

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

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**No. 21 EM 2019**

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THE PHILADELPHIA COMMUNITY BAIL FUND, et al.,

*Petitioners,*

v.

ARRAIGNMENT COURT MAGISTRATES of the FIRST JUDICIAL DISTRICT  
of the COMMONWEALTH OF PENNSYLVANIA,

*Respondents.*

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BRIEF OF JUVENILE LAW CENTER AS *AMICI CURIAE*  
IN RESPONSE TO REPORT OF THE SPECIAL MASTER

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Marsha L. Levick, ID No. 22535  
Jessica R. Feerman, ID No. 95114  
JUVENILE LAW CENTER  
1800 JFK Blvd., Ste. 1900B  
Philadelphia, PA 19103  
(215) 625-0551  
mlevick@jlc.org

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## STATEMENT OF INTEREST OF AMICI CURIAE<sup>1</sup>

**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.

### SUMMARY OF ARGUMENT

On December 17, 2019, the Special Master submitted his Report and Proposed Interim Pretrial Reform plan (the “Plan”) to this Court recommending a series of improvements to the First Judicial District’s cash bail system. These recommended improvements were the result of negotiated agreements between and among the parties to this litigation as well as the President Judge of the First Judicial District, the President Judge of the Municipal Court, the Philadelphia District Attorney, and

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<sup>1</sup> 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, nor authored the brief in whole or in part.

the Defender Association of Philadelphia. Notably absent from the recommendations, however, is any recognition or consideration of the serious challenges, risks, and needs faced by youth in the criminal justice system and, in particular, in bail proceedings. *Amici* therefore write separately to outline the grave harm faced by youth and to propose an alternative that considers what the U.S. Supreme Court has long recognized, that youth must be provided with distinctive procedural protections.

First, among the recommended improvements on which the parties reached agreement is the enforcement of the legal and constitutional requirement that any decision to impose monetary conditions on pretrial release must consider a defendant's ability to pay. Youth as a class, however, do not have the financial resources to pay for bail. They have limited earning capacity and—until age 18—are required to attend school. 24 P.S. § 13-1327, 13-1326. Second, the deprivation of liberty caused by pretrial detention imposes unique harms on youth, who are at a heightened risk of pleading guilty to avoid the documented, greater likelihood of violence and injury in adult jail. Given these particular vulnerabilities, *Amici* recommend this Court adopt a presumption of indigence standard for youth in adult bail proceedings. While the Report and Plan provide enhanced protections that will also benefit youth, such as greater access to counsel which *Amici* also support, additional protections are necessary to ensure that allailable youth's constitutional

right to pretrial liberty is protected.

## ARGUMENT

### I. YOUTH AS A CLASS CANNOT AFFORD BAIL

Youth transferred to the criminal justice system typically do not have and cannot obtain the money necessary to make bail payments. Indeed, some youth are not old enough to work at all, or at least cannot work full time under state and federal law. 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), however, the vast majority of youth under 14 simply cannot earn the money they would need to pay even minimal fees and costs. Furthermore, Pennsylvania law imposes time restrictions on youth employment. *See* 43 P.S. §§ 40.3, 40.4; 24 P.S. §§ 13-1327, 13-1326 (mandating that every child within the Commonwealth between the ages of 6 and 18 attend school).

While older teenagers may be legally capable of work, reports show that they are increasingly unable to access employment. One 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 2001-2014 13 (2015), <http://www.ebony.com/wp-content/uploads/2016/04/changing-face-of-us-jobs.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>.

More importantly, opportunities for work are also largely shaped by systemic racial disparities. In 2018, among high school aged youth, white youth had an employment rate of 22%, while black and Hispanic youth had comparable employment rates of only 14%. *YOUTH EMPLOYMENT*, CHILD TRENDS, <https://www.childtrends.org/indicators/youth-employment> (last visited Jan. 29, 2020) (citing THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS (1994-2018) and (2010-2018)).

These disparities in employment opportunities are particularly relevant given the severe racial disparities identified among youth tried in the adult system. In 2017, black youth made up over half (54%) of youth judicially transferred to adult court despite being only a third (35%) of youth delinquency cases. Meanwhile, white

youth accounted for a greater share of delinquency cases (44%) but made up only 31% of the cases transferred to adult court. Wendy Sawyer, *Youth Confinement: The Whole Pie 2019* (Dec. 19, 2019), <https://www.prisonpolicy.org/reports/youth2019.html>. And while the total numbers of youth prosecuted as adults have dropped over the last two decades, the racial disproportionality has actually increased. *Id.*

Financial challenges for youth in Philadelphia are even more extreme. The Youth Justice Project, a collaboration between Philadelphia Legal Assistance and Community Legal Services, found that Philadelphia has the highest rate of youth disconnected from both employment and education of any major city in the country. Poverty rates for young people in Philadelphia were found to be as high as 38%, compared to 24% nationally. YOUTH JUSTICE PROJECT, YOUTH JUSTICE: ENSURING VULNERABLE YOUTH SUCCESSFULLY TRANSITION INTO ADULTHOOD & OUT OF POVERTY (JANUARY 2016), <https://www.philalegal.org/html/YJP/YJP%20Issue%20Primer%202016-01.pdf>.

