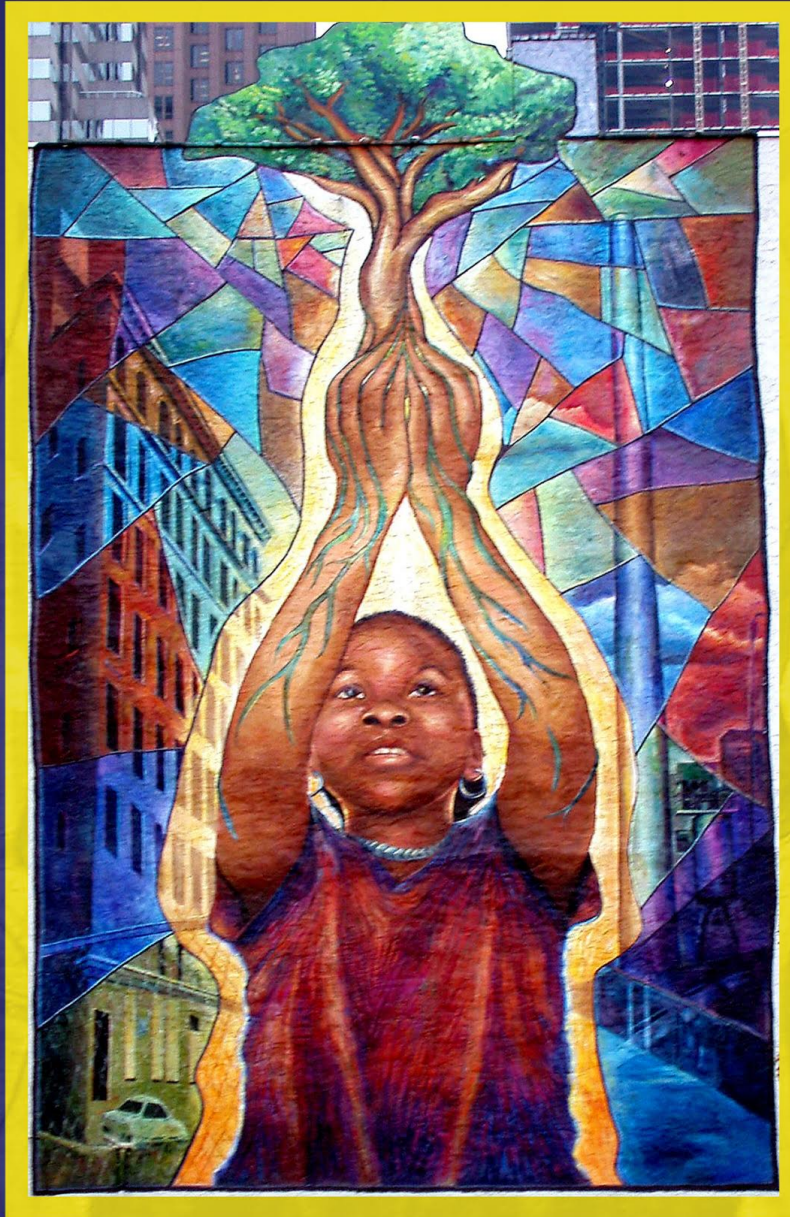


DOUBLE PUNISHMENT:

PHILADELPHIA'S PRACTICE OF CHARGING PARENTS
FOR THEIR CHILD'S INCARCERATION COSTS



SELA COWGER | WESLEY S STEVENSON | KELSEY R GRIMES

Philadelphia imposes children's incarceration costs on parents. This double punishment hurts working families.

When a child in Philadelphia is incarcerated, the City's Department of Human Services (DHS) files a lawsuit against his or her parents to recover costs for the time that child spent incarcerated. DHS targets only some parents with these support orders, almost always those who are working low-wage jobs.

Although this policy is permitted by state law, Philadelphia is not required to follow it. It acts as a double punishment for working families, destabilizing their finances and stressing a child's support system. It works against DHS's goal of promoting family stability, the juvenile justice system's philosophy of rehabilitation, and Mayor Kenney's stated priorities of serving Philadelphia's working families and advancing criminal justice reform.

Philadelphia's cost recovery cannot be at the expense of children and families

The mission of DHS is to promote "safety, permanency, and well-being for children and youth at risk of abuse, neglect, and delinquency."

- These support orders force working families to make an impossible choice: pay for the child's incarceration costs or pay for necessities, like housing and food.
- When a child returns home, families should be focused on rebuilding their relationships. Instead, families are indebted to DHS, which exacerbates shame in the child and hinders family healing.

DHS should be supporting—not straining the resources of—Philadelphia families.

Philadelphia is imposing a second punishment instead of giving a second chance

Children are vulnerable and have immense capacity for change. The primary goal of the juvenile justice system should be rehabilitation, not exploitation.

- This policy punishes children for the same crime twice: through time spent in juvenile placement and through the money demanded by the support order.
- Parents are also punished twice: their children are involuntarily taken and then they are asked to pay for it, or their wages are garnished.

This practice runs counter to rehabilitation goals, including preventing further crime and reducing recidivism.

The collections aren't worth the costs for Philadelphia

The Kenney Administration has committed to fiscal responsibility, transparency in governance, and fostering trust to enhance public safety.

- Almost two decades ago, a private attorney suggested this practice as a cost saving initiative. The City has allowed him to exercise almost unfettered discretion to identify and pursue working families.
- Through this single contract, Philadelphia pays him up to and regularly \$320,000 per year—significantly more than the Mayor's salary—to pursue these collections.

Where our City invests our money is a reflection of our values. This practice comes at too high a cost.

Kameelah is a working mom and proud parent. She fought through unemployment and homelessness to get a job as a security guard to provide for her family. After Kameelah's son was arrested, he was incarcerated at a privately-run juvenile placement center, and returned home. Kameelah received a notice that she needed to pay for her son's incarceration. She was confused and overwhelmed, feelings that grew when DHS subsequently garnished her tax refund. At the time, Kameelah was using food stamps to support her children.

“ You took my son from out of my home, away from my family, and now you want me to pay for taking him. It's damaging to my family... We were deprived of him, and now you want me to pay. The whole thing start to finish reeks of unfairness. ”

Every Philadelphia child deserves a second chance. It's time to end punitive support collections against working families.

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ABOUT THE CONTRIBUTORS

This report was prepared by Sela Cowger, Kelsey Grimes, and Wesley Stevenson, students from Justice Lab, a clinic at the Sheller Center for Social Justice at Temple University Beasley School of Law. Justice Lab's client for this project was the Youth Sentencing & Reentry Project.

The report was initially written in the Spring 2016 semester. After conversations with the Department of Human Services and others at the City of Philadelphia, the report was updated and released in November 2016.

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JUSTICE LAB AT THE SHELTER CENTER FOR SOCIAL JUSTICE TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW

Justice Lab is a clinic at the Sheller Center for Social Justice at Temple University Beasley School of Law. Justice Lab represents client organizations (including community groups, nonprofit organizations, and governmental agencies) in a range of systemic advocacy matters and is directed by Prof. Colleen F. Shanahan. Students develop and advance policy campaigns, design and pilot legal services and access to justice programs, draft legislation and provide legislative advocacy tools, and act as problem solvers and strategic planners. Through this social justice advocacy, Justice Lab students develop expertise in finding creative solutions to legal problems, reflect on the complex social and political aspects of legal problems, and develop strengths in interviewing, research and information gathering, policy, legislative, and strategic analysis, written and oral advocacy, collaboration, project planning and management, professional ethics, negotiation, and media advocacy skills. The Sheller Center for Social Justice at Temple University Beasley School of Law, created in 2013 by a generous gift from Stephen and Sandy Sheller, is a hub for social justice inquiry and advocacy. The Center's faculty, staff and affiliated faculty work with law students, the Law School's other legal clinics and experiential programs, others at the University, community organizations, and external partners to seek justice for disadvantaged populations in Philadelphia and across Pennsylvania.

YOUTH SENTENCING & REENTRY PROJECT

The Youth Sentencing & Reentry Project (YSRP) uses direct service and policy advocacy to transform the experiences of children prosecuted in the adult criminal justice system, and to ensure fair and thoughtful resentencing and reentry for individuals who were sentenced to life without parole as children ("juvenile lifers"). We partner with court-involved youth and juvenile lifers, their families, and lawyers to develop holistic, humanizing narratives that mitigate the facts of each case; get cases transferred to the juvenile system or resentenced; and make crucial connections to community resources providing education, healthcare, housing, and employment. We also provide trainings on mitigation, and recruit, train and supervise students and other volunteers to assist in this work. Our ultimate goals are to keep children out of adult jails and prisons and to enhance the quality of representation juvenile lifers receive at resentencing, and as they prepare to reenter the community.

INTRODUCTION

Since the mid-1990s, the City of Philadelphia (“the City”) has imposed children’s incarceration costs on working parents. Parents are targeted for cost recovery through civil lawsuits, brought by the City’s Department of Human Services (“DHS”). When parents do not pay, typically because they are unaware of the costs or are unable to do so, the City garnishes wages, withdraws funds from bank accounts, or garnishes tax refunds. The Justice Lab team has heard stories of these practices from Philadelphia’s working poor, the population that these actions target almost exclusively.

