

Testimony  
of  
James E. Anderson

Regarding  
Proposed legislation  
to  
Address the Recommendations of  
The Pennsylvania Juvenile Justice Task Force

before the  
Senate Judiciary Committee

May 23, 2022

Good morning, Senator Baker, Senator Santarsiero and members of the Judiciary Committee. My name is Jim Anderson, and I am very pleased to appear before you today to offer my perspective on the proposed legislation that has been introduced to date in response to the recommendations of the Pennsylvania Juvenile Justice Task Force.

Before beginning, I want to express my deepest appreciation, as a member of the Task Force, to Senator Baker and Senator Jay Costa for their strong leadership of the Task Force under very difficult circumstances, and to Senator Scott Martin and Senator Anthony Williams for their active participation and commitment to our work.

I had the great privilege to serve as Executive Director of the Juvenile Court Judges' Commission (JCJC) for nearly 28 years (1986-2014) and to work for and with some of the brightest and most committed judges in Pennsylvania; judges who truly believed that working in juvenile court was among the most important work that any judge can do. In that capacity, I worked closely with members of the General Assembly and their staffs in drafting legislation affecting the juvenile justice, child welfare, and criminal justice systems.

Pennsylvania has been at the forefront in the development of juvenile law and social policy for more than a century, and Pennsylvania's status as a national leader in juvenile justice policy and practice was further enhanced by its approach to addressing increasing rates of violent juvenile crime in the early to mid-1990s.

While, at that time, the juvenile justice reform strategies of most states consisted primarily, if not exclusively, of placing more juvenile offenders within the jurisdiction of their respective criminal justice systems, Pennsylvania re-defined the very mission of its juvenile justice system.

In January of 1995, then-newly elected Governor Tom Ridge called the General Assembly into special session the day following his inauguration to focus exclusively on the issue of crime. Special Session No. 1 of 1995 would see the passage of 37 separate bills, 15 of which affected the juvenile justice system in some way. Together, these laws represented the most dramatic legislative changes in the history of the Commonwealth's juvenile justice system.

The most significant of the new laws was Act 33 of Sp. Sess. No. 1 of 1995. This new law included provisions that excluded designated felonies from the definition of "Delinquent act," subjecting them to initial criminal court jurisdiction, but with

the possibility that such cases could be transferred from criminal proceedings if a judge determined that it was in the public interest to do so based on criteria set forth in statute. These have come to be known as the “direct file” provisions of Pennsylvania’s Juvenile Act. However, the most important provisions of Act 33 amended the purpose clause of the Juvenile Act to established a new mission for Pennsylvania’s juvenile justice system based on a legislative proposal that I developed for the Juvenile Court Judges’ Commission. Since March of 1996, our juvenile justice system has been mandated:

***“consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.”***

Our Juvenile Act also specifically requires that the terms and conditions of every consent decree diversion and every juvenile delinquency disposition to provide balanced attention to each of these issues as appropriate to the individual circumstances of each child’s case.

This statutory mission for Pennsylvania’s juvenile justice system is rooted in the principles of “restorative justice,” which define “crime” in terms of the harm done to crime victims and communities and “offender accountability” in terms of accepting responsibility and taking action to repair that harm to the greatest extent possible.

The “balanced attention” mandates in the Juvenile Act provide the framework for restorative justice, and are premised on the concept that the clients of the juvenile justice system include the crime victim, the community, and the offender, and that each should receive “balanced attention” and gain tangible benefits from their interactions with Pennsylvania’s juvenile justice system.

