' Onerous Legal Financial Obligations ("LFOs")

Consistent with Recommendations 21, 22, and 31 of the Task Force's Final Report, SB 752 also aims to prevent system involvement due simply to a young person's socioeconomic status.³⁸ In the Final Report, the Task Force found that the number of cases where LFOs are assessed has "nearly doubled in the past ten years to just under 60 percent."³⁹ Where such obligations are assessed, they are often challenging for youth to pay off. In 2018, youth were assessed an average of \$173 each in costs/fees, and those that were assessed restitution owed an average amount of just under \$1,000.⁴⁰ The more frequent assessment of LFOs, the hefty price tag that accompanies them, and the fact that LFOs "can be part of any informal or formal resolution of a case" have rendered such obligations among the most burdensome conditions for youth to satisfy.⁴¹

The Task Force also found that whether a youth must pay an LFO largely depends on where they live. Although 17 counties did not impose any fines in 2018, seven assigned fines totaling more

³⁶ *Task Force Executive Summary supra* note 2, at 2.

³⁷ *Id.*

³⁸ *Task Force Report supra* note 1, at 38, 42.

³⁹ *Id.* at 23.

⁴⁰ *Id.*

⁴¹ *Id.*

than \$150 per youth.⁴² All told, the Task Force found that the average amount of costs/fees per youth imposed across counties in Pennsylvania ranged from \$53 to \$673.⁴³

To remedy the onerous costs of LFOs and the geographic discrepancies that characterize their unbalanced assignment, SB 752 eliminates the payment of fees, costs, and most fines from the list of permissible terms and conditions that may attach when a youth's case results in an informal adjustment, consent decree, or other diversionary measure. To further reduce financial disparities, the bill caps the amount that youth may pay into a restitution fund at \$10. Third, SB 752 provides that when a child is ordered to participate in a constructive program of service or labor pursuant to a formal probationary period, the child must be paid at least minimum wage while involved in that program. Collectively, these reforms promote equal access to justice, better ensuring that youth are not trapped in the juvenile justice system due solely to their financial means.

C. Conclusion

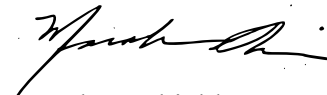
For each of these reasons, we urge you to take the appropriate measures to facilitate the passage of SB 752. By passing this bill, the General Assembly will advance a significant number of evidence-based reforms designed to permit Pennsylvania's juvenile justice system to operate more fairly and efficiently. By expanding diversionary programs, focusing the use of pre-adjudication detention and out-of-home placements, and eliminating unduly onerous LFOs, the General Assembly will promote equal application of the law for all young people in our Commonwealth.

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

Respectfully,



Carlos Graupera
Chair, Criminal Justice Committee



Maraleen Shields, Esq.
Executive Director



Brendan Bertig, Esq.
Staff Attorney

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

⁴² *Id.*

⁴³ *Id.*