This report describes the research that informs the conclusion that Philadelphia must end its practice of collecting juvenile incarceration costs from parents through support orders, the initial advocacy to call attention to this recommendation, and the City of Philadelphia’s early steps to right this wrong. The report’s analysis and findings are based on our legal research, meetings with a range of institutional and individual stakeholders, information provided by the City, and conversations with Philadelphia parents.

This practice is a double punishment for parents and their children. The City is straining the resources of, rather than supporting, Philadelphia’s most vulnerable families. Yet, the practice recovers a small fraction of the costs of incarcerating children, leaving both the City and its families worse off. In light of the significant harms created by this practice, the City should institute a moratorium on the collection of juvenile incarceration costs from parents.

After receiving the initial draft of this report in Spring 2016, the City of Philadelphia and the leadership of the Department of Human Services have been active participants in an ongoing conversation about how to end this practice. We believe that the City shares our view that this practice hurts working families and is not cost effective. We also believe that its leaders are working to end the practice. We welcome this active engagement and look forward to the day—hopefully soon—when a moratorium is in place and Philadelphia joins other cities in this meaningful area of juvenile justice reform.

RESEARCH PROCESS

As students in Justice Lab, we started by examining whether the law allows the City’s practice of collecting costs from parents for their children’s incarceration. We quickly determined that the practice is legally authorized, but not required, as described in Section I of this report.

In order to place this material in context, we investigated national trends in juvenile justice reform, imposition of costs on families, and the theories behind state agency involvement in and responsibility over the practice. We also specifically examined the mission of Philadelphia’s DHS and its role in juvenile justice. We found that the imposition of incarceration costs on Philadelphia’s working families runs counter to the core tenets of both. Our conversations with representatives of DHS, and their expressed concern about the tension between DHS’s mission and this practice, were important to this analysis. These findings are described in Section II.

To understand the scope and effect of this practice on Philadelphia families, we interviewed Philadelphia civil, juvenile and criminal legal services attorneys and staff, parents who had been the objects of these

civil suits, and a private attorney who handles these collections for the City. We analyzed information provided by the City in response to a Right to Know Request and subsequent information informally provided by DHS. In addition, we spoke with DHS and other City leaders and confirmed the agency's support to end the practice. This information is summarized in Section III of this report.

In light of these findings, we recommend in Section IV that Philadelphia enact a moratorium on the practice of collecting juvenile incarceration costs from parents. It is our understanding that the City continues to make progress on this front and we will continue to work with DHS leadership to make sure families are relieved of the burdens of this policy as soon as possible.

I. PENNSYLVANIA LEGAL AUTHORITY

Pennsylvania law authorizes, but does not require, the practice of collecting juvenile incarceration costs from parents.¹ This means that, although it is permissible for Philadelphia to seek these support orders, the City is not required to do so. The practice of seeking costs from parents is authorized generally by the Commonwealth’s child welfare law, which requires parents to support their children, even if the children are in state custody. Child welfare law further allows the state to bring a civil suit for support against a parent to obtain these funds. In Pennsylvania, this extends to children who are incarcerated in the juvenile justice system. The few state appellate courts—from counties other than Philadelphia—presented with issues related to the practice have approved the collection of fees from parents. The law governing funding responsibilities for incarcerated children among the federal, state, and county governments similarly allows for seeking costs from parents, but does not require it.

This report confines its research to state law authorizing the practice of collecting incarceration costs from parents. While federal law, particularly reimbursement regulations, may create incentives for the practice, it does not mandate that states pursue these actions. In addition, the scope of this report is limited to the collection of juvenile incarceration costs, rather than the broader question of collection of any costs, such as those related to foster care, borne by the state from custodial parents.

Costs May be Sought from Parents

Three Pennsylvania statutes govern the practice of charging parents for the cost of their child’s incarceration: Title 42, Judiciary and Judicial Procedure;² Title 62, General Welfare;³ and Title 23, Domestic Relations.⁴ Title 23 creates the obligation for parents to pay support for children who are not in their custody.⁵ Child support must be awarded pursuant to statewide guidelines⁶ and the definition of income is extremely broad.⁷ Title 42 establishes that these requirements extend to “proceedings in which a child is alleged to be delinquent or dependent.”⁸ Title 62 allocates the costs and expenses for the care of children among different branches of government. Under this statute the Commonwealth must

¹ We use the term “incarceration”, consistent with Title IV-E requirements, to describe a secure facility for youth that meets the federal definition of a “detention facility” in 42 U.S.C. §672(c)(2). We do not use the term “detention” because in practice in Philadelphia, “detention” is commonly used to describe pre-trial placement in a secure facility and “placement” is commonly used to describe post-adjudication residential placement in a secure facility. We are concerned with collection for both types of government costs and thus use “incarceration” to cover either situation.

² Juvenile Matters, 42 Pa.S.C. §§ 6301–6375 (2016).

³ Departmental Powers and Duties as to Public Child Welfare, 62 Pa.S.C. §§ 701–774 (2016).

⁴ Support Matters, 23 Pa.S.C. §§ 4301–4396 (2016).

⁵ 23 Pa.S.C. § 4321(2) (2016) (“Parents are liable for the support of their children who are unemancipated and 18 years of age or younger.”); see also *id.* § 4321(3) (establishing that parents may be liable for costs such as educational costs for a child over 18).

⁶ *Id.* § 4322(a).

⁷ *Id.* § 4302 (defining income). *But* see Pa. R.C.P. 1910.16-2(b)(1) (noting that public assistance and SSI benefits shall not be counted as income for support purposes).

⁸ 42 Pa.S.C. § 6303(a)(1) (2016).

reimburse county institutions for 50% of the “actual cost of care and support of . . . a child committed by a court.”⁹ These provisions are discussed in more detail in the following sections.

The Pennsylvania Rules of Procedure define the process for the government to seek support from parents of children in the government's care. Pa. R.C.P. 1910.1–1910.50 govern actions for support, including that “all civil actions or proceedings brought in the court of common pleas to enforce a duty of support.”¹⁰ The rules state that actions may (not must) be brought by “a public body or private agency” with an interest in the support of a person to whom a duty of support is owed. This means that a county can bring a support action against a parent who does not have custody of a child, but is not required to do so.¹¹

Under the rules, the government's income is counted as zero and a parent's income is calculated based on the child support guidelines.¹² If a support order is not paid, enforcement includes income withholding, including from wages and tax returns, and other remedies.¹³ Civil contempt proceedings are also permitted.¹⁴

Only three Pennsylvania cases address this issue, and none are from Philadelphia.¹⁵ In each of the three cases, the court upheld a county service agency's imposition of these fees against a parent. In their respective holdings, the courts upheld the imposition of fees against parents of children past the child's eighteenth birthday¹⁶ and against parents who did not have physical custody of the child at the time of placement.¹⁷ They also pointed to the Legislature's intent that parents bear some of these societal costs.¹⁸ These courts also rejected arguments that initiating a suit after the child turns eighteen should result in no duty to pay,¹⁹ that courts should consider ability to pay,²⁰ and that agreements by one parent to pay for placement could prevent a public body from seeking recovery of costs against the other parent.²¹ In sum, there is limited guidance in the Commonwealth (and none in Philadelphia) from the courts regarding the permissibility of this practice, but the Commonwealth's limited legal precedents suggest courts are reluctant to modify support orders for incarceration costs unless there is a clear abuse of discretion.

⁹ 62 Pa.S.C. § 704.1(a)(4) (2016).

¹⁰ Pa. R.C.P. 1910.16-1(a)(2).

¹¹ Pa. R.C.P. 1910.1(a).

¹² Pa. R.C.P. 1910.3(a)(4). A support order is effective from the date of filing, unless otherwise specified by the court. Pa. R.C.P. 1910.17.

¹³ Pa. R.C.P. 1910.21.

¹⁴ Pa. R.C.P. 1910.25.

¹⁵ *Bradford County Children and Youth Services v. Moon*, 923 A.2d 526 (Pa. Super. Ct. 2007); *Erie Cty. Office of Juvenile Prob. v. Schroeck*, 721 A.2d 799 (Pa. Super. Ct. 1998); *Adams Cty. Prob. Office v. DeSilva*, 5 Pa. D. & C. 4th 183 (C.P. 1990). One possible explanation for the lack of case law is that working parents are largely without counsel at the stage in which these actions are brought and accept these costs without legal challenges.

¹⁶ *Schroeck*, 721 A.2d at 799.

¹⁷ *Moon*, 923 A.2d at 527.

¹⁸ *DeSilva*, 5 Pa. D. & C.4th at 187–88 (Finding statutes “clearly demonstrate an intent to seek some reimbursement for the cost and support for children who commit delinquent acts while a minor and are subsequently placed in residential facilities.”).

¹⁹ *Schroeck*, 721 A.2d at 802.

²⁰ *Id.* at 805.

²¹ *Moon*, 923 A.2d. at 528.

