

ORIGINAL

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIMES AND CORRECTIONS
PUBLIC HEARING - HOUSE BILL 2261

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DATE: FEBRUARY 24, 2000, 1:15 P.M.

BEFORE: HON. JERRY BIRMELIN, CHAIRMAN
HON. JOSEPH PETRARCA
HON. KATHY MANDERINO

ALSO PRESENT:

HON. GEORGE KENNEY
BRIAN PRESKI, ESQUIRE
MICHAEL RISH, EXECUTIVE STAFF



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1 CHAIRMAN BIRMELIN: Good
2 afternoon. I want to welcome you to this
3 hearing. This is the Pennsylvania House of
4 Representatives Judiciary Committee, the
5 Subcommittee on Crime and Corrections for
6 public hearing today on House Bill 2261, the
7 prime sponsor of which is Representative
8 George Kenney, who is seated to my left, or
9 will be shortly.

10 And he's going to be giving some
11 comments here in just a moment. I'm
12 Representative Birmelin. I chair the
13 Subcommittee on Crime and Corrections. I
14 represent Erie and Pike counties and I'm going
15 to ask the gentlemen who are seated with me if
16 they would introduce themselves, starting to
17 my far right.

18 REPRESENTATIVE PETRARCA:
19 Representative Joe Petrarca, Westmoreland
20 County.

21 MR. PRESKI: Brian Preski, chief
22 counsel to the Committee.

23 REPRESENTATIVE KENNEY: George
24 Kenney.

25 MR. RISH: I'm Mike Rish,

1 Representative Birmelin's staff.

2 CHAIRMAN BIRMELIN: We do have
3 one change in the agenda, and they are
4 available to you somewhere.

5 MR. PRESKI: All on the side.

6 CHAIRMAN BIRMELIN: All on the
7 side over there. So if you don't have an
8 agenda or copies of testimonies that are being
9 given today, you may want to ask for that. We
10 generally have our testifiers give their
11 testimony in writing.

12 The one change we know of is that
13 the last gentleman was going to be testifying,
14 Mr. Frankel, the executive director of
15 American Civil Liberties Union, he's not going
16 to be here. He has submitted comments for the
17 record and we will incorporate them in the
18 record.

19 Just as a point of information,
20 the full members of the House Judiciary
21 Committee will all be given copies of
22 testimony today and that will be provided for
23 them. They'll obviously not have the
24 opportunity to see the give and take of the
25 question and answer periods that we may have,

1 but the testimony that was written and
2 submitted today will be presented to all the
3 committee members who are not here present.

4 And if any committee members come
5 in at a later time, I'll be sure to introduce
6 them.

7 Representative Kenney is not a
8 member of the committee per se; however, it's
9 my practice and when we have public hearings
10 that when the prime sponsor of a bill is
11 present when we are discussing his bill, I
12 always give him the opportunity or her the
13 opportunity to sit with me and the rest of the
14 committee and to participate as if they were
15 committee members. So he's an honorary
16 Judiciary Committee member today.

17 And with that having been said,
18 I'll turn the mic over to Representative
19 Kenney.

20 REPRESENTATIVE KENNEY: Thank you,
21 Mr. Chairman. Let me first thank the
22 Community College of Philadelphia's Northeast
23 Regional Center for their hospitality today.

24 And, Mr. Chairman, thank you for
25 taking the time to come to Northeast

1 Philadelphia, you and the committee, to hear
2 testimony on House Bill 2261.

3 And the origins of 2261,
4 Mr. Chairman, are very simple. I look at it
5 as a very common-sense approach to dealing
6 with juvenile crime and addressing the issue
7 of delinquency.

8 The legislation's referred to as
9 the Juvenile Court Deferred Adjudication
10 Legislation. And as you know, the General
11 Assembly, as Representative Petrarca knows,
12 we've been dealing with the issue of school
13 violence.

14 The House Urban Affairs Committee
15 is presently holding public hearings on the
16 issue of school violence. We've been talking
17 about what to do with these -- I slip and call
18 them punks -- these young people in our
19 schools that are disrupting students that want
20 to learn, disrupting teachers that want to
21 teach.

22 We in the legislature have taken
23 action to allow school districts to contract
24 with outside entities to place these troubled
25 kids in environments where they'll learn and

1 be disciplined. Really, in Philadelphia we're
2 working with the Community Education Partners
3 out of Houston that create that environment.

