

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

No. 4 MAP 2021

**LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA and LORRAINE
HAW, et al.,**

v.

**VERONICA DEGRAFFENREID AS ACTING SECRETARY OF THE
COMMONWEALTH,**

**APPEAL OF: SHAMEEKAH MOORE, MARTIN VICKLESS, KRISTIN
JUNE IRWIN AND KELLY WILLIAMS**

**BRIEF FOR *AMICUS CURIAE*, JUVENILE LAW CENTER,
IN SUPPORT OF LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA
AND LORRAINE HAW**

*Appeal from Order of the Commonwealth Court
entered January 7, 2021, at No. 578 M.D. 2019*

Eli Segal (Pa. 205845)
Angela Monaco (Pa. 329103)
TROUTMAN PEPPER HAMILTON
SANDERS LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
(215) 981-4000

*Counsel for Amicus Curiae
Juvenile Law Center*

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I. INTEREST OF *AMICUS CURIAE*

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 particular expertise on the interplay between the rights of children and social science and neuroscientific research on adolescent development, especially with regard to children involved in the juvenile justice systems.

Juvenile Law Center has a direct interest in the outcome of this case, as the proposed constitutional amendments could negatively impact youth in the juvenile justice system in multiple ways.

Pursuant to Pa. R. App. P. 531(b)(2), Juvenile Law Center states that no other person or entity has paid for the preparation of or authored this brief, in whole or in part.

II. SUMMARY OF ARGUMENT

The Commonwealth Court correctly held that Marsy’s Law was not a single constitutional amendment but, rather, a sweeping package of distinct amendments for which an up-or-down vote by the electorate violated Article XI, § 1 of the Pennsylvania Constitution. Juvenile Law Center writes here to highlight the impact of the Law’s litany of constitutional rights for “victims”—expansively and vaguely defined—on the juvenile justice system. These consequences to youth further underscore the importance of the Commonwealth Court’s conclusion that the proposed law was too complex and multi-faceted to be treated as a single ballot amendment. *First*, a constitutional right for “victims” to refuse to provide “discovery” could undermine the rights of youth in the juvenile justice system to a fair process in which they are able to obtain the evidence needed to counter the accusations against them. *Second*, broad constitutional rights for “victims” to notice and an opportunity to be heard in juvenile justice proceedings could cause delays that threaten the timely case processing that is so important when youth are involved. *Third*, a constitutional right for “victims” to full and timely restitution could eliminate courts’ discretion to fashion appropriate restitution amounts that factor in the earning capacity of, and rehabilitative plan for, the particular youth at issue.

III. ARGUMENT

The Commonwealth Court properly declared Marsy's Law an unconstitutional ballot amendment for its effects on multiple existing constitutional provisions and its impact on multiple, insufficiently interrelated subject matters in violation of Article XI, § 1 of the Pennsylvania Constitution. Marsy's Law, as Judge Ceisler accurately characterized, would "immediately, profoundly, and irreparably impact individuals who are accused of crimes, the criminal justice system as a whole, and most likely victims as well." *League of Women Voters of Pa. v. Boockvar*, No. 578 M.D. 2019, 2021 Pa. Commw. Unpub. LEXIS 19, at *9 (Pa. Commw. Ct. Jan. 7, 2021). So too with Pennsylvania's juvenile justice system.

- A. Marsy's Law's constitutional right for "victims" to refuse to provide "discovery" could undermine the rights of youth in the juvenile justice system to a fair process in which they are able to obtain the evidence needed to counter the accusations against them.**

Marsy's Law would provide "victims"—encompassing "any person against whom the criminal offense or delinquent act is committed or who is directly harmed by the commission of the offense or act"—with a constitutional right "to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused." A Joint Resolution Proposing an Amendment to the Constitution of the Commonwealth of Pennsylvania, Providing

for Rights of Victims of Crime, H.B. 276 (2019-20). As Judge Ceisler explained in her opinion in support of the Commonwealth Court’s order, this right conflicts with the constitutional rights of an accused in a criminal proceeding to ““demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, [and] to have compulsory process for obtaining witnesses in his favor.”” *League of Women Voters of Pa. v. Boockvar*, 2021 Pa. Commw. Unpub. LEXIS at *22, *51 (quoting Pa. Const. art. I, § 9).