Philadelphia is Not Required to Seek Costs

In addition to the legal structure permitting, but not requiring, the practice of collecting support payments from parents of children incarcerated in juvenile facilities, we also investigated whether Pennsylvania fiscal or reporting requirements mandate Philadelphia to pursue these collections by tying the collections to sources of state funding. Two specific areas of regulatory guidance are relevant to this inquiry: the administrative guidance from the Pennsylvania Department of Human Services and the Pennsylvania statutes governing funding. Our research reveals that neither Pennsylvania statutory language nor the existing (and dated) administrative guidance applies to the practice of collecting juvenile incarceration costs.²²

PENNSYLVANIA FUNDING ALLOCATION STATUTE

The Pennsylvania statute governing funding allocations with counties, 62 P.S. § 704.2(a), mandates that public funding shall not be spent on a child’s incarceration costs until all other “existing or future private, public, local, State or Federal programs” are exhausted.²³ Analysis of the entire statute and related regulations reveals that this language does not require Philadelphia’s DHS to pursue collections against parents because such collections are not a “program” under the meaning of the statute.²⁴ This reading of the statute is consistent with the statute’s requirement of exhausting program funding, and distinction that costs may be borne by a “private person.”²⁵

While the statute does not define “programs,”²⁶ § 704.2 and its corresponding regulations in 55 Pa. Code 3170.31 use the distinct terms “program” and “person” and prescribe different treatment of each.²⁷ Following a basic canon of statutory interpretation, this use of distinct terms and distinct statutory prescriptions must be given meaning, and thus “program” cannot be read to include “persons.” The statutory structure in § 704.2 and § 3170.31 draws a clear divide between institutional resources and funding, or “programs,” before turning to private sources, or “persons.” While institutional sources of funding *must* be exhausted before the Commonwealth is liable, a private person *may* bear some other

²² Although we did not conduct a comprehensive survey of Pennsylvania counties, initial phone calls to several juvenile probation offices revealed that counties vary in their collection practices. Representatives of Westmoreland County, Delaware County, Berks County, Lancaster County, Lehigh County, and Montgomery County reported that they collect for some delinquent placements, although no county had clear information how many delinquent youth were not Title IV-E eligible and some counties specifically do not collect for pre-placement detention. Most of these counties reported that collections were handled by the county’s Domestic Relations Department. A representative of Bucks County reported that it does not collect for the costs of delinquent placements. These initial informal inquiries support our legal conclusion that Philadelphia is not required to seek costs.

²³ 62 P.S. § 704.2(a).

²⁴ *Id.* § 704.2(a).

²⁵ *Id.* § 704.2(b).

²⁶ *Id.* § 102.

²⁷ 55 Pa. Code § 3170.31(a) states a similar requirement to § 704.2(a) and mandates that “neither the Department or county will be required to expend funds to provide services to a child so long as the child is eligible for or receiving benefits which exceed the cost of the service under a private, public, county, State or Federal program.” Like § 704.2(b), § 3170.31(b) mandates that “when the child is no longer eligible for benefits under another program...the Department and the county will share the cost of providing services to the child, to the extent that the cost[s]...are not borne by...a private person or agency.”

proportion of the costs.²⁸ This interpretation is strengthened by § 704.1(e), which states that after due notice, opportunity to be heard, and a finding that they are financially able to pay, a court *may* order payment of some of the costs by parents of children placed in juvenile detention and residential placement facilities. Therefore, while the statute clearly authorizes such collections for persons, it does not compel them as it does for programs.²⁹

In addition, the Supreme Court of Pennsylvania has analyzed §§ 704.1 and 704.2 as providing that the Commonwealth bears “the full burden of providing facilities and services for the care of children who have been adjudicated dependent or delinquent.”³⁰ These sections establish the Commonwealth's liability for delivering these services to the counties that administer them.³¹ Section 704.2 acts to shield state and local welfare funds by ensuring that they are used after funding from other programs for which the child was already eligible.³² In each of these cases, the court has interpreted the statute's use of “programs” as official, state sponsored benefits programs and not individual persons.

PENNSYLVANIA ADMINISTRATIVE GUIDANCE

We located a single administrative document relevant to this practice: Bulletin 3170-92-03, issued on September 15, 1992 by the Pennsylvania Department of Human Services, then known as the Department of Public Welfare's Office of Children, Youth and Families (“OCYF”).³³ The plain language of the Bulletin, the statutes and regulations it relies upon, and case law regarding its force all lead to the conclusion that the Bulletin does not require the City of Philadelphia to pursue cost recovery through the enforcement of child support orders against parents of children who are placed in juvenile detention and residential placement facilities.

The Bulletin states “county children and youth agencies are required to refer all children who have been placed in foster care or a residential child care facility and for whom a duty of support may be owing to the domestic relations section for an assessment of child support benefits.”³⁴ It makes clear that this “applies to the placement of alleged or adjudicated dependent and delinquent children whether or not the placement is by voluntary agreement or court order.” The Bulletin cites Public Welfare Code 62 P.S. § 704.2(a), Children and Youth Regulations 55 Pa. Code 3170.31, and the Social Security Act 42 U.S.C. 671(a) (17) as the legal bases for this requirement. A thorough analysis of the Bulletin reveals that it does not require Philadelphia to pursue support collections for the costs of children in juvenile detention

²⁸ See *id.*

²⁹ Indeed, a court is able to hold a hearing, determine a parent is legally obligated and able to pay, and under § 704.1(e), can decline to impose harmful costs on the family.

³⁰ See *Mars Area School District v. United Presbyterian Women's Ass'n of North America*, 721 A.2d 360, 362 (Pa. 1998).

³¹ *In re Tameka M.*, 580 A.2d 750, 754 (Pa. 1990) (Finding the sections “merely establish the extent of the Department's liability for reimbursement to the county for expenses incurred by the county for children and youth services.”).

³² See *Dept. of Pub. Welfare v. Devereux Hosp. Texas Treatment Network*, 855A.2d 842, 845–46 (Pa. 2004) (interpreting § 704.2 to require medical assistance program funds to be used before state and local child welfare funds).

³³ Pa. Dep't of Pub. Welfare, Off. of Children, Youth and Families Bulletin No. 3170-92-03 (Sept. 15, 1992) (attached as Appendix B).

³⁴ *Id.*

and residential placement facilities because: 1) the language of the Bulletin, read in whole, does not describe such a requirement; 2) the Bulletin is outdated and inconsistent with current Pennsylvania law; and 3) Title IV-E funding regulations are inconsistent with such a requirement. Each basis is discussed below.

The Bulletin’s language demonstrates it does not cover children adjudicated delinquent but not dependent.

First, the language of the Bulletin makes clear that it refers only to the collection of costs for dependent children (whether those children are also adjudicated delinquent or not). The distinction between dependency and delinquency is important because Pennsylvania can access more federal funds for children who are 1) only adjudicated dependent and not incarcerated or 2) adjudicated dependent and delinquent and incarcerated.³⁵

The Bulletin states that its purpose is “clarification of requirements relating to child support for children in placement generally, and specifically, those children in placement and eligible for federal benefits under Title IV-E.”³⁶ Children who are incarcerated are not eligible for Title IV-E benefits,³⁷ thus the scope of the Bulletin explicitly excludes these collections. In addition, the Bulletin refers to children in a “residential child care facility.” This is a term of art in state and federal law that describes institutions caring for children in the dependency process, as distinguished from institutions serving as detention and placement facilities in the delinquency process.³⁸ Finally, the Bulletin refers to “alleged or adjudicated dependent and delinquent children.” The use of “and” refers to children who are adjudicated both dependent and delinquent, rather than “or,” which would mean either scenario.³⁹ This language choice is consistent with the funding provisions of Title IV-E, which provides funding for dependent children who are *also* adjudicated delinquent, but not children who are *only* adjudicated delinquent.⁴⁰ Thus, the Bulletin applies to and requires support collections for children who are dependent, consistent with the federal funding schemes that create incentives for such state requirements, but not children who are only adjudicated delinquent and incarcerated.

The Bulletin is outdated and inconsistent with current Pennsylvania law.

Second, the Bulletin is from 1992 and subsequent changes in the law make it inconsistent with current law. In 2011, the Pennsylvania Rules of Civil Procedure were amended so that instead of stating that “a public body or private agency” with an interest in the support of a person from whom a duty of support is owed “shall” pursue such an action; they now state that a public agency “may” pursue such an action.⁴¹ Thus, counties can decide whether to pursue any type of support collections, whether for dependency or delinquency costs. As a result, the Bulletin is now inconsistent with state law even as it applies to

³⁵ See *supra* note 1 for an explanation of the terms “incarcerated” and “detained” in this report.

³⁶ Bulletin, *supra* note 33.

³⁷ 42 U.S.C. § 672 (2016) (mandating that Title IV-E funding “may only be paid for a child who is 1) in a foster family home or 2) in a child care institution.”).

³⁸ *Id.*; see also 62 P.S. § 704.1-2.

³⁹ To reiterate, Title IV-E funding does not apply to incarcerated children.