4 But when you talk to law
5 enforcement, you talk to the district
6 attorneys from throughout Pennsylvania, you
7 talk to law enforcement in general, and you
8 talk about juvenile crime and just what's
9 going on out there in the real world, you find
10 that something's not being taken care of. And
11 let me just -- in working with the District
12 Attorneys Association, this whole issue of
13 when a juvenile's picked up for a crime --
14 whether it be a weapons offense, assault --
15 they are never adjudicated delinquents, which
16 would then trigger services they may need --
17 rehabilitation, treatment, detention, those
18 issues.

19 And what happens is that decision
20 is deferred for sometimes up to years by the
21 court system. And that just doesn't make
22 sense, especially to the victims. We're
23 sending the wrong signal to victims, to the
24 families of victims, to communities that are
25 plagued by the rules and obeying the law. It

1 just doesn't make any sense.

2 And just a couple -- just to give
3 you an example of a couple cases here in the
4 City of Philadelphia, just to have some idea
5 what is going on and how this whole issue and
6 we defer this final decision of adjudication,
7 November of '98 in a middle school in the 39th
8 Police District a twelve-year-old female
9 punches a 28-year-old school employee. A
10 couple months later on 4/13/99, after a trial,
11 found guilty of aggravated assault, this
12 twelve year old, put on interim probation,
13 community service.

14 Now it's further deferred at court
15 hearings in May of '99, in June of '99, in
16 July of '99, and August of '99, September of
17 '99, October of '99. And I hope at sometime
18 in the year 2,000 we'll be deferred -- I mean
19 adjudicated a delinquent if they are truly a
20 delinquent. But there's no reason the
21 28-year-old victim should be waiting this long
22 to determine whether this 12 year old needs
23 treatment, needs additional services to put
24 them on the right track.

25 Here's another case in the Second

1 Police District, not far from here, an eleven
2 year old punched a male nonteaching assistant
3 in the chest six times, leaves the
4 disciplinary office and punched a female
5 nonteaching assistant in the chest in the
6 hallway, then goes back and punches the other
7 nonteaching assistant again.

8 That was in May of '98. In June
9 of '98, at the trial, found guilty of two
10 counts of simple assault, adjudication
11 deferred; then further deferred at court
12 hearings in September of '98, October of '98,
13 January of '99. Despite reports of
14 misbehavior in school, again deferred in March
15 of '99. Again deferred in April of '99,
16 despite reports of not doing well in school.
17 So, I mean, the common-sense law-abiding
18 people out there watching this, this kid
19 needs -- I mean, you would think something
20 would trigger the system to say this child
21 needs some help.

22 Again, deferred on November of
23 '99, despite two school suspensions for
24 offensive language and class disruption. And
25 that case is again scheduled for this year, 20

1 months after being found guilty of two counts
2 of simple assault.

3 Mr. Chairman, that tells the whole
4 story. My legislation, I am the prime sponsor
5 with some 20-some other co-sponsors, simply
6 says to the court system that in a timely
7 manner judges must come forward and make a
8 decision on this whole issue of delinquency.

9 They should not be given 20
10 months, 10 months, 3 years. The system should
11 say to those law-abiding citizens, especially
12 victims, we're going to make a decision, in a
13 timely manner. I believe 60 days is in the
14 legislation to allow the court system to make
15 that decision. It can be extended if -- if a
16 judge and -- excuse me, if the prosecutor and
17 the child agree that there is some other
18 circumstances that there needs to be an
19 extension, but there's no reason we should be
20 sending this message to law-abiding citizens
21 and victims that the system needs this long to
22 make a decision on their behalf.

23 So it's a very -- I perceive it to
24 be a very simple piece of legislation. And
25 thank you, again, for having the public

1 hearing.

2 CHAIRMAN BIRMELIN: We'll call
3 the first testifier at this time. He is the
4 District Attorney for Cumberland County, the
5 Honorable Skip Ebert, Jr.

6 Mr. Ebert, if you would come
7 forward, please. And when you're ready to you
8 may present your testimony.

9 MR. EBERT: Thank you, sir. Good
10 afternoon. My name's Skip Ebert. I'm
11 presently the elected district attorney of
12 Cumberland County. Briefly, I served as
13 Assistant District Attorney in Dauphin County,
14 First Assistant District Attorney Cumberland
15 County, Chief of Criminal Prosecution in the
16 Attorney General's office, and finally
17 Executive Deputy Attorney General in Charge in
18 the Attorney General's Criminal Law Division.