The Juvenile Advisory Committee (JAC) of the Pennsylvania Commission on Crime and Delinquency (PCCD), the predecessor to the Juvenile Justice and Delinquency Prevention Committee (JJJPC) of PCCD, would play a critical role in ensuring that this new system mission was understood and would be achieved. In a letter to former JAC/JJDPC Chair, Dr. Ronald E. Sharp, dated June 25, 1996, Governor Ridge charged the JAC with the responsibility for..... ***“developing a strategic plan to take Pennsylvania’s juvenile justice system into the next century.”***

The JAC immediately began the process of determining how to accomplish this task. The JAC believed that that the new legislative “balanced attention” mandates must be at the heart of any juvenile justice reform efforts, and serve as the foundation for the development of the strategic plan. On the basis of this belief, the JAC adopted the following mission statement for Pennsylvania’s juvenile justice system:

**“JUVENILE JUSTICE:  
COMMUNITY PROTECTION;  
VICTIM RESTORATION;  
YOUTH REDEMPTION.”**

**Community Protection** refers to the right of all Pennsylvania citizens to be and feel safe from crime.

**Victim Restoration** emphasizes that, in Pennsylvania, a juvenile who commits a crime harms the victim of the crime and the community, and thereby incurs an obligation to repair that harm to the greatest extent possible.

**Youth Redemption** embodies the belief that juvenile offenders in Pennsylvania have strengths, are capable of change, can earn redemption, and can become responsible and productive members of their communities.

*Furthermore, all of the services designed and implemented to achieve this mission and all hearings and decisions under the Juvenile Act—indeed all aspects of the juvenile justice system—must be provided in a fair and unbiased manner. The United States and Pennsylvania Constitutions guarantee rights and privileges to all citizens, regardless of race, color, creed, gender, national origin or handicap.*

Pennsylvania’s strong commitment to its statutory mission, and its comprehensive approach to juvenile justice reform, continued to garner national attention and, in 2004, the John D. and Catherine T. MacArthur Foundation selected Pennsylvania as the first state to participate in its *Models for Change* juvenile justice reform initiative.

The MacArthur Foundation’s choice of Pennsylvania as the first *Models for Change* state was a tribute to all of the juvenile justice reforms that had already been accomplished. The Foundation explicitly sought to partner with a “bellwether” state—that is, a state whose leadership would be followed by other states, and whose example would be watched nationally. Pennsylvania’s *Models for Change* partnership with the MacArthur Foundation focused on: (1) the system of *aftercare*

services and supports, (2) the coordination of *mental health services* for juvenile justice-involved youth, and (3) *disproportionate minority contact* with the juvenile justice system, each of which was already a priority of the JJDPC. *Models for Change* accelerated the pace of Pennsylvania’s efforts at reform at both the state and local levels, and supported a series of evidence-based practices, including the introduction of screening and assessment instruments and targeted evidence-based interventions.

In June 2010, with the Commonwealth’s five-year partnership with the MacArthur Foundation drawing to a close, the Executive Committee of the Pennsylvania Council of Chief Juvenile Probation Officers and Juvenile Court Judges’ Commission (JCJC) staff agreed, at their annual strategic planning meeting, that it was essential to develop a strategy to consolidate the various *Models for Change*-related initiatives “under one roof,” and to sustain and enhance the gains of the previous five years.

Following an intensive review of the impact of and the many lessons learned through this partnership, it was agreed that the JCJC and Pennsylvania Council of Chief Juvenile Probation Officers would work together with PCCD and other system partners to develop and implement a comprehensive “Juvenile Justice System Enhancement Strategy” (JJSES) as the means to achieve this goal.

The first concrete step in developing Pennsylvania’s JJSES was to articulate the purpose of the initiative. On November 4, 2010, the Juvenile Court Judges’ Commission (JCJC) unanimously endorsed the following Statement of Purpose:

### **JJSES Statement of Purpose**

**We dedicate ourselves to working in partnership to enhance the capacity of Pennsylvania’s juvenile justice system to achieve its balanced and restorative justice mission by**

- employing evidence-based practices, with fidelity, at every stage of the juvenile justice process;**
- collecting and analyzing the data necessary to measure the results of these efforts; and, with this knowledge,**
- striving to continuously improve the quality of our decisions, services and programs.**

In addition to the JCJC, the JJSES Statement of Purpose was soon endorsed by the JJDPC, the Pennsylvania Council of Chief Juvenile Probation Officers, the Juvenile Court Section of the Pennsylvania Conference of State Trial Judges, the Juvenile Detention Centers Association of Pennsylvania (JDCAP), the Pennsylvania Council of Children, Youth and Family Services, the Pennsylvania Community Providers Association, and many individual service provider agencies.