Similar to those accused of crimes in the criminal justice system, those accused of delinquent acts in the juvenile justice system are entitled to “a fair hearing” during which their “constitutional and other legal rights [are] recognized and enforced.” Juvenile Act, 42 Pa. C.S. § 6301(b)(4). Therefore, just as in the criminal justice system, a vaguely worded constitutional right for “victims” to refuse to provide “discovery” could have devastating consequences in the juvenile justice system. The assertion of such a right could prevent the discovery of evidence—including exculpatory evidence—that is critical to a youth’s defense. *League of Women Voters of Pa. v. Boockvar*, 2021 Pa. Commw. Unpub. LEXIS at *23-24. And while under current practice, the refusal of a youth’s “victim” to provide information before trial might preclude the Commonwealth from continuing to pursue a case against the accused youth—or at least from pursuing

formal adjudication—a victim’s invocation of a constitutional right to refuse to provide such information might not have the same preclusive effect.

The U.S. Supreme Court has long emphasized the importance of due process for children in juvenile court, establishing that “[n]either man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law” and that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.” *In re Gault*, 387 U.S. 1, 13 (1967) (internal citation omitted). As in the adult system, due process is a basic safeguard of individual rights. But in the juvenile justice system, it serves another function as well—to support the juvenile justice system’s therapeutic and rehabilitative purpose. Indeed, “the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process—may be a more impressive and more therapeutic attitude so far as the juvenile is concerned.” *Id.* at 26 (referring also to a sociological study showing that a child facing an informal court process but then receiving a harsh punitive disposition may feel “deceived or enticed” and “may therefore resist the rehabilitative efforts of court personnel”).

Moreover, adolescents often need, and have been granted, greater procedural protections than adults. As the U.S. Supreme Court has clarified, “[o]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.” *J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) (internal

citation omitted); *see also Haley v. Ohio*, 332 U.S. 596, 599 (1948) (holding a youth confession unconstitutional and noting the following: “What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.”).

B. Marsy’s Law’s constitutional rights for “victims” to notice and an opportunity to be heard could cause delays that threaten the timely case processing that is so important in the juvenile justice system.

The provisions of Marsy’s Law granting “victims” broad and ill-defined constitutional rights to notice and an opportunity to be heard¹ risk creating significant delays in Pennsylvania’s juvenile justice system. Time is particularly of the essence in the juvenile justice system, given that youth are at critical developmental stages and perceive and are impacted by time differently than adults. Delays caused by Marsy’s Law’s notice and opportunity-to-be-heard provisions would hinder the efficiency of case processing in the juvenile justice

¹ These include the rights “to reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct; to be notified of any pretrial disposition of the case; with the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including, but not limited to, release, plea, sentencing, disposition, parole, and pardon; to be notified of all parole procedures, to participate in the parole process, to provide information to be considered before the parole of the offender, and to be notified of the parole of the offender; [and] to reasonable notice of any release or escape of the accused.” A Joint Resolution Proposing an Amendment to the Constitution of the Commonwealth of Pennsylvania, Providing for Rights of Victims of Crime, H.B. 276 (2019-20).

system and undermine the Juvenile Act's aim to address youth behavior in a swift, developmentally appropriate manner.

The Juvenile Act acknowledges at the outset—in the list of the Act's purposes—the integral role that youth development concerns must play in the juvenile justice system. *See* 42 Pa. C.S. §§ 6301(b)(1.1) (“To provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter”), (b)(2) (“[T]o provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to . . . the development of competencies to enable children to become responsible and productive members of the community”), (b)(3)(i) (“[To] us[e] the least restrictive intervention that is consistent with the rehabilitation, supervision and treatment needs of the child”).