19 All told, I have been a criminal
20 prosecutor for over 18 years. Additionally,
21 from 1993 to 1996 I was a member of the
22 governing council of the American Bar
23 Association's criminal justice section, which
24 represents 8,000 defense lawyers, prosecutors,
25 judges, court personnel and law professors

1 involved in the criminal justice process
2 nationwide.

3 I served as the National
4 Association of Attorney General's
5 representative to the ABA Criminal Justice
6 Standards Committee, which is responsible for
7 formulating and publishing ABA policy
8 regarding criminal justice issues. Currently
9 I'm a member of the Executive Committee of the
10 Pennsylvania District Attorney's Association.

11 Today we deal with the issue of
12 deferred adjudications. I want to state in
13 Cumberland County is not -- is basically a
14 suburban county. There are approximately
15 205,000 people, but we share common problem
16 with big cities like Philadelphia. What I've
17 seen in the last five murders committed in
18 Cumberland County, three of them have been
19 done by people under the age of 18.

20 I think this issue has plagued
21 Cumberland County for many years. In
22 Cumberland County, juveniles are petitioned to
23 juvenile court just as in any other county;
24 however, that's where the similarity ends. In
25 a majority of cases in my county, regardless

1 of the severity of the juvenile's offenses,
2 the likely disposition of any petition is a
3 deferred adjudication.

4 In 1997, 1,735 offenses were
5 reported to the juvenile probation office
6 resulting in 784 substantiated offenses, only
7 three of which were adjudicated delinquent.

8 165 of these offenses were
9 felonies. The deferred adjudication is, in
10 fact, the disposition of the juvenile case.
11 The juvenile is placed on probation and
12 supervised just as if he'd been adjudicated
13 delinquent. However, at the completion of the
14 probation, the juvenile is released from
15 probation and the petition is dismissed
16 without any record.

17 Additionally, as an added quirk,
18 in the rare case where the court does
19 adjudicate delinquent, it will adjudicate the
20 juvenile delinquent for only one charge,
21 normally a misdemeanor, even though there are
22 other pending felonies.

23 Essentially what the court has
24 done is create a judicial consent decree. My
25 office has never approved a consent decree.

1 In fact, the juvenile probation office does
2 not even offer such a disposition. The
3 Juvenile Court Judge's Commission has created
4 a special category for Cumberland County so
5 that our statistics do not skew the state's
6 yearly statistics.

7 According to 1997 JCJC statistics,
8 Cumberland County had 159 consent decree
9 dispositions. Again, I never approved any
10 consent decrees. Under the Act, a consent
11 decree does require a district attorney to
12 approve. What these statistics reflect is, in
13 fact, there were 159 juveniles received
14 deferred adjudication as their disposition.

15 The use of deferred adjudication
16 is not only impractical, in my opinion it is
17 illegal, since such a disposition is not
18 mentioned in the Juvenile Act -- and I've
19 cited a case there which I won't bring up
20 unless someone would like to discuss case
21 cite.

22 The court's use of deferred
23 adjudications also leads to results that
24 constrain the Commonwealth's ability to hold
25 adult offenders accountable, because deferred

1 adjudications cannot be counted for prior
2 records score. Consider -- considering the
3 issue of quality of justice throughout Central
4 Pennsylvania, all the other counties do
5 adjudicate delinquency and these people who
6 then do adult crimes in Cumberland County, do
7 have their prior records scored applied to
8 their sentences. Cumberland County youth do
9 not.

10 Consider these examples. Michael
11 Powers was recently sentenced to six and a
12 half to 15 years for numerous armed robberies.
13 In one of those robberies a person was
14 actually shot. Powers had a previous juvenile
15 incident in which he was found to have
16 committed a criminal conspiracy -- guilty of
17 criminal conspiracy to commit aggravated
18 assault. The criminal act involved a drive-by
19 shooting of an innocent pedestrian with a
20 pellet gun. However, that record could not be
21 used at his adult sentencing because instead
22 of being adjudicated delinquent, he was given
23 as a disposition a deferred adjudication,
24 resulting in no juvenile record.

25 This adjudication of delinquency

1 would have led to a prior record score of four
2 rather than a prior record score of one when
3 he was sentenced on his adult robberies.