⁴⁰ 42 U.S.C. § 672(2)(c) (stating that Title-IV applies to children in placement if there is a judicial determination that such children meet the foster care criteria and the children are placed in qualified facilities).

⁴¹ Pa R.C.P. 1910.3(a)(4); 41 Pa.B. 4847 (2011).

dependency collections. The current legal framework is permissive and allows Philadelphia to decide not to pursue collections from parents to recover costs related to juvenile detention and residential placement facilities.

The Bulletin cannot apply to children in juvenile detention and residential placement facilities and be consistent with federal funding.

Third, even if such a change in state law had not taken place, the Bulletin's requirements cannot apply to children who have been adjudicated delinquent and placed in juvenile detention and residential placement facilities because they are categorically ineligible for Title IV-E funding. 42 U.S.C. § 672 states that Title IV-E funding "may only be paid for a child who is 1) in a foster family home or 2) in a child care institution."⁴² 42 U.S.C. §672(c)(2) explicitly states, "...the term [child care institution] shall not include detention facilities...or any other facility operated primarily for the detention of children who are determined to be delinquent."⁴³ States may claim Title IV-E funds for the costs of children who were both adjudicated delinquent and dependent, and placed in childcare institutions, but may not claim Title IV-E funds for a child who is solely placed in a juvenile detention and residential placement facility.⁴⁴ Because states do not receive reimbursement for children placed in juvenile detention and residential placement facilities, they are not required to enforce orders of support as mandated under 42 U.S.C. 671 § (a)(17). Thus, the Bulletin is inconsistent with Title IV-E requirements for children placed in juvenile detention and residential placement facilities.

The Bulletin cannot validly mandate that support payments are program income.

Finally, the Bulletin does explicitly provide that "[r]evenues generated from child support payments must be treated as program income by county children and youth agencies when claiming state and federal reimbursement for program costs."⁴⁵ This provision cannot be valid in light of its inconsistency with the regulations governing Title IV-E funding and the intervening change in Pennsylvania law, as discussed above. In addition, if the provision were to be valid, it would be inconsistent with current Pennsylvania law, and thus impermissible legislative rulemaking under Pennsylvania law.⁴⁶

In sum, no Pennsylvania law or administrative guidance requires Philadelphia to pursue support actions to collect costs of juvenile incarceration.⁴⁷ Further, Title IV-E funding would not be jeopardized if Philadelphia stopped charging parents for the cost of their child's incarceration.

⁴² 42 U.S.C. § 672.

⁴³ *Id.*

⁴⁴ *Id.* See also Child Welfare Policy Manual, The Administration for Children and Families (ACF), U.S. Dep't of Health & Human Servs., Question 7 (May 8, 2006) ("States should note that, in accordance with long-standing Departmental policy, title IV-E administrative costs cannot be claimed on behalf of a child who is placed in a facility that is not a foster care facility, even if the State intends to place such child in foster care at a later date.").

⁴⁵ Bulletin, *supra* n. 33.

⁴⁶ See *Northwestern Youth Servs. v. Cmwlth of Pa.*, 620 Pa. 140 (2013) (finding Pa. Dept. of Public Welfare Bulletin that went beyond interpreting legislation to effectively change policy was procedurally invalid legislative regulation because it had not been subject to the legislative rulemaking process).

⁴⁷ We understand that delinquent children can be Title IV-E eligible if there is a judicial determination that they meet foster care criteria and the children are placed in qualified facilities. Although these facilities contain delinquent children, they are licensed as childcare institutions and thus may qualify for Title IV-E funding. We do

II. POLICY FRAMEWORKS: JUVENILE JUSTICE AND SUPPORTING FAMILIES

In light of the discretionary—and not required—nature of Philadelphia's practice of collecting juvenile incarceration costs from parents, this report examines the policy goals of this practice. Charging parents for their children's incarceration conflicts directly with the core tenets of the juvenile justice system and the mission of DHS. The policy's regressive nature is underscored by national trends in juvenile justice reform.

Juvenile Justice Goals in Philadelphia and Beyond: Rehabilitation and Capacity Building

The United States Supreme Court has emphatically endorsed the idea that children are different than adults for a host of purposes, including punishment.⁴⁸ This difference is embodied in the juvenile justice system through its philosophy of rehabilitation. Recognition of these differences is longstanding. Dating back to 1899, when the first juvenile court was established in Chicago, Illinois,⁴⁹ states across the country have recognized that children should be treated differently from adults under the law. Recent Supreme Court case law has solidified the importance of rehabilitation in the juvenile justice system.⁵⁰ This national perspective is important because it stands in direct contradiction to Philadelphia's practice of collecting incarceration costs from parents.

Similarly, in Pennsylvania, rehabilitation is a primary purpose of juvenile punishments and sentences. The Juvenile Act's specified purpose is 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."⁵¹ Basic tenets of Balanced and Restorative Justice, which emphasizes rehabilitation over punishment, inform the Commonwealth's goals, including "youth redemption."⁵² In the mid-2000s, Pennsylvania began working with the MacArthur Foundation to help reshape the state's system into a "national model of juvenile justice reform."⁵³ Out of this partnership, the System Enhancement Strategy ("the Strategy") was released in

not know how many children who have been adjudicated delinquent are placed in Title IV-E eligible facilities with an appropriate eligibility determination. Although these children may also be a source of concern, the scope of this report remains limited to children charged and/or adjudicated delinquent and placed in juvenile detention and residential placement facilities.

⁴⁸ See, e.g., *Roper v. Simmons*, 125 S.Ct. 1183 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).

⁴⁹ See generally Robert M. Mennel, *Thorns and Thistles Juvenile Delinquents in the United States, 1825-1940*, 124-57 (1973).

⁵⁰ See *supra* note 48.

⁵¹ 42 Pa.S.C. § 6301(b)(2) (2016).

⁵² See Juvenile Court Judge's Commission (JCJC), *OUR BALANCED AND RESTORATIVE JUSTICE MISSION*, available at <http://www.jcjc.pa.gov/Balanced-Restorative-Mission/Pages/default.aspx#.VwraGjYrU> (defining youth redemption as the embodiment of the idea that the vast majority of youth who come into contact with the juvenile justice system are capable of change and have strengths upon which treatment services can build through competency development).

⁵³ JCJC, *SYSTEM ENHANCEMENT STRATEGY*, available at <http://www.jcjc.pa.gov/Publications/Documents/JJSES/Pennsylvania%E2%80%99s%20Juvenile%20Justice%20System%20Enhancement%20Strategy%20-%20A%20Monograph.pdf> (2012).

2012.⁵⁴ The Strategy set out to enhance “the capacity of our juvenile justice system to achieve its balanced and restorative justice mission through the implementation of evidence-based practices.”⁵⁵ Reforms to Philadelphia's juvenile justice system have been a particular focus of the statewide investment. Thus, at the national and state level, the regressive practice of charging parents for their child's incarceration costs is in stark contrast to the longstanding goals and current efforts in the juvenile justice system.

Philadelphia DHS institutes and maintains the support actions at the heart of the practice of charging parents for their child's incarceration costs. The agency's mission is “to provide and promote safety, permanency, and well-being for children and youth at risk of abuse, neglect, and delinquency.”⁵⁶ Core values include empowering its employees to “provide families with the tools they need to become active partners in solving many of the challenges they face.”⁵⁷ DHS also strives to engage community members with respect, foster open dialogue and trust, and ensure permanency for children in nurturing family settings.⁵⁸ As discussed below, in light of the financial impact and corresponding harms caused by the practice, it is consistent with DHS' stated objectives to stop seeking support orders against parents for their child's incarceration costs. Our conversations with DHS about our research and conclusions lead us to believe that DHS shares this view and seeks to make changes that support working families.

Perspectives of Philadelphia Legal Advocates

Conversations with advocates for children in a variety of fields informed our understanding of the scope and effect of this collection practice in Philadelphia, and the importance of reform. The organizations represented by the individuals with whom we spoke include Juvenile Law Center, Education Law Center, the Defender Association of Philadelphia, Philadelphia Legal Assistance, Community Legal Services, Temple Legal Aid, and the Youth Sentencing & Reentry Project.

Most advocates were unfamiliar with this practice or had only encountered a few cases of families facing support orders from DHS for juvenile placement costs. One reason for the lack of experience with the practice is that these support orders fall beyond the scope of criminal representation and often do not qualify for free civil legal services. While children involved in the juvenile justice system have criminal legal representation, that representation typically ends after a child is released from placement. It appears that the City typically does not seek an order of support until after the child is released. As a result, advocates have limited direct experience with how these support orders impact clients and their families.

The response from advocates, whether they had personally encountered this collection practice or not, was unanimous disapproval. Stakeholders expressed that the policy was fiscally unsound, fundamentally unfair, and had a punitive and otherwise deleterious effect upon working families.

⁵⁴ *Id.*

⁵⁵ *Id.* at 9.

⁵⁶ Department of Human Services, City of Philadelphia, <http://www.phila.gov/dhs/index.html>.

⁵⁷ Department of Human Services, City of Philadelphia, <http://www.phila.gov/dhs/dhsCoreValues.html>.