The JCJC has been coordinating the implementation of the JJSES with the assistance of the JJSES Leadership Team, comprised of key leaders from the Pennsylvania Council of Chief Juvenile Probation Officers, PCCD's Office of Juvenile Justice and Delinquency Prevention, and the JCJC.

Essential to the underlying philosophy of the JJSES is belief that through the use of research evidence and the demonstration of outcomes, Pennsylvania's juvenile justice system can both achieve and confirm the effectiveness of its statutory balanced and restorative justice mission.

JCJC Executive Director Rick Steele will be providing you with the latest information regarding dramatic impact that the JJSES has had, and continues to have, in our juvenile justice system. The JJSES is especially unique because the individuals who would have to do the tremendous amount of work to ensure its success were responsible for its creation: the leadership of the Pennsylvania Council of Chief Juvenile Probation Officers. The JJSES is undoubtedly one of the most comprehensive statewide juvenile justice initiatives in the nation, and is the foundation upon which our continued efforts to improve decision-making and juvenile justice services delivery should be based.

Yet, as we continue to build on the success of the JJSES, it is critically important that we never forget that despite the success of the MacArthur Foundation partnership, and the strong system-wide commitment to the principles of balanced and restorative justice and evidence-based practice that led to the creation of the JJSES, the Luzerne County juvenile justice system of that time had remained isolated and unchanged; and Pennsylvania's juvenile justice system got a very painful wake-up call when the previously unimaginable abuses of power and violations law that harmed Luzerne County children and families were exposed.

But it is also critically important to remember that the response of the General Assembly and the Supreme Court to the recommendations of the widely acclaimed Interbranch Commission on Juvenile Justice, chaired by Judge John Cleland, has created what is arguably among the strongest combinations of statutory procedural

rule due process protections for alleged and adjudicated delinquent children in the nation.

These protections include ensuring that juveniles are represented by an attorney at every important hearing because all juveniles are presumed indigent and the waiver of counsel has been virtually eliminated. (Senator Lisa Baker's Act 23 of 2012 and Pa.R.J.C.P. 151 and 152.) And requiring that, prior to entering an order of disposition in a juvenile delinquency case, the judge must state its disposition and the reasons for its disposition on the record in open court, together with the goals, terms and conditions of that disposition. If the child is to be committed to out-of-home placement, the court must also state the name of the specific facility or type of facility to which the child will be committed and its findings and conclusions of law that formed the basis of its decision including the reasons why commitment to that facility or type of facility was determined to be the least restrictive placement that is consistent with the protection of the public and best suited to the child's treatment, supervision, rehabilitation and welfare. (Senator Lisa Baker's Act 22 of 2012 and Pa.R.J.C.P. 512).

This morning we have the opportunity to discuss several legislative proposals that address some of the most important recommendations of Juvenile Justice Task Force. In this regard, it is important to understand that not every Task Force recommendation received the same level of support, and that the recommendations were developed by Task Force subgroups, which the full Task Force had very limited opportunity to discuss or debate.

Consequently, I recommend that the General Assembly prioritize the Task Force recommendations for legislative action that received unanimous or consensus (2/3 of the 29 voting members), as opposed to the recommendations that received only majority support.

I strongly support the following bills, which are listed in chronological order of the Task Force recommendations that they address:

**JJTF Recommendation 2: Amend the Human Services Code to include both juvenile justice and child welfare goals (Unanimous)**

**SB 1227 (PN 1644)** amends the Human Services Code to include both juvenile justice and child welfare goals that are consistent with the statutory mandates of the Juvenile Act.

**Background:** The Commonwealth’s funding of services to children in both the child welfare and juvenile justice systems is governed by the “needs-based budgeting process” set forth in the Human Services Code (62 P.S. §709.1), and by Department of Human Service (DHS) Regulations. The objectives, service projections and service budgets in needs-based plans submitted to DHS by the counties are required by DHS regulation to be consistent with the achievement of “Commonwealth objectives for the delivery of children and youth social services” (55 Pa. Code § 3140.16) which, according to these regulations, are:

- To protect children from abuse and neglect.
- To increase the use of in-home services for dependent and delinquent children.
- To use community-based residential resources, whenever possible, when placement is necessary.
- To reduce the use of institutional placements for dependent and for delinquent children.
- To reduce the duration of out-of-home placements.