4 At the time of the decision to
5 defer adjudication in the juvenile matter, the
6 court noted that, "Unfortunately, Michael has
7 been charged as an adult with the crime of
8 robbery. He became 18 on January the 17th of
9 this year. Realistically, I do not feel that
10 there is anything more the juvenile system can
11 do with Michael; therefore, adjudication is
12 deferred."

13 Why defer adjudication for a
14 serious delinquent 18 year old who is pending
15 trial as an adult on an related robbery
16 charge? It makes no sense.

17 The next case involves two
18 juveniles who caused the death of Deputy
19 Attorney General Eric Noonan while driving
20 illegally without a license. These juveniles
21 were 15 and 16 at the time of the offense.
22 Both received deferred adjudications and were
23 placed on probation until their 21st birthday
24 as a disposition of their respective case.

25 It's obvious the court felt that

1 they needed probationary treatment since they
2 admitted their crimes, but that the killing of
3 this individual somehow didn't warrant a
4 criminal record.

5 Most recently, my office recently
6 certified a juvenile who had a prior record
7 that if committed by an adult would qualify
8 him as a repeat felon. His involvement began
9 in 1996 at age 13 when adjudication was
10 deferred and he was placed in drug and alcohol
11 treatment program.

12 Then, again in 1996, the juvenile
13 committed delinquent act of burglary that
14 involved a theft of a handgun. Adjudication
15 was again deferred.

16 In 1997 he was found to have
17 committed delinquent acts of three counts of
18 theft of an automobile, two counts of
19 burglary, unauthorized use of an automobile,
20 fleeing and eluding police, two counts of
21 theft by unlawful taking.

22 He was at that time adjudicated
23 delinquent on one third-degree misdemeanor
24 count and placed in George Junior Republic
25 from June of 1997 to July of 1998.

1 Then in 1995 he was found to have
2 committed the delinquent acts of burglary,
3 criminal conspiracy and criminal mischief.
4 Again, he was adjudicated delinquent on only
5 one count criminal conspiracy, and continued
6 on intensive probation. He had, in fact,
7 absconded from probation supervision at the
8 time of the transfer of offenses.

9 Please understand that I am
10 convinced that the juvenile court feels it is
11 acting in the best interest of the youth.
12 Indeed, Pennsylvania's juvenile tradition has
13 always focused on the amenability to
14 treatment.

15 Unfortunately, what we have failed
16 to recognize is that with the Commonwealth's
17 shift to a balanced and restorative approach
18 to the juvenile justice system with the
19 amendments to the Act in 1996, the rights of
20 victims and the safety of the community must
21 be balanced against the juvenile youth's
22 welfare.

23 This system of deferred
24 adjudications where the Commonwealth is not
25 allowed to participate in what even the JCJC

1 cites statistically as consent decrees is
2 wrong. In our county, probation officers are
3 negotiating plea agreements with defense
4 attorneys without any input from the
5 Commonwealth.

6 Please understand that I am not
7 saying that we have to throw the book at every
8 juvenile offender. However, I am saying that
9 the person whose house is burglarized or the
10 victim of some other felony should have a
11 right to some input on whether or not that
12 juvenile perpetrator will have a juvenile
13 record, which may be later used should the
14 juvenile commit an act as an adult.

15 With our system of deferred
16 adjudications, we are giving kids who commit
17 offenses no incentive whatsoever to remain
18 crime free after their 18th birthday.

19 After all, the system is designed
20 to say if you stay good your juvenile record
21 cannot be used against you. The message we
22 are giving delinquent youths in Cumberland
23 County is, Hey, we found you guilty of the
24 offense but we didn't adjudicate you
25 delinquent so you really don't have a record.

1 After you're 18 we'll treat you just like
2 every other good kid if you do more crimes.

3 The juvenile law as it is now
4 written is designed to protect juveniles,
5 victims, and the safety of our communities in
6 general.

7 I urge you to amend the law to
8 make it perfectly clear that after hearing the
9 evidence the court must either adjudicate
10 delinquent or find that the allegations have
11 not been established.

12 I'm open to any questions.

13 CHAIRMAN BIRMELIN: Thank you,
14 District Attorney Ebert. I'll give that
15 opportunity now to Representative Kenney.

16 REPRESENTATIVE KENNEY: Thank you,
17 Mr. Ebert. Just are there any cases in
18 Cumberland County that you know or across
19 Pennsylvania where the court has delayed this
20 determination and the same juvenile went out
21 and committed further offenses that triggered
22 a delinquency charge, or were they just put
23 off again?