Compared to the Commonwealth as a whole, children in Philadelphia experience poverty at twice the rate experienced by children across the state (31.8% compared to 16.7%). *Philadelphia, Pennsylvania (PA) Poverty Rate Date*, CITY-DATA.COM, <http://www.city-data.com/poverty/poverty-Philadelphia-Pennsylvania.html>. And between 76% and 84% of children ages 16 to 19 in Philadelphia are unemployed in

a given year (compared to between 65% and 70% across the Commonwealth). THE ANNIE E. CASEY FOUNDATION, KIDS COUNT DATA CENTER, *Unemployed Teens Ages 16 to 19 in the United States* (Updated October 2019), <https://datacenter.kidscount.org/data/tables/5051-unemployed-teens-age-16-to-19?loc=1&loct=1#detailed/3/10,55-56,58-61,64-77,79-84,86,88-94,96-109,9428-9429/false/37,871,870,573,869,36,868,867,133,38/any/11461,11462>

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 studies, students 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, YOUTH EMPLOYMENT 1 (2014), [https://www.childtrends.org/wp-content/uploads/2015/02/indicator\\_1422944063.38.pdf](https://www.childtrends.org/wp-content/uploads/2015/02/indicator_1422944063.38.pdf). These studies show 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 are therefore more likely to plead guilty rather than risk excessive bail and the threat of increased violence and harm posed by pretrial detention.

The U.S. Supreme Court has repeatedly recognized that youth are highly susceptible to coercion. *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) (explaining that “a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go”). As the Supreme Court found, 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”).

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); Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and The Role of Child’s Counsel*

in *Delinquency Cases*, 81 NOTRE DAME L. REV. 245, 272–73 (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 an adolescent 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).

Pretrial detention in adult jail is also 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 ACROSS THE UNITED STATES, AMERICAN CIVIL LIBERTIES UNION AND HUMAN RIGHTS WATCH (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 INT’L J. 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.<sup>2</sup> 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-

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<sup>2</sup> 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](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>).

term consequences, will be too likely to plead guilty to obtain immediate relief without properly accounting for the long-term harms of such a plea, including incarceration.

**III. GIVEN YOUTHS' GENERAL INABILITY TO PAY BAIL, THE RISK OF COERCED GUILTY PLEAS, AND THE HEIGHTENED DANGER OF PRETRIAL DETENTION FOR YOUTH, YOUTH SHOULD RECEIVE A PRESUMPTION OF INDIGENCE TO SECURE PRETRIAL RELEASE**

Youth lack the ability to pay bail. At the same time, adolescent susceptibility to coercion and the trauma of adult jail place Philadelphia youth at high risk of coerced guilty pleas, as discussed above. Accordingly, this Court should adopt an additional protection for youth that presumes indigence in bail proceedings that the Commonwealth must rebut before bail may be imposed.

Within the Commonwealth, youth are already presumed indigent for the purpose of assigning counsel in delinquency proceedings:

The presumption that a child is indigent may [only] be rebutted if the court ascertains that the child has the financial resources to retain counsel of his choice at his own expense. The court may not consider the financial resources of the child's parent, guardian or custodian when ascertaining whether the child has the financial resources to retain counsel of his choice at his own expense.

42 Pa.C.S.A. § 6337.1(b). Similarly, the National Council of Juvenile and Family Court Judges recommends that courts “presume youth indigent when making decisions regarding the imposition of fines, fees, and costs if the youth was previously determined indigent for the purpose of securing attorney representation.”

NCJFCJ, RESOLUTION ADDRESSING FINES, FEES, AND COSTS IN JUVENILE COURTS 2 (Mar. 17, 2018), <https://pdfslide.net/documents/resolution-addressing-fines-fees-and-costs-in-juvenile-resolution-addressing.html>. The same considerations underlying these recommendations are at issue in determinations here. Given their inherent lack of financial resources as well as the demonstrated challenges and disadvantages that youth face navigating the criminal judicial system, providing for a presumption of indigence with respect to bail lifts a procedural burden off of young people and places it with the District Attorney's Office which is better able to carry it. Ultimately, the harms faced by youth are too great, the threat to a fair justice system from an inappropriate or coerced plea too real, and the fact of youth indigence too common not to provide additional reasonable protections for youth.

### CONCLUSION

This Court should adopt the recommendations of the Special Master's Report and Plan and take the additional step to add a presumption of indigence for youth in Philadelphia's bail system.

Respectfully submitted,

/s/ Marsha L. Levick

Marsha L. Levick, ID No. 22535

Jessica R. Feierman, ID No. 95114

JUVENILE LAW CENTER

1800 JFK Blvd., Ste. 1900B

Philadelphia, PA 19103

(215) 625-0551

mlevick@jlc.org

*Counsel for Amici Curiae*

Dated: January 30, 2020

## 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 2,824 words. In preparing this certificate, I relied on the word count feature of Microsoft Word. I further certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that requires filing confidential information and documents differently than non-confidential information and documents.

Dated: January 30, 2020

/s/ Marsha L. Levick  
Marsha L. Levick