These goals, although laudable, are clearly inconsistent with the statutory “balanced attention” mandate for Pennsylvania’s juvenile justice system set forth in the Juvenile Act. This inconsistency between the Juvenile Act’s statutory mandates and DHS regulations must be corrected to ensure that funding is available for essential juvenile justice services. Moreover, the Commonwealth’s “child welfare” goals should not be found only in DHS regulations, but should likewise be set forth in the Human Services Code.

This proposed legislation was specifically included among the recommendations presented to Governor Wolf in the “2021 Pennsylvania Juvenile Justice and Delinquency Prevention Plan” developed by PCCD’s Juvenile Justice and Delinquency Prevention Committee.

**JJTF Recommendation 5: Amend the Human Services Code to provide funding for indigent juvenile defense services (Unanimous)**

**SB 1229(PN1645)** amends the Human Services Code to provide that indigent juvenile defense services are reimbursed at a 50% rate through the county needs-based budget process, the same rate as guardians *ad litem* and counsel in dependency proceedings.



**Background:** Juveniles who come within the jurisdiction of Pennsylvania’s juvenile justice system are required to be represented by an attorney at every important hearing because all juveniles are presumed indigent and the waiver of counsel by juveniles has been virtually eliminated (42 Pa.C.S. §§6337 and 6337.1 and Pa.R.J.C.P. 151 and 152). In addition, a juvenile may not enter an admission to an offense unless a mandatory written admission colloquy form has been reviewed and completed with the juvenile by an attorney and reviewed by the court (Pa.R.J.C.P. 407).

Even though these due process protections are mandated by the Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure, the quality of representation provided by public defenders varies widely across the Commonwealth due to the lack of a state funding stream for these essential services.

§ 704.1(a)(5) of the Human Services Code currently provides that DHS reimburse counties for:

“Fifty percent of the reasonable cost of medical and other examinations and treatment of a child ordered by the court pursuant to the act of December 6, 1972 (P.L.1464, No.333), known as the “Juvenile Act,” and the expenses of the appointment of a guardian pen-dente lite, summons, warrants, notices, subpoenas, travel expenses of witnesses, transportation of the child, and other like expenses incurred in proceedings under the act of December 6, 1972 (P.L.1464, No.333), known as the “Juvenile Act.”

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Although § 704.1(a)(5) of the Human Services Code does not specifically provide for reimbursement of the costs for providing counsel or a guardian *ad litem* for a child in the context of a dependency proceeding under the Juvenile Act, or for the costs of providing counsel for an indigent child in the context of a delinquency proceeding, it had previously been then-DPW’s policy for a number of years to reimburse for these costs as “other like expenses” to those specifically set forth in (a) (5) which are incurred in proceedings under the Juvenile Act. Following the policy change by DPW in FY 2011-2012, DPW ceased reimbursing for indigent juvenile defense costs, but continued to reimburse for the cost of providing counsel or a guardian *ad litem* for a child in the context of a dependency proceeding. DHS has continued this policy.

SB 1229 (P.N. 1645) specifically requires reimbursement for the costs of providing counsel or a guardian *ad litem* for a child in the context of a dependency proceeding, as well as the cost of providing counsel for an indigent child in the context of a delinquency proceeding. In addition, SB 1229 deletes the language in (a)(5) that provides reimbursement for expenses related to the appointment of a “guardian *pendente lite*” because the term is not relevant to Juvenile Act proceedings.

This proposed legislation was also included among the recommendations presented to Governor Wolf in the “2021 Pennsylvania Juvenile Justice and Delinquency Prevention Plan” developed by PCCD’s Juvenile Justice and Delinquency Prevention Committee.