⁵⁸ *Id.*

National Trends in Ending Collection of Juvenile Incarceration Costs

The national trends in juvenile justice reform provide context and support for the City ending this collection practice. There is growing national interest in cost-recovery programs that negatively affect families who come in contact with the juvenile justice system.⁵⁹ Although every state in the country technically allows such cost collection, not all jurisdictions pursue them. More importantly, some states and cities are actively choosing to end these practices now.

The U.S. spends approximately 80 billion dollars annually on the criminal justice system. Approximately 80% of individuals who are incarcerated are low income.⁶⁰ In addition, approximately 40% of crimes are linked with the systemic effects of poverty.⁶¹ The effect of the imposition of fees in the criminal justice system for indigent families is well-researched and shows that families of incarcerated individuals absorb some of the cost of that time spent in jail, through indirect means like traveling to visit and sending incarcerated family members money.⁶² These absorbed costs negatively affect the entire family through the loss of economic stability, costs of maintaining contact with the incarcerated family member, and stigma associated with contact with the criminal justice system.⁶³ This is in addition to the negative and more direct effects of fees associated with incarceration, such as cost of detention and court fines.⁶⁴ Most research, however, is centered on the adult incarceration system, rather than the juvenile justice system. We found no instances of families being charged for the cost of adult incarceration and, further, parents of children who are incarcerated in the adult criminal justice system are not required to pay for the cost of prison.

In late August of 2016, Juvenile Law Center (JLC) published *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, detailing the extensive, harmful effects of collecting costs and fees from families of children involved in the juvenile justice system.⁶⁵ The report includes a study of Allegheny County's juvenile justice system, finding that financial penalties imposed upon youth increase recidivism upon case closure and finding significant racial disparities in the practice.

The JLC report follows attention from the federal government, led by Pennsylvania's Senator Casey, who has asked the Justice Department's Office of Juvenile Justice and Delinquency Prevention to look into local practices of charging parents and legal guardians for "costs associated with processing and incarcerating youth in our juvenile justice system."⁶⁶ In addition, the United States Senate held a briefing

⁵⁹ See The Editorial Board, *The Injustice of Making Kids Pay*, The New York Times (September 5, 2016).

⁶⁰ Harry Holzer, et al., *The Economic Costs of Childhood Poverty in the United States*, 14 Journal of Children & Poverty 1 (2008).

⁶¹ Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violates the Excessive Fines Clause*, Brennan Center for Justice (2014).

⁶² deVuomo-Powell, et al., *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center (2015).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Juvenile Law Center, *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, (2016), available at <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

⁶⁶ See Press Release, Office of Sen. Sheldon Whitehouse (D-RI), Casey and Whitehouse Call on Justice Department to Address Court Fees Charged to Families of Youth Offenders (Jan. 19, 2016) (on file with authors).

on the issue of costs in the juvenile justice system on September 13, 2016, featuring JLC and Philadelphia community leaders.⁶⁷

Some jurisdictions already have stopped these harmful practices.⁶⁸ For example, in March 2016, the Alameda County, California Board of Supervisors issued an immediate moratorium on all fees and costs charged to families with children in the juvenile justice system.⁶⁹ These fees incurred by families included per diem costs in placement centers for delinquent youth, those relating to electronic monitoring, probation supervision, and public defender fees, among other costs.⁷⁰ An extensive report by the U.C. Berkeley School of Law Policy Advocacy Clinic found that the practice had no financial benefit for the county but had significant consequences for families and their children.⁷¹ Alameda County's suspension follows an earlier moratorium in Los Angeles, where an LA Times investigation revealed the harmful effects on families of collecting juvenile justice costs, leading to policy change.⁷² Notably, the moratorium on costs in Alameda and Los Angeles Counties is much broader than the moratorium we recommend in Philadelphia.⁷³

The Ninth Circuit took notice of Alameda County's work in a recent case, *Rivera v. Orange County Probation Department*.⁷⁴ In considering whether debts owed for juvenile detention are "in the nature of support" and thus non-dischargeable in bankruptcy, the court took a strong stand against the practice. It held it is both "inaccurate and inconsistent" to characterize the debt as support because "juvenile detention serves not domestic but correctional ends."⁷⁵ Further, the court determined that persistent collection of such debts can "compromise the goals of juvenile correction and the best interests of the child, and, ironically, impair the ability of his mother to provide him with future support."

⁶⁷ Congressional Briefing, *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, Sept. 13, 2016. See also *supra* note 65.

⁶⁸ On November 1, 2016 Contra Costa County, California decided to stop collecting fees from parents and guardians of incarcerated children in the juvenile justice system. Donna Beth Weilenman, *County Halts Juvenile Incarceration Fees*, *Martinez News-Gazette* (October 30, 2016), available at <http://martinezzgazette.com/archives/26993>. See also *The Board of Supervisors of Contra Costa County, Res. No. 16/606* (October 25, 2016), available at http://64.166.146.245/docs/2016/BOS/20161025_813/27510_BO_JUVENILE%20FEES%20CHARGED%20BY%20THE%20PROBATION%20DEPARTMENT.pdf.

⁶⁹ See Press Release, East Bay Community Law Center, *Alameda County Halts Juvenile Probation Fees* (Apr. 7, 2016), <http://ebclc.org/in-the-news/alameda-county-halts-juvenile-probation-fees/>.

⁷⁰ *Id.*

⁷¹ See Jeffrey Selbin & Stephanie Campos, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low Income Families in Alameda County, California* (March 26, 2016).

⁷² See Molly Hennessy-Fiske, *Probation Fees Allegedly Continue Despite Moratorium*, *L.A. Times* (Mar. 24, 2009), <http://articles.latimes.com/2009/mar/24/local/me-probation-fees24>; Molly Hennessy-Fiske, *County Spent \$13,000 to Chase \$1,004*, *L.A. Times* (Mar. 4, 2009), <http://articles.latimes.com/2009/mar/04/local/me-probation-fees4>. See also Memorandum from Los Angeles County Probation Department to Los Angeles County Board of Supervisors, *Probation Department Moratorium on Support Costs for Incarcerated Minors* (Mar. 31, 2009) available at http://file.lacounty.gov/bc/q1_2009/cms1_129570.pdf.

⁷³ *Id.*

⁷⁴ No. 14–60044, 2016 WL 4205946 (9th Cir. Aug. 10, 2016).

⁷⁵ *Id.* at *4.

Philadelphia has an opportunity to join the national movement—at the state and federal levels—to end the collection costs of incarcerating by ending its practice of support actions against parents. The Kenney Administration has already shown a commitment to criminal justice reform through its leadership in obtaining funding to reduce the City’s adult jail population, and related initiatives funded by the MacArthur Foundation.⁷⁶ Our conversations with leadership at the City and at DHS lead us to believe that, consistent with a broader commitment to thoughtful reform, they understand the problems with the practice of collecting costs for incarcerating children and are actively seeking solutions.

⁷⁶ See The Editorial Board, *Grant Key to Changing City’s Criminal-Justice System*, Philadelphia Daily News (April 18, 2016).

III. COLLECTION PRACTICES IN PHILADELPHIA

Voices of Parents: Kameelah

"You took my son from out of my home, away from my family, and now you want me to pay for taking him. It's damaging to my family... We were deprived of him, and now you want me to pay. The whole thing start to finish reeks of unfairness."

Kameelah is a working mom and proud parent from West Philadelphia. She fought through unemployment and homelessness to secure a low-paying job as a security guard to provide for her family. After Kameelah's son was arrested, incarcerated in a privately-run juvenile placement facility, and returned home, Kameelah got a notice in the mail that she needed to pay for her son's incarceration. She was confused and felt overwhelmed when she received the notice, feelings that grew when DHS subsequently garnished her tax refund. As a further illustration of the limited resources Kameelah and her family were dealing with at the time, Kameelah was using food stamps to feed her children.

After garnishing Kameelah's tax refund, DHS began to garnish \$30 per month from her paycheck, a practice that incurs a \$1.80 monthly service charge. Kameelah's hours were cut at work, and so the financial toll of this garnishment on her family is even greater. Kameelah is also now exposed to the professional stigma of her employer knowing details of her family life.

The Collections Process

Through discussions with stakeholders and information gathered from publicly available City contract data, we learned that the City has paid a private attorney since 1998 to recoup costs expended by DHS on children in juvenile and foster care placements. This attorney recovers these costs through initiation and enforcement of support payments from employed parents and guardians of children in placement. For close to two decades, this attorney has had almost unfettered discretion to identify and pursue working families, almost all of which are low-income. As of the publication of this report in November 2016, we believe that the City has recognized the problems with this collection practice and is actively seeking alternatives—but in the meantime, the practice continues.

THE COSTS OF COLLECTION

The practice began as a cost-saving initiative for the City during the administration of Mayor Ed Rendell in 1998.⁷⁷ Since then, the attorney pursuing these collections has had a yearly contract from the City that pays up to \$320,000 annually (renewed each year).⁷⁸ According to a July 2007 *Legal Intelligencer*

⁷⁷ See Gina Passarella, *Living off Other People's Money*, *The Legal Intelligencer* (July 2, 2007), <http://www.thelegalintelligencer.com/id=900005485123/Living-Off-Other-Peoples-Money?slreturn=20160206181615>.

