



TESTIMONY REGARDING SENATE BILLS 1226, 1227, 1228, & 1229

I. Introduction

The Public Defender Association of Pennsylvania (PDAP) thanks the Senate Judiciary Committee for the opportunity to provide testimony on Senate Bills 1226, 1227, 1228, and 1229.¹ We applaud the Senators for beginning to take up the 35 recommendations of the Juvenile Justice Task Force (JJTF). The bills under consideration are a good start, but more work is needed to fulfill the promise of the JJTF Recommendations. Thanks to the work of the Task Force, we know what Pennsylvania stands to gain if the Task Force's Recommendations are adopted and implemented in a comprehensive way- better outcomes for youth, a fairer justice system, a system that treats Black youth and youth of color more equitably, and a projected \$81 million dollars in savings from reduced placement costs.²

Taken together the bills under current consideration do achieve these goals, but they serve as an important first step. The Public Defender Association of Pennsylvania (PDAP) recommends the following improvements to the below bills and urges all members of the General Assembly to pass further legislation to follow the other JJTF Recommendations.

PDAP is a statewide nonprofit representing the Pennsylvania's Public Defenders. We are dedicated to securing a fair justice system and to ensuring high quality legal representation for people facing loss of life, freedom, or family. Our mission is to provide tools, mutual support, training, and information to Public Defender offices in Pennsylvania; to be the voice of public defense in Pennsylvania; and to promote best practices in the leadership, management, and administration of justice in Pennsylvania. We provide the below response to the bills under consideration today.

¹ Submitted on May 18, 2022 in advance of oral testimony on May 23, 2022. For additional information or with any questions, please contact PDAP Executive Director Sara Jacobson at SJacobson.pdap@gmail.com.

² THE PENNSYLVANIA JUVENILE JUSTICE TASK FORCE (JJTF REPORT), *Report and Recommendations*, pg. 5 (June 2021), <https://www.pacourts.us/pa-juvenile-justice-task-force>

II. Senate Bill 1226 - Juvenile Expungement

PDAP supports expansion of juvenile expungement and the reduction of the time limits before children can seek expungement, as laid out in SB 1226. We also applaud the inclusion of expungement opportunities for felonies and other serious misdemeanors. The timelines in the bill for expungement of felonies and other serious misdemeanors, however, are too long and jeopardize successful reintegration into society.

SB 1226 does not permit an opportunity to expunge a felony or other serious misdemeanor until five years after supervision is complete. As a rule, juvenile courts can maintain jurisdiction and supervision over a juvenile until the age of 21, which means that the first opportunity to expunge could come as late as age 26. Even a child adjudicated for a felony at age 15 will not have a chance to expunge their record until they are at least 20. The late teen years and early twenties are the time when many people enroll in college, begin to build a career, or join the military. Denying the opportunity to petition for expungement until those formative years have passed, curtails and sometimes entirely forecloses the chance for a child to reach their full potential. We propose, instead, a time limit of three years for felonies and other serious misdemeanors, to broaden access to opportunities for employment and education.

Adjudications for sex offenses should be expungable, particularly misdemeanor offenses. At the time juvenile court expungement provisions expanded, juveniles adjudicated delinquent for sexual offenses were subject to reporting requirements under the Sex Offender Registration and Notification Act (SORNA). Since that time, the Pennsylvania Supreme Court held that those registration requirements are unconstitutional as applied to juveniles, removing that impediment from expunging those offenses.³ These children, too, if they meet the other requirements of SB 1226, should be eligible for expungement hearings.

We also recommend that prosecutors not be the gatekeepers for early expungement petitions, as currently set forth in §6304(a.2)vii. Instead, if a petition is filed before the dates laid out in the statute, we recommend that a hearing be held where the prosecution is notified and has an opportunity to make their case as to whether this expungement is appropriate at that time. We propose the following language replace §6304(a.2)vii , as currently drafted.

³ *Commonwealth v. Muniz*, 163 A.3d 1189 (Pa. 2017).