Moreover, consistent with this emphasis on youth development, the Juvenile Act repeatedly stresses the importance of speed and of disrupting youth's lives for as little time as possible. *See, e.g.*, 42 Pa. C.S. §§ 6301(b)(3)(ii) (stating that a purpose of the Act is to “impos[e] confinement only if necessary and for the minimum amount of time that is consistent with the purposes under paragraphs (1), (1.1) and (2”)), 6331 (short timeframe for release from detention or commencement of proceedings), 6332(a) (short timeframe for informal hearing after child is placed in detention or shelter care), 6335(a) (short timeframe for

scheduling adjudicatory hearing), 6341(a) (short timeframe for issuing findings after adjudicatory hearing), 6341(b) (short timeframe for disposition hearing and findings), 6352 (“[W]hen confinement is necessary, the court shall impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation needs of the child.”); *see also* Pa. R.J.C.P. 140(C)(2), 220, 231(A), 240(C), 404, 510(A) (requiring “prompt” procedural steps).

Timely case processing is critical to the success of the juvenile justice system because youth’s developmental immaturity makes them particularly responsive to immediate feedback and consequences. *See generally* Naomi E.S. Goldstein et al., “*You’re on The Right Track!” Using Graduated Response Systems to Address Immaturity of Judgment and Enhance Youths’ Capacities to Successfully Complete Probation*, 88 Temp. L. Rev. 803 (2016) (advocating for the use of graduated response systems in juvenile probation, informed by adolescent development research, that emphasize short-term, positive outcomes for compliance and predictable, proportionate sanctions for noncompliance). During adolescence, youth have immature executive functioning capabilities—such as behavioral planning and response inhibition. Goldstein at 811. They are limited in their ability to consider future consequences and focus primarily on short-term outcomes. *Id.* at 817. They demonstrate heightened impulsivity, more difficulty regulating their emotions, and increased sensitivity to rewards relative to adults.

Id. These cognitive challenges are often amplified in youth involved in the juvenile justice system. *Id.* at 818.

It naturally follows that the juvenile justice system most effectively responds to youth behavior and reduces the likelihood of future justice system involvement when it acts quickly and proportionately. *See* Bart Lubow, Annie E. Casey Foundation, *Timely Justice: Improving JDAI Results through Case Processing Reforms* 5 (2017) (discussing the benefits, challenges, and approaches to case processing reforms in local juvenile justice systems); Goldstein at 822 (explaining that immediate, consistent, and proportionate punishment of children's undesired behaviors is "a critical component of successful behavioral management interventions"). Indeed, timely case processing leads to many positive system outcomes, including minimizing the use of detention, having fewer youth commit an offense before their court dates, and having fewer youth fail to appear for their court dates. *See* Lubow at 5.

C. Marsy's Law's constitutional right for "victims" to full and timely restitution could eliminate courts' discretion to fashion appropriate restitution amounts that reflect both the youth's earning capacity and the court's rehabilitative goals.

The Juvenile Act permits—but does not require—the court to order a youth adjudicated delinquent to pay restitution. *See* 42 Pa. C.S. § 6352(a)(5). The Act gives the court discretion to choose to do so only if it would be "consistent with the

protection of the public interests and best suited to the child’s treatment, supervision, rehabilitation and welfare.” *Id.* § 6352(a). Moreover, any restitution amount must be “reasonable” and “deemed appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child.” *Id.* § 6352(a). The Superior Court has explained further that this statutory mandate to consider the “earning capacity of the child” requires the court to assess the following factors: the youth’s “mental ability, maturity, education; [the youth’s] work history, if any; the likelihood of [the youth’s] future employment and the extent to which [the youth] can reasonably meet a restitution obligation; the impact of a restitution award on [the youth’s] ability to pursue higher education and thus increase [the youth’s] earning capacity; and [the youth’s] present ability to make restitution.” *In the Interest of Dublinski*, 695 A.2d 827, 830 (Pa. Super. Ct. 1997).

Marsy’s Law, in contrast, would provide “victims” with a constitutional right to “full and timely restitution as determined by the court in a juvenile delinquency proceeding.” A Joint Resolution Proposing an Amendment to the Constitution of the Commonwealth of Pennsylvania, Providing for Rights of Victims of Crime, H.B. 276 (2019-20). This risks turning the Juvenile Act’s restitution framework on its head if courts interpret this provision as stripping them of their discretion to choose whether and how much restitution to award,

prohibiting (rather than requiring) consideration of the youth's earning capacity, and prohibiting (rather than requiring) consideration of the contemplated restitution order's rehabilitative impact on the youth.