⁷⁸ *Id.*

article, the incentive-based contract includes “a bonus system under which [the attorney can] receive, for example, \$15,000 when collections exceed \$300,000, and \$50,000 when collections exceed \$1.5 million.”⁷⁹

In the spring of 2016, the City issued a Request for Proposals for the same contract for 2016-2017 for a total allocation of \$316,000.⁸⁰ The RFP describes the contract structure as \$156,000 annually in base compensation with the opportunity for up to \$160,000 annually in bonus compensation.⁸¹ Although the contract term would have commenced July 1, 2016, as of October 25, 2016, publically available information does not indicate whether the contract has been renewed. In addition, it is our understanding from informal conversations with DHS in late October 2016 that the City continues to pursue new support actions against parents of incarcerated children and to collect costs from parents with existing support orders.

City contract reporting shows that the attorney has regularly received the full annual amount of potential compensation allowed for in his annual contract. In fiscal year 2015, for example, the City paid this attorney \$316,000,⁸² which is more than the salary of any public City employee—including the Mayor.⁸³

Contract Information from FY2014 and FY2015⁸⁴

Year	Quarter	Yearly Contract Amount	Quarter Payment
2015	Q4	\$316,000	\$143,000
2015	Q3	\$316,000	\$104,000
2015	Q2	\$316,000	\$65,000
2015	Q1	--	\$4,850
<i>2015 Total: \$316,850</i>			
2014	Q4	\$316,000	\$143,000
2014	Q3	\$316,000	\$104,000
2014	Q2	\$316,000	\$65,000
<i>2014 Total: \$312,000</i>			

⁷⁹ *Id.*

⁸⁰ Both the FY2016 Renewal (Contract ID 1320103-03) and FY2017 Request (Opportunity Number 21160309164808) are available on the City of Philadelphia’s eContract website, available at <https://secure.phila.gov/eContract/> (last visited October 8, 2016).

⁸¹ Passarella, *supra* note 77.

⁸² Philadelphia Dep’t of Commerce, Office of Economic Opportunity Annual Report-Fiscal Year 2015, available at <http://www.phila.gov/commerce/Documents/FINAL%20FY15%20Annual%20Participation%20Report.pdf>.

⁸³ See Claudia Vargas, *Top-paying jobs in Kenney’s administration*, PHILLY.COM (Feb. 18, 2016), <http://www.philly.com/philly/blogs/heardinthehall/Top-paying-jobs-in-Kenneys-administration.html>.

⁸⁴ All information obtained from OpenDataPhilly Professional Services Contracts Data, <https://www.opendataphilly.org/dataset/professional-services-contract-data>.

These contract payments include collections for both costs of incarceration and costs of the dependency system. To understand more precisely the practice of seeking costs from parents of incarcerated children, we submitted a Right to Know request to the City.⁸⁵ In response to a request about the personnel costs associated with the collection practice, the Department of Human Services stated that “salaries budgeted for DHS employees on the institution and maintenance of support actions against parents of incarcerated children for each year referenced in the request is \$107,546. Additionally, the City has budgeted \$316,000 per year for outside counsel to obtain child support payments on behalf of the City.”⁸⁶

THE COLLECTION PRACTICE

To understand how this collection practice is implemented, we spoke with legal services providers, representatives of DHS, and the private attorney. We learned that the private attorney receives notice to review the file for each child that is placed in a residential juvenile facility, and then uses various methods to determine which parents are working and able to pay for the costs of their child's incarceration.⁸⁷ To do this, the private attorney uses labor and industry databases to find employed parents.⁸⁸ In addition, he is also sometimes notified by Philadelphia Family Court employees when a parent is unable to attend a hearing because of work, which suggests that a parent has income to pursue.⁸⁹

No City agency, no court or prosecutor, no government representative tells families they may have to pay for their child's incarceration when their child is sentenced. There is no notice to parents that the City has a collections practice, including when parents are shown brochures by representatives of placement facilities during the sentencing process. Families learn of a pending support action when they receive a notice in the mail that DHS is seeking support payments.⁹⁰ Our research reveals that families typically receive this notice after their child has been released from placement.

The notice requires a parent to “appear at Family Court of Philadelphia...before a conference officer...for a conference, after which the conference offer may recommend that an order for support be entered.”⁹¹ These working parents typically must take a day off of work—and lose a day's worth of pay—to attend the conference. The private attorney described this event as a pre-trial hearing to negotiate the payment amount with him.⁹² Generally, families attend this hearing without an attorney.⁹³

The parents with whom we spoke described the process as first arriving at Family Court and being asked to complete an intake sheet and income statements. They are then brought back to a cubicle behind the

⁸⁵ We submitted a March 8, 2016 request pursuant to the Pennsylvania Right to Know Law, 65 P.S. 67.101, *et seq.* The City provided its response on May 27, 2016. The complete request and responses are on file with the authors.

⁸⁶ May 27, 2016 Letter from Jill Freeman, Deputy City Solicitor, City of Philadelphia (on file with authors).

⁸⁷ Telephone interview with Steve Kaplan, DHS private attorney (March 23, 2016).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Appendix B includes an example of such a notice, titled Order of the Court, from 2016.

⁹¹ *Id.*

⁹² See Kaplan, *supra* note 87.

⁹³ *Id.*

front desk at Family Court to meet with the private attorney, who described himself as a lawyer, but not the parent's lawyer, and as not working for DHS.⁹⁴ Parents reported that the private attorney explained that DHS has asked him to determine the parent's ability to pay and describes the process, stating that the court will assess income and determine ability to pay, but he is not specific about the basis for that calculation. One parent described how the private attorney said that "the court" was doing the calculation as they met, then he received a phone call, and after hanging up said that the court had determined the parent's income. Based on that determination, he explained that DHS would be withdrawing the support complaint. The parent did not know who "the court" making the determination on the other end of the phone was.

In our conversation with the private attorney, he described how he uses the federal support guidelines to negotiate a payment plan, but has discretion to deviate from the guidelines.⁹⁵ For example, he charges some families as little as \$1 a day or \$5 a month.⁹⁶ The attorney said that he is able to reach an agreement with almost every family he meets.⁹⁷ Thus, families do not typically go before a judge to review or challenge the payment plan.

After speaking with the private attorney, parents, and legal services providers, we sought official information from the City about the standards for this practice. In response to our Right to Know request regarding the standards for seeking costs of incarceration from parents, DHS stated that it "looks to" Civil Procedure Rule 1910.16-5 to determine the amount of money to seek in support actions against parents.⁹⁸ The City further stated that

Pursuant to the Rule 1910.16-5, the factors include: unusual needs and unusual fixed obligations; other support obligations of the parties; other income in the household; ages of the children; the relative assets and liabilities of the parties; medical expenses not covered by insurance; standard of living of the parties and their children; in a spousal support or alimony pendente lite case, the duration of the marriage from the date of marriage to the date of final separation; and other relevant and appropriate factors, including the best interests of the child or children.⁹⁹

Consistent with the experience of individual parents, the information we received from the City reveals limited guidance for or oversight of this practice. DHS' response that it relies on the state child support guidelines to determine what to seek from parents is remarkable because Rule 1910 applies to courts to help them fairly determine support obligations, but DHS is not a court and parents who are subject to these collections do not appear in front of a court. Rather, DHS' private attorney meets with parents,

⁹⁴ The business card provided by Mr. Kaplan to one parent with whom we spoke includes no institutional identification, only his name, phone, and email. A copy of the card is on file with the authors.

⁹⁵ See Kaplan, *supra* note 87.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ May 27, 2016 Letter from Jill Freeman, Deputy City Solicitor, City of Philadelphia.

⁹⁹ *Id.*

without oversight or formal process, and imposes these collections on mostly unrepresented, low-income parents whose children are or have recently been incarcerated.

It is also notable that the City seeks support orders after a child has been released from incarceration. These delayed support orders have additional complications for parents because DHS asserts that the date of filing is the date of placement and thus seeks to recover costs going weeks or months back in time. If DHS seeks and obtains a support order long after a child has been placed in and released from a detention or placement facility, the family instantly faces significant child support arrears balances. Arrears balances are particularly harmful to working families, as they trigger the garnishment of wages or tax refunds. As the next section describes, the City is still actively pursuing these collections. In addition, these support obligations are ongoing debts, so a parent can be liable for the entire cost of incarceration for an infinite period of time into the future, with all of the negative consequences that flow from an outstanding debt or garnishment order.