(vii) if a petition for expungement is filed before the above dates, the attorney for the Commonwealth shall be notified of the hearing and given an opportunity to respond to the petition; unless the offense committed by the juvenile is precluded from expungement under 18 Pa.C.S. § 9123(a.1), in which case no hearing will be held.

Additionally, expungement of juvenile records should not be reserved only for those who are never convicted or adjudicated of another offense. All juvenile offenses should be expungable once an individual has been crime-free for a set period of time. Here, too, prosecutors should have the opportunity to raise objections during a court hearing, but obtaining approval from prosecutors should not be the only path for consideration of expungement by the courts.

We support the revisions to §6304, §6323, §6340, §6341, and §6352 and steps to make expungement filings automatic, without requiring a petition by an attorney. We recommend the removal of “request the court to” in subparagraph (1), to further clarify the role of probation officers in initiating expungement proceedings. The subparagraph should read as follows.

(1) The Chief Juvenile Probation Officer or designee shall promptly notify the court that the records of a juvenile delinquency case are eligible for expungement and shall ~~request the court to~~ initiate expungement proceedings in accordance with 18 Pa.C.S. § 9123 (relating to juvenile records) and the Pennsylvania Rules of Juvenile Court Procedure, upon determining that any of the following Applies....

This language change ensures that probation officers have the authority and obligation to initiate expungement proceedings. It will provide greater uniformity in expungement practices across the Commonwealth and expand expungement.

We applaud the inclusion of provisions for technology and case management tools for juvenile probation officers to monitor expungement eligibility. Currently, access to technology varies greatly across Pennsylvania. Without creating and disseminating such case management tools, this legislation risks creating unobtainable obligations for juvenile probation officers.

III. Senate Bill 1227 – Juvenile Justice Goals in the Human Services Code

PDAP recognizes that SB 1227 meets Recommendation 2 of the JJTF report, to “(a) mend the Human Services Code to include both juvenile justice and child welfare funding goals.” Additional legislation is needed to accomplish the purposes laid out in §701.1, and we look forward to those bills. The JJTF report noted a keen need for more nonresidential treatment options for youth, so they can be treated in their communities while living at home.⁴ With that in mind we recommend the addition of the below language.

§701.1(c) (1) To increase the use of and access to in-home services when consistent with the protection of the public and the rehabilitation needs of delinquent children.
(2) To utilize the least restrictive treatment option available, consistent with the rehabilitative needs of delinquent children and the protection of the public.
(3) To operate and encourage the development of community-based resources sufficient to provide every community with options for in-home services...

There are other recommendations of the JJTF that can and should be advanced by the goals of §701.1. These goals should embrace Recommendation 16, to “(k) keep youth in out-of-home placement no longer than the timeframe supported by research.” The addition of the following language to §701.1(c)2 would advance Recommendation 16..

(v.) To ensure that duration of placement is limited to a timeframe no longer than necessary to meet the rehabilitative needs of the delinquent child and to protect the public, consistent with evidence-based research.

Another recommendation of the JJTF should be addressed in §701.1, specifically Recommendation 28, “(d) do not send youth to out-of-state placements, except to those located in neighboring states, and bring youth currently residing in out-of-state placements back to their communities in Pennsylvania, by adding the following language to §701.1(c)2.

(vi.) To encourage use of the in-state placements unless no placement within Pennsylvania can meet the rehabilitative needs of the delinquent child.

⁴ JJTF REPORT at 5, 25.

Including these additional provisions will strengthen §701.1 by including more recommendations by the JJTF.

IV. Senate Bill 1228 – Dispositional Review Hearings

PDAP supports the more frequent review hearings mandated in SB 1228, but notes that the additional review hearings will create a greater workload for Judges, Probation, District Attorneys, and Public Defenders. These costs will require financial support.

PDAP recommends the addition of the below language in §6353(a.1)2 to advance Recommendations 24, 27, and 30 of the JJTF, regarding the safety and quality of residential placements.

(vi.) whether the child is safe and whether the child's educational needs are being met.

V. Senate Bill 1229 – Funding Indigent Juvenile Defense

PDAP supports funding from the Commonwealth for indigent juvenile defense.