**JJTF Recommendation 16: Keep youth in out-of-home placement no longer than the timeframe supported by research (Consensus)**

**SB 1228(PN1640)** amends the Juvenile Act to require courts to hold a disposition review hearing at least every three months to ensure that each delinquent child committed to out-of-home placement is receiving necessary services and treatment

**Background:** Pa.R.J.C.P. 610 requires courts to conduct dispositional review hearings at least every six months in all cases where a child has been adjudicated delinquent for the purpose of ensuring that the child is receiving necessary treatment and services and that the terms and conditions of the court’s disposition are being met. 42 Pa.C.S. § 6353(a), the section of the Juvenile Act which requires the court to review the commitment every six months and to hold a disposition review hearing every nine months, was suspended by the Supreme Court in so far as it is inconsistent with Pa.R.J.C.P. 610.

Many courts are already conducting disposition review hearings in juvenile delinquency placement cases more frequently than is required by the Rules of Juvenile Court Procedure. SB 1228(PN 1640) would require these hearings to be held in least every three months and set forth the minimum determinations that must be made.

Moreover, the bill would require the court, at the conclusion of each such hearing and prior to entering its order, to state each determination and the reasons therefor, on the record in open court. In this regard, SB 1228 builds

on the provisions of Senator Baker’s Act 22 of 2012, which requires the court, prior to entering its order of disposition in a delinquency case to state its disposition and the reasons for its disposition on the record in open court, together with the goals, terms and conditions of that disposition.

Mandating that disposition review hearings be held at least every three months in juvenile delinquency placement cases is far preferable to the concept of a “presumptive six-month period of commitment” that was included in the explanatory language under Task Force Recommendation 16.

**JJTF Recommendation 23: Create a standardized expungement process (Consensus-1 negative vote)**

**SB 1226(PN1639)** amends the Criminal History Record Information Act (CHRIA) and the Juvenile Act to standardize the process of identifying the cases of alleged and adjudicated delinquent youth that are eligible for expungement; for commencing expungement proceedings in these cases; and to reduce the length of time that the cases of adjudicated delinquents found only to have committed misdemeanors are eligible for expungement.

**Background:** The expungement of juvenile delinquency records is governed primarily by the Criminal History Record Information Act (CHRIA), which comprises Chapter 91 of Title 18 and by the Rules of Juvenile Court Procedure. The relevant provisions of CHRIA are as follows:

**18 Pa.C.S. § 9123. Juvenile records.**

(a) **Expungement of juvenile records.**--Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and except as provided under subsection (a.1), expungement of records of juvenile delinquency cases and cases involving summary offenses committed while the individual was under 18 years of age, wherever kept or retained, shall occur after 30 days' notice to the district attorney whenever the court upon its own motion or upon the motion of a child or the parents or guardian finds:

- (1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court;
- (1.1) a written allegation is filed which was not approved for prosecution;

(1.2) six months have elapsed since the individual successfully completed an informal adjustment and no proceeding seeking adjudication or conviction is pending;

(2) six months have elapsed since the final discharge of the person from supervision under a consent decree or diversion program, including a program under 42 Pa.C.S. § 1520 (relating to adjudication alternative program) and no proceeding seeking adjudication or conviction is pending;

(2.1) the individual is 18 years of age or older and six months have elapsed since the individual has satisfied all terms and conditions of the sentence imposed following a conviction for a summary offense, with the exception of a violation of section 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages), committed while the individual was under 18 years of age and, since satisfying all terms and conditions of the sentence, the individual has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending to seek such conviction and adjudication;

(2.2) the individual is 18 years of age or older and has been convicted of a violation of section 6308 which occurred while the individual was under 18 years of age and six months have elapsed since the individual has satisfied all terms and conditions of the sentence imposed for the violation, including any suspension of operating privileges imposed under section 6310.4 (relating to restriction of operating privileges). Expungement shall include all criminal history record information and all administrative records of the Department of Transportation relating to the conviction;

(3) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(4) the attorney for the Commonwealth consents to the expungement and a court orders the expungement after giving consideration to the following factors:

(i) the type of offense;

(ii) the individual's age, history of employment, criminal activity and drug or alcohol problems;

(iii) adverse consequences that the individual may suffer if the records are not expunged; and

(iv) whether retention of the record is required for purposes of protection of the public safety.