The North Dakota Supreme Court reached such a conclusion when addressing the conflict between North Dakota's enacted Marsy's Law and its pre-existing restitution statute. *See State v. Strom*, 921 N.W.2d 660 (2019). Marsy's Law was passed in 2016 in North Dakota and amended the Constitution to provide the victim with the right to "full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct." N.D. Const. art. I, § 25(1)(n). The court held that Marsy's Law "implicitly repealed" the portions of North Dakota's restitution statute that gave the court discretion in ordering restitution and required the court to fix restitution for an amount that did "not exceed an amount the defendant can or will be able to pay." *Strom*, 921 N.W.2d at 663. A court now "may not consider a defendant's ability to pay in determining the amount of restitution awarded to a victim." *Id.*

The notion of mandatory, full restitution is particularly troubling in the juvenile justice system. Restitution has been found to pose serious, long-term issues for youth and their families and risks entrenching youth in the system based on their inability to pay. *See generally* Jessica Feierman et al., *Debtors' Prison for*

Kids? The High Cost of Fines and Fees in the Juvenile Justice System (2016), <http://debtorsprison.jlc.org/documents/jlc-debtors-prison.pdf> (providing a nationwide overview of the challenges youth face paying court fines and fees, including restitution).

Youth generally lack the means to pay restitution, let alone “full and timely” restitution. Depending on their age, youth may not be old enough to work at all or they cannot work full time under state or federal law. Feierman at 7. Even if youth are old enough to work at least part time, they may experience significant difficulty finding employment, as teens have historically high unemployment rates. See Lauren Bauer et al., *Teen disengagement is on the rise*, The Brookings Institution (Oct. 1, 2020), <https://www.brookings.edu/blog/up-front/2020/10/01/teen-disengagement-is-on-the-rise/> (reporting that teen unemployment rates were 24.2% in 2019 and 31.7% in 2020 for Black teenagers, 14.7% in 2019 and 33% in 2020 for Hispanic teenagers, and 11.7% in 2019 and 27.6% in 2020 for White teenagers). Moreover, many youth in the juvenile justice system are living in poverty or low-income households, making restitution an even greater, longer-term burden. See Feierman at 8 (discussing how “[f]inancial obligations in the juvenile system also exacerbate the system’s existing economic disparity”); Marcia Hopkins, *Looking at Marsy’s Law from Both Sides of The Courtroom*, Juvenile Law Center (Nov. 4, 2019), <https://jlc.org/news/looking-marsys-law-both-sides->

courtroom (“Poverty cannot be solved with more costs or incarceration.”). And even when youth do have access to work opportunities, working too much and too soon can lead to declines in academic performance and increased school drop-out rates. Child Trends Databank, *Youth Employment* (2015), https://www.childtrends.org/wp-content/uploads/2016/04/indicator_1460107226.317.html.

The economic stress of restitution also impacts youth’s families—many of whom are already experiencing significant financial strain—as they are often forced to contribute to restitution payments due to youth’s inability to pay. This restitution obligation may require families to choose which bills to pay or even forego basic necessities like groceries, driving families into debt. See Leslie Paik & Chiara Packard, *Impact of Juvenile Justice Fines and Fees on Family Life: Case Study in Dane County, WI* 14 (2019); Feierman at 6-7; see also Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS Notes, Washington: Board of Governors of the Federal Reserve System (Sept. 28, 2020), <https://doi.org/10.17016/2380-7172.2797> (reporting the minimal liquid savings for typical families in each ethnic group—\$8,100 for the typical White family, \$1,500 for the typical Black family, and \$2,000 for the typical Hispanic family). The financial burdens associated with restitution can take an enormous toll on youth’s family relationships, threatening the very family

unity that Pennsylvania's Juvenile Act explicitly seeks to preserve. *See* 42 Pa. C.S. § 6301(b)(1); Paik & Packard at 12-13.