Pennsylvania is one of only two states in the nation to provide no funding from the state for Public Defenders.⁵ Numerous studies have found that Pennsylvania's current funding scheme for Public Defense, that leaves all funding responsibility with the counties, has prevented Public Defenders from meeting their Constitutional obligation to provide effective assistance of counsel.⁶ Recommendation 5 of the JJTF, to "(a)mend the Human Services Code to provide funding for indigent juvenile defense services," had unanimous support from the Task Force, but if the goal is to both provide funding *and* to improve services, the details matter.

SB 1229, as written, will provide funding but may not improve the legal services children get. As drafted, SB 1229 allows counties to replace half the cost of "the appointment of counsel for an indigent child in the context of delinquency proceedings" with state dollars rather than county dollars. That saves the county money, but it does not ensure any addition dollars for indigent defense. It just means that county dollars are replaced by state dollars. To improve the quality of indigent juvenile defense,

⁵ LEGISL. BUDGET & FINANCE COMM. OF PA. GENERAL ASSEMB. (LBFC REPORT), *Pennsylvania Indigent Criminal Defense Fundings and Caseloads*, Exhibit 4 at 21-24, (Oct. 2021). <http://lbfc.legis.state.pa.us/Reports.cfm?ReportID=332>.

⁶ Joint State Gov't Comm'n, A CONSTITUTIONAL DEFAULT: SERVICES TO INDIGENT CRIMINAL DEFENDANTS IN PENNSYLVANIA, at 3 (2011). *And See Pa. Sup. Ct. Comm. on Racial and Gender Bias in the Justice System, Final Report (2003)*, <http://www.pa-interbranchcommission.com/pdfs/FinalReport.pdf>.

Public Defender offices need more money for lawyers, investigators, social workers, and support staff. Changing the source of the funding without increasing the funding does not help.

That need is clear. In October of 2021, the Legislative Budget and Finance Committee issued a report on Pennsylvania Indigent Criminal Defense Services Funding and Caseloads. It revealed that over 20% of Pennsylvania's Public Defender offices have total annual budgets under \$250,000, and four have annual budgets under \$100,000.⁷ The least resourced office has an annual budget of \$35,559 for all Public Defender services, including juvenile defense.⁸ Pennsylvania's Public Defenders, and the clients they serve, need more resources, not just the same amount of money from a different source.

To ensure that the capacity to provide legal services increases, counties should only be eligible for reimbursement of 50% of the cost to provide funding for indigent juvenile defense services if they do not decrease funding to their Public Defender offices by the amount that the Commonwealth contributes. We propose the addition of the below language to achieve that goal.

§704.1(5.1) Money shall only be available for the appointment of counsel for an indigent child in the context of delinquency proceedings pursuant to §5(iv) to counties that certify that their budget allocation to their Public Defender's Office will not decrease in any year it receives funds under this statute.

Any step toward funding Pennsylvania's Public Defenders is laudable, but JJTF Recommendation 5 garnered unanimous support from the task force to do more than remove Pennsylvania's ignominious distinction of not providing Public Defender funding from the Commonwealth. The point was to do better by the children who juvenile Public Defenders serve. To do better by the children, Pennsylvania's Defenders need more dollars, not dollars from a different source.

V. Conclusion

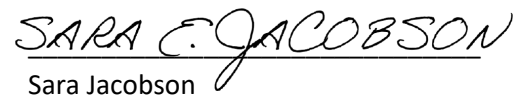
PDAP applauds these first steps in achieving the promise of the JJTF Recommendations. We hope that next early areas of prioritization include increasing community-based programming available for children; increasing oversight and accountability of out-of-home placements for youth adjudicated

⁷ LBFC REPORT, Exhibit 4 at 21-24.

⁸ Cameron County, LBFC REPORT, at 32.

delinquent; narrowing the criteria for trying youth as adults; and ordering a racial impact statement on the JJTF Recommendations. Much is left to do, but this set of bills, particularly with the revisions that we propose, will begin down the road for Pennsylvania to fulfill the duty it owes to its most vulnerable children.

Thank you for this opportunity to share our concerns on these issues.


Sara Jacobson
Executive Director, PDAP