**(a.1) Exceptions.** -- Subsection (a) shall not apply if any of the following apply:

(1) The individual meets all of the following:

(i) Was 14 years of age or older at the time the individual committed an offense which, if committed by an adult, would be classified as:

(A) An offense under section 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse) or 3125 (relating to aggravated indecent assault).

(B) An attempt, solicitation or conspiracy to commit an offense under section 3121, 3123 or 3125.

(ii) Was adjudicated delinquent for the offense under subparagraph (i).

(2) Upon cause shown.

**(b) Notice to prosecuting attorney.** -- The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney.

**(c) Dependent children.** -- All records of children alleged to be or adjudicated dependent may be expunged upon court order after the child is 21 years of age or older.

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The court procedures governing the process of expunging juvenile delinquency records are governed by Pa.R.J.C.P. 170 (Motion to Expunge or Destroy Records), PA.R.J.C.P. 172 (Order to Expunge or Destroy), and Pa.R.J.C.P. 173 (Retention of Specific Information from Juvenile Records).

The sad reality is that the overwhelming majority of Pennsylvania juvenile delinquency cases that are eligible for expungement are not expunged. SB 1226 (PN 1639) conforms substantially with JJTF Recommendation 23 and is based on the successful practices of the Allegheny County Juvenile Court and Juvenile Probation Department, where the probation department tracks the cases of alleged and adjudicated delinquent children and informs the Court when a case is eligible for expungement.

SB1226(PN1639) departs from the sub-recommendations of JJTF Recommendation 23 only in excluding the cases of juveniles adjudicated

delinquent for misdemeanor violations of the Chapter 61 (relating to firearms and other dangerous articles) of Title 18 or a misdemeanor under 18 Pa.C.S. §3126 (a)(2) or (3) (relating to Indecent Assault) from being eligible for expungement when two years have elapsed since discharge and the individual is otherwise eligible. If SB1226 is enacted in its current form, these cases would not be eligible for expungement until five years have elapsed and the individual has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding.

In addition to the preceding bills, I encourage the General Assembly to develop and consider legislation to address the following Task Force Recommendations:

- **JJTF Recommendation 9: Narrow the criteria for trying youth as adults (Consensus)**

I believe strongly that most of the so-called “direct file” provisions of the Juvenile Act should be repealed, and I encourage the development of a working group involving the Juvenile Court Judges’ Commission JCJC, the PDAA, the Juvenile Defenders Association of Pennsylvania and others to work together on this issue.

However, any such action must be accompanied by a major initiative to ensure that the juvenile justice system has the capacity to address this change. Many of our private sector agencies are experiencing, or have experienced a staffing crisis. The private sector has been the backbone of the juvenile justice treatment and service delivery system, and must continue to be. And while abuses in some residential programs in recent years have exposed deficiencies in DHS oversight and monitoring that must be addressed, DHS must likewise ensure that these agencies are adequately compensated to address the increasingly complex cases that they being asked to serve.

The Commonwealth must ensure that every county has access to high quality juvenile detention services and alternatives. Currently, these essential services are not available in many jurisdictions.

Both of these issues, which were addressed in the 2021 Juvenile Justice and Delinquency Prevention Plan presented to Governor Wolf by PCCD’s Juvenile Justice and Delinquency Prevention Committee, will

become even more critical if the “direct file” provisions of the Juvenile Act are repealed or significantly modified.

- **JJTF Recommendation 21: Eliminate the use of fines and most fees/costs (Consensus)**
- **JJTF Recommendation 22: Restitution (Consensus)**

Finally, I encourage the General Assembly to provide the funding necessary to address the following Task Force Recommendation:

- **JJTF Recommendation 7: Aggressively pursue statewide implementation of the Juvenile Justice System Enhancement Strategy (JJSES) (Unanimous)**

This will require additional funding for the Juvenile Court Judges’ Commission (JCJC) operating budget to coordinate the JJSES, and for the JCJC’s juvenile probation services grant program to further the implementation of evidence-based juvenile probation practices.

Thank you again for the opportunity to participate in today’s hearing. Please let me know if I can be of further assistance.