Financial Impact on Philadelphia Families and on the City

To understand the financial impact of the practice of collecting the costs of incarceration from parents, we submitted a request for records to the City of Philadelphia pursuant to the Pennsylvania Right to Know Law.¹⁰⁰ The response provided by the Department of Human Services, and subsequent information informally provided to us by DHS, makes clear that this practice has almost no fiscal benefit for the City and is deeply burdensome for Philadelphia parents.¹⁰¹

The information provided by the City describes a system where:

- The total costs for delinquent children to the City have been approximately \$50 million per year, with an average daily placement cost of approximately \$480 per child.¹⁰²
- Although the information included in Appendix A, Table 2 describes approximately \$100,000 per year in collections from parents of children in juvenile detention and residential placement facilities, DHS subsequently informed us that their actual collections are approximately \$630,000 per year. In either case, these collections offset a small percentage of the City's cost which is not worth the burden it places on families.
- Although our analysis reveals an average monthly payment of \$145.24 from these families, this number does not tell the entire story of how these collections are imposed on families. A close look at the data reveals a substantial number of collections occur from February to May and in disproportionately larger payments than regular monthly payments. We believe that these

¹⁰⁰ 65 P.S. 67.101, *et seq.*

¹⁰¹ All of the information in this section, unless otherwise cited, is from the City's May 27, 2016 Right to Know response. The City's complete response is on file with the authors. Appendix A to this report is a summary of the information in the records produced by the City. After sending the City an initial draft of this report in May 2016, DHS provided additional information regarding its Right to Know response and its collections from Philadelphia parents. That information is specifically noted in this section.

¹⁰² See Appendix A, Table 1: Placement Costs for a summary of the data provided by the City, describing costs for 2009-2015.

payments are garnished tax refunds from parents of incarcerated children, a practice we heard about directly from parents.¹⁰³

- If these disproportionately large payments are excluded, then the average monthly payment is \$80 and the median monthly payment is \$30, with some parents paying just \$2 per month.¹⁰⁴

The average monthly payment of \$80, claimed by the City to be based on the parent’s ability to pay, indicates that even the parents who can pay are of limited means. Further, the prevalent practice of garnishing tax refunds suggests that these parents do not have the disposable monthly income to pay these costs. Parents also reported that when the City garnishes these monthly payments from their wages, as is common practice, the parent must also pay the employer a monthly service charge. The City’s choice to seize tax refunds inevitably has an immediate negative impact on these families, and monthly payments have an ongoing one. Finally, as a matter of policy and priorities, there is little rationality or humanity in a practice that asks a parent whose child has just been incarcerated to go through a protracted process just to pay the City \$2 a month.

Voices of Parents: Boris

“They need to be upfront about the fact that we’re going to get hit with this financial process... I don’t think it’s fair for [the City] to profit off of sending kids to placement and parents being burdened for things their kids did. We all have to work to take care of our children.”

Boris works as a delivery driver and is a single father of three. Two years ago, his teenage son was placed in a residential juvenile facility outside of Philadelphia. A few months after his son’s release, Boris got a notice from his bank of a hold on his account. He learned that \$2,900 had been garnished for the costs of his son’s incarceration. This unexpected garnishment of funds from his bank account limited his ability to support his other children.

When Boris’ second son came into contact with the juvenile justice system, he asked what costs he would face after his son was released from placement. Boris wanted what was best for his son, but he also knew that he needed to think about the financial implications of his son’s placement. This made him question whether he should advocate to have his son placed at a costly private juvenile facility, seek to have son placed at a cheaper facility or, worse, not fight the Commonwealth’s efforts to try him as an adult in order to relieve his family of financial debt. Boris repeatedly asked representatives from Glen Mills – where his son was ultimately placed – about impending costs, but never received any information. Boris’s son is still incarcerated and he expects for his wages or bank accounts to be garnished when his son is released.

¹⁰³ See Appendix A, Table 3: Costs collected Per Family for a summary of data provided by the City, describing collections from July 2013-April 2016.

¹⁰⁴ *Id.*

IV. RECOMMENDATION: IMMEDIATE MORATORIUM

Philadelphia is imposing a double punishment on working families that runs counter to the rehabilitative goals of the juvenile justice system. This is particularly concerning given that the City has the highest rate of deep poverty in the nation.¹⁰⁵ Although state law permits the practice, Philadelphia is not required to impose costs on working families in this manner. As our research shows, the fiscal benefit to the City does not justify the costs expended or the significant harms that are imposed upon parents and their children. As a fiscal matter, the City does not even recover the costs of the practice itself, let alone offset the costs of incarcerating children. In addition, the practice hinders parent-child relationships and goes against the rehabilitative goals of the juvenile justice system.

Based on our conversations with Philadelphia DHS, we believe that Philadelphia's leaders recognized that this practice is harmful and are working to change it as part of broader efforts to create juvenile justice policies that support children and their families.¹⁰⁶ We applaud this progress and support the implementation of a full and immediate moratorium on the harmful collection practice. A moratorium would mean no further support orders are issued, and also that the City will not collect on all orders issued before the moratorium went into effect.

As in Alameda County, an immediate moratorium will allow Philadelphia to thoughtfully implement a permanent stop to the practice, while immediately stopping this practice from harming more working families. This would allow the City to navigate any complexities in contracts, state and federal regulations, and the distinctions between the delinquency and dependency cases. It would also allow DHS time to develop and announce a thoughtful approach to balancing cost collection, juvenile justice goals, and the effects on Philadelphia families in a way that could serve as a national benchmark. We hope—with other advocates—to work in active partnership with DHS and the City in these efforts.

Changing the terms of the private attorney's contract or modifying collection practices is not a sufficient remedy. Any mechanism to collect the costs of juvenile incarceration—whether through another private or government attorney, an administrative process, or a judicial process—carries the same risk: imposing double punishment on families that cannot bear the cost. In addition, providing notice to parents with regard to these costs may force parents to choose between economic stability and placing their child in an adult jail. This is exactly the sort of impossible choice Boris faced, and we believe that DHS wants to ensure no parents are forced into this predicament. A moratorium is imperative because only by ending the practice can the City end these harms.

A moratorium holds the most power when it is announced publicly by the City and paired with monitoring mechanisms and public transparency that ensure it is functioning properly. Public accountability is important to ensure that this practice is permanently ended, and that children and families are treated fairly by the systems that are designed to support them. In addition, a transparent and accountable process is an opportunity for Philadelphia to claim the national attention it deserves as a leader on this issue.

¹⁰⁵ Alfred Lubano, *Of Big Cities, Phila. Worst for People in Deep Poverty*, *The Philadelphia Inquirer* (March 20, 2015).

¹⁰⁶ See Maura Ewing, *A Reckoning in Philadelphia*, *The Atlantic* (Mar. 3, 2015).

APPENDIX A – SUMMARY OF FINANCIAL DATA

Table 1: Placement Costs

Summary and Analysis of Data from May 27, 2016 Right to Know Response

	TOTALS	Youth Study Center	YFC 2	YFC 3	North Central	New Castle
2009-10						
<i>Per Diem</i>	\$403	\$620	\$270	\$324	\$444	\$409
<i>Total Kids</i>		-	106	25	614	295
<i>Total Cost</i>	\$54,265,421	\$21,611,142	\$755,460	\$198,612	\$7,633,692	\$3,192,654
2010-11						
<i>Per Diem</i>	\$418	\$500	\$365	\$373	\$444	\$456
<i>Total Kids</i>		-	88	49	592	68
<i>Total Cost</i>	\$50,935,033	\$21,531,968	\$820,520	\$481,916	\$7,373,508	\$770,640
2011-12						
<i>Per Diem</i>	\$469	\$493	\$376	\$413	\$498	-
<i>Total Kids</i>		-	-	-	-	-
<i>Total Cost</i>	\$44,696,017	\$21,382,736	\$897,888	\$363,853	\$5,726,502	-
2012-13						
<i>Per Diem</i>	\$591	\$837	\$470	\$470	\$570	-
<i>Total Kids</i>		-	-	-	-	-
<i>Total Cost</i>	\$60,915,146	\$31,982,456	\$1,203,200	\$789,130	\$8,176,080	-
2013-14						
<i>Per Diem</i>	\$512	\$732	\$445	\$445	\$498	-
<i>Total Kids</i>		-	-	-	-	-
<i>Total Cost</i>	\$51,112,383	\$28,160,470	\$721,345	\$1,184,590	\$7,820,094	-
2014-15						
<i>Per Diem</i>	\$484	(*JJSC) \$661.04	\$470	\$470	\$443	-
<i>Total Kids</i>		-	-	-	-	-
<i>Total Cost</i>	\$57,709,361	\$31,990,895	\$1,447,130	\$1,006,270	\$8,830,038	-