The inability to pay subjects youth to extended supervision, potential probation revocation, and even incarceration. Feierman at 4, 21. In Pennsylvania, the court retains jurisdiction over a youth's case until the youth fully complies with the restitution order or until the youth turns 21. 42 Pa. C.S. § 6352(a)(5). Once the youth turns 21, any unpaid restitution is converted into a civil judgment against the youth. *Id.* A civil judgment puts youth at risk of eviction and wage garnishment, and negatively affects credit, which, in turn, limits youth's access to higher education, employment, stable housing, and even basic utilities, which are increasingly sold and priced based on credit history. Feierman at 23. In addition, the imposition of restitution and outstanding restitution upon case closing have been linked to increased recidivism in youth, even when controlling for relevant demographics and case characteristics. Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 Youth Violence & Juv. Just. 1, 10 (2016).

Finally, restitution perpetuates the racial disparities in Pennsylvania's juvenile justice system. The existing racial disparities in the system mean that the burdens posed by restitution fall disproportionately on Black and Brown youth and

families, who already experience a devastating wealth gap. *See Addressing Racial and Ethnic Disparities in Pennsylvania’s Juvenile Justice System*, Pa. Juv. Just. (Pa. Juvenile Court Judges’ Comm’n), June 2020, at 2, <https://www.jcjc.pa.gov/Publications/Newsletters/2020/June.pdf> (acknowledging that racial and ethnic disparities continue to be “a significant problem” in Pennsylvania’s juvenile justice system); Bhutta et al. (reporting that, in 2019, national median family wealth was \$188,200 for White families versus \$36,100 for Hispanic families and \$24,100 for Black families and national median family wealth for “young” families under 35 was \$25,400 for White families versus \$11,200 for Hispanic families and \$600 for Black families); Ana Hernández Kent, *Examining U.S. Economic Racial Inequality by State*, 3 Fed. Res. Bank of St. Louis Bridges, Aug. 17, 2020, <https://www.stlouisfed.org/publications/bridges/volume-3-2020/examining-us-economic-racial-inequality-by-state> (reporting that, in 2018, the Black-White poverty gap in Pennsylvania was 17%). Reflecting the disproportionate impact of restitution, a recent study on the Allegheny County juvenile justice system found youth of color to be more likely to owe restitution upon case closing. Piquero & Jennings at 10.

In light of the above, juvenile courts must retain their discretion and flexibility to set restitution appropriately and on an individualized basis, to minimize the substantial harms that can flow from it.

I. CONCLUSION

For the foregoing reasons, *amicus curiae* Juvenile Law Center respectfully requests that this Honorable Court affirm the ruling of the Commonwealth Court.

April 12, 2021

Respectfully submitted,

/s/ Eli Segal
Eli Segal (Pa. 205845)

Angela Monaco
Angela Monaco (Pa. 329103)

TROUTMAN PEPPER HAMILTON
SANDERS LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
(215) 981-4000

*Counsel for Amicus Curiae
Juvenile Law Center*

CERTIFICATE OF SERVICE

I, Eli Segal, hereby certify that on April 12, 2021, I caused a true and correct copy of the foregoing Brief for Amicus Curiae, Juvenile Law Center, in Support of League of Women Voters of Pennsylvania and Lorraine Haw to be served via electronic filing upon all counsel of record.

April 12, 2021

/s/ Eli Segal

Eli Segal (Pa. 205845)
Angela Monaco (Pa. 329103)
TROUTMAN PEPPER HAMILTON
SANDERS LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
(215) 981-4000

*Counsel for Amicus Curiae
Juvenile Law Center*

CERTIFICATE OF COMPLIANCE

I certify pursuant to Pa. R. App. P. 127 that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (eff. 1/5/2018) that require filing of confidential information and documents differently than non-confidential information and documents.

I further certify pursuant to Pa. R. App. P. 531(b)(3) that this Brief contains no more than 3453 words, including footnotes, which is less than the allowable 7000 words.

April 12, 2021

/s/ Eli Segal

Eli Segal (Pa. 205845)
Angela Monaco (Pa. 329103)
TROUTMAN PEPPER HAMILTON
SANDERS LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
(215) 981-4000

*Counsel for Amicus Curiae
Juvenile Law Center*