Table 1, continued

	New Castle South	Loysville	Loysville SE	Danville	South Mountain	Cresson
2009-10						
<i>Per Diem</i>	\$409	\$352	\$352	\$444	\$465	\$346
<i>Total Kids</i>	725	275	168	145	288	280
<i>Total Cost</i>	\$8,267,935	\$2,657,248	\$1,743,104	\$1,782,660	\$3,759,060	\$2,663,854
2010-11						
<i>Per Diem</i>	\$456	\$376	\$376	\$444	\$471	\$341
<i>Total Kids</i>	688	297	137	132	230	244
<i>Total Cost</i>	\$8,601,528	\$3,064,776	\$1,425,040	\$1,653,456	\$2,968,242	\$2,243,439
2011-12						
<i>Per Diem</i>	\$524	\$427	\$427	\$498	\$562	\$475
<i>Total Kids</i>	-	-	-	-	-	-
<i>Total Cost</i>	\$6,547,904	\$2,363,445	\$956,480	\$1,095,600	\$2,996,584	\$2,365,025
2012-13						
<i>Per Diem</i>	\$725	\$560	\$560	\$570	\$580	\$565
<i>Total Kids</i>	-	-	-	-	-	-
<i>Total Cost</i>	\$3,821,475	\$4,949,840	\$2,229,920	\$3,773,970	\$2,540,980	\$1,448,095
2013-14						
<i>Per Diem</i>	-	\$498	\$498	\$498	\$498	\$498
<i>Total Kids</i>	-	-	-	-	-	-
<i>Total Cost</i>	-	\$4,568,154	\$1,805,250	\$2,730,036	\$2,309,724	\$1,812,720
2014-15						
<i>Per Diem</i>	-	\$498	\$498	\$498	\$498	\$498
<i>Total Kids</i>	-	-	-	-	-	-
<i>Total Cost</i>	-	\$5,525,808	\$1,380,954	\$3,389,886	\$2,107,536	\$2,030,844

Table 2: Annual Costs Collected from Families

The City’s Right to Know Response provided a list of each payment received by DHS, listed by individual child by month from July 1, 2013 to April 1, 2016, as of April 20, 2016. We aggregated and analyzed this data to create Table 2. As noted in note 101 of the report, DHS subsequently provided additional estimated data on cost collection.

	Amount Collected	Average number of individual payments per month	Average Collection per Payment
January - April 1, 2016	\$51,821.29	61	\$213.26
2015	\$115,556.16	75	\$128.25
2014	\$97,848.58	54	\$149.84
July - December 2013	\$22,480.91	26	\$143.19
TOTAL (34 months)	\$287,706.94		

Table 3: Costs Collected Per Family

The City’s Right to Know Response provided a list of each payment received by DHS, listed by individual child by month from July 1, 2013 to April 1, 2016, as of April 20, 2016. We aggregated and analyzed this data to create Table 3. As noted in note 101 of the report, DHS subsequently provided additional estimated data on cost collection.

	Average Total Payment Per Family	Average Payment (any kind) Per Family	Average Garnished Payment Per Family	Average Monthly (non-garnished) Payment Per Family	Median Monthly (non-garnished) Payment Per Family
July 1, 2013 – April 1, 2016	\$1233.11	\$147.24	\$1601.43	\$80.03	\$30.00

APPENDIX B – KEY DOCUMENTS



CHILDREN, YOUTH AND FAMILIES BULLETIN

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF PUBLIC WELFARE

ISSUE DATE September 15, 1992	EFFECTIVE DATE Immediately	NUMBER 3170-92-03
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SUBJECT Coordination of Child Support
Collections Between County Children and
Youth Agencies and County Domestic
Relations Sections

BY

James J. ...
Dep. Sec. for CY and Families
Robert M. ...
Dep. Sec. Ofc. of Fraud and
Abuse Invst. & Recovery

SCOPE: PRESIDENT JUDGES
COUNTY COMMISSIONERS AND EXECUTIVES
COUNTY CHILDREN AND YOUTH ADMINISTRATORS
COUNTY CHILDREN AND YOUTH ADVISORY COMMITTEES
CHIEF JUVENILE PROBATION OFFICERS
COUNTY DOMESTIC RELATIONS SECTION DIRECTORS
BUREAU OF CHILD SUPPORT ENFORCEMENT STAFF

PURPOSE: To provide clarification of requirements relating to child support activities in the children and youth program and to establish a process for coordination of child support activities between county children and youth agencies and county domestic relations sections.

BACKGROUND:

At a recent meeting between Department of Public Welfare officials and members of the Domestic Relations Association of Pennsylvania (DRAP), a need was identified for better coordination between the children and youth and domestic relations programs. There is a need for clarification of requirements relating to child support for children in placement generally, and specifically, those children in placement and eligible for federal benefits under Title IV-E of the Social Security Act. There is also a need for each county to develop working protocols between its children and youth agency and domestic relations section. DRAP members report success in enhancing revenues, through child support payments, for children and youth agencies and believe considerable additional revenues can be generated if working protocols are developed between the two agencies. The following discussion addresses these areas.

REFER COMMENTS AND QUESTIONS REGARDING THIS BULLETIN TO:
Regional Children and Youth Directors
Bureau of Child Support Enforcement Area Managers
Origin: Lee W. Miller, Ofc. of CY and Families (717) 787-7756

DISCUSSION:

A. Requirements of County Children and Youth Agencies

There is little difference between the general requirement that children and youth agencies seek child support for all children in out-of-home placement and the requirement that such children, who are eligible under Title IV-E, be referred to domestic relations sections for assessment of support benefits (see OCYF Bulletin #3170-89-01). The only difference is that children in placement and Title IV-E eligible must be separately identified as Title IV-E eligible for the domestic relations section. Such identification must include the child's medical assistance identification (MAID) number, issued for the child as a result of the Title IV-E eligibility determination. This number is necessary to meet State and federal accounting and reporting requirements. The child's Title IV-E eligibility status and MAID number will probably not be known at the time of placement and initial referral to the domestic relations section, but must be provided when known.

County children and youth agencies are required to refer all children who have been placed in foster care or a residential child care facility and for whom a duty of support may be owing to the domestic relations section for an assessment of child support benefits. This applies to the placement of alleged or adjudicated dependent and delinquent children whether or not the placement is by voluntary agreement or court order. Referrals to the domestic relations section must be made at the time of placement and Title IV-E information provided when known. Revenues generated from child support payments must be treated as program income by county children and youth agencies when claiming State and federal reimbursement for program costs.

The legal bases for these requirements are as follows:

1. Public Welfare Code (62 P.S. §704.2(a));
2. Children and Youth Regulations (55 Pa. Code §3170.31); and
3. Social Security Act (42 U.S.C.A. §671(a)(17)).

B. Development of County Protocols

Based on the recommendation of DRAP, program requirements, and the need or coordination of child support enforcement efforts between county children and youth agencies and domestic relations sections, the Department is requesting that counties develop working protocols between these two agencies. The format and content of the protocol should be determined by the county, be in writing, and include the following:

1. procedures for referral and feedback;
2. procedures for informing the domestic relations section of whether or not the child is Title IV-E eligible; and
3. for Title IV-E eligible children:
 - a procedure for documenting Title IV-E eligibility for the domestic relations section including a copy of Form CY-61 completed by the county assistance office for each child; and
 - a procedure for informing the domestic relations section of the child's medical assistance identification (MAID) number issued for the child as a result of the Title IV-E eligibility determination.
NOTE: This is the MAID number issued for the child after placement.

Copies of completed protocols should be sent to the appropriate Regional Children and Youth Director and Bureau of Child Support Enforcement Area Manager by November 1, 1992.

Counties which do not develop these protocols will be surveyed by their regional children and youth representative to evaluate compliance with child support enforcement requirements as discussed in this bulletin. This survey and evaluation will be in addition to the annual surveys and evaluations of county children and youth agencies conducted by the Department.

In the Court of Common Pleas of PHILADELPHIA County, Pennsylvania
DOMESTIC RELATIONS DIVISION

DEPARTMENT OF HUMAN SERVICES

vs.

Plaintiff

Defendant

) Docket Number: [REDACTED]

) PACSES Case Number: [REDACTED]

) Other State ID Number:

ORDER OF COURT

You, [REDACTED] plaintiff/defendant of

are ordered to appear at FAMILY COURT OF PHILADELPHIA

C/O DHS CONFERENCE OFFICER, 1501 ARCH STREET, 12TH FLOOR WAITING ROOM A,
PHILADELPHIA, PA, 19102-1508

before a conference officer of the Domestic Relations Section, on [REDACTED], 2016 at
9:15AM for a conference, after which the conference officer may recommend that an
order for support be entered.

You are further required to bring to the conference:

1. A true copy of your most recent Federal Income Tax Return, including W-2s, as filed;
2. Your pay stubs for the preceding six (6) months;
3. The Income Statement and the appropriate Expense Statement, if required, attached to this order, completed as required by Rule 1910.11 (c);
4. Verification of child care expenses;
5. Proof of medical coverage which you may have, or may have available to you;
6. If a physician has determined that a medical condition affects your ability to earn income you must obtain a Physician Verification Form from the domestic relations section, sign it, have it completed by your doctor, and bring it with you to the conference.

If you intend to offer the Physician Verification Form as evidence at any record proceeding, you must comply with the timeframes established by PA Rule of Civil Procedure 1910.29(b)(2);

7. Information relating to professional licenses; and,
8. Other:

**JUSTICE LAB AT THE
STEPHEN AND SANDRA SELLER
CENTER FOR SOCIAL JUSTICE
TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW**

1719 N. Broad Street
Philadelphia, PA 19122
(215) 204-8800
shellercenter@temple.edu

YOUTH SENTENCING & REENTRY PROJECT (YSRP)

123 South Broad Street - 24th Floor
Philadelphia, PA 19109
(215) 804-9093
<https://ysrp.org/>