24 MR. EBERT: It's hard to say it's
25 put off. I mean, there is a determination

1 made of guilt, if you would. Normally in the
2 Act, what the Act reflects is you have two
3 choices there. You're either to be
4 adjudicated delinquent or there is
5 insufficient evidence to substantiate the
6 charge, that's supposed to be dismissed. That
7 just never happens in any of these.

8 I mean, I believe our court is
9 taking on a *parens patriae* attitude of, okay,
10 I'm going to save you from a juvenile record.
11 Now I'm watching you and you're on probation,
12 don't do anything again. But that final
13 decision never gets made.

14 The kids come up to 18 or
15 sometimes earlier and they have done bad
16 things, but then they -- it's just ended. It
17 stops and then kids in Cumberland County who
18 do commit offenses again, that should have
19 prior records scores that we should be looking
20 at, they're treated as if they have no record.

21 REPRESENTATIVE KENNEY: So once
22 this juvenile hits the age of 18, the slate
23 goes clean?

24 MR. EBERT: Absolutely.

25 REPRESENTATIVE KENNEY: There's

1 no way --

2 MR. EBERT: There -- the one case
3 that I cited I even specifically went in and
4 appealed to the judge to try to bring this to
5 a focus, saying you should have used this
6 record since it was a felony and would have
7 counted in points. And he quite frankly
8 didn't want to issue an opinion, but told us
9 that's the way we do it around here. It was
10 not an adjudicated delinquency; therefore, it
11 cannot be used for prior record.

12 What I also worry about, and
13 nobody seems to care about this, is
14 technically you do the adjudication gives you
15 the authority to do the punishment part. What
16 we're really doing here is probation without
17 verdict. You know, we're sort of like, okay,
18 we're holding off.

19 Now I'm saying to -- and this may
20 be stretching the point a bit, but if you
21 don't adjudicate, in this age of litigation,
22 if one of those children that we never
23 adjudicate and a good attorney could say, Oh,
24 gee, he's not really under the jurisdiction of
25 the juvenile court. If he's in an accident

1 while we're driving him to George Junior
2 Republic or he gets punched out there or
3 whatever, those parents could legitimately
4 come back and say, hey, there was no
5 legitimate -- he was not under the authority
6 of any court, we have a lawsuit here. This --
7 he was being illegally detained. Now, that
8 never happens until you get the tort claim
9 that's going to come. But I'm saying that
10 that's opening up the State to some serious
11 liability in the right case.

12 REPRESENTATIVE KENNEY: Thank
13 you, Mr. Chairman.

14 CHAIRMAN BIRMELIN: We've been
15 joined by Representative Manderino from
16 Philadelphia, and I'll afford her the
17 opportunity to ask questions at this time.

18 REPRESENTATIVE MANDERINO: Thank
19 you. Actually, just a clarifying question.
20 The JCJC statistics that you refer to, is that
21 in a published report that I can --

22 MR. EBERT: Yes.

23 REPRESENTATIVE MANDERINO: -- get
24 a copy of and look at?

25 MR. EBERT: They seem to be a

1 little behind. The last one I had was 1997.
2 We tried to get a fax of the ones -- I did get
3 a kind of soft copy. I imagine they'll be
4 coming out with the ones for 1998 shortly, but
5 they are compiled. I actually believe they
6 are done by -- I forget the name of the group,
7 but it's located at Shippensburg University,
8 that provides the statistical analysis.

9 REPRESENTATIVE MANDERINO: That
10 report was called Juvenile?

11 MR. EBERT: Juvenile Court
12 Dispositions 1997, Juvenile Court Judge's
13 Commission.

14 CHAIRMAN BIRMELIN: Anything
15 else?

16 REPRESENTATIVE MANDERINO: No.
17 That was it. Thank you.

18 CHAIRMAN BIRMELIN: Chief Counsel
19 Preski?

20 MR. PRESKI: First, Representative
21 Manderino, we have the report. I'll send it
22 over Monday.

23 REPRESENTATIVE MANDERINO: Thank
24 you.

25 MR. PRESKI: Mr. Ebert, just a few

1 questions. Do you think that the passage of
2 this legislation with the seven days for guilt
3 and innocent, 60 days for the termination,
4 would lead to more consent decrees or the use
5 of the consent decree by your office? You
6 say, for your testimony's sake, you've never
7 entered into them, but given the numbers --
8 1735 of which 784 go deferred, three of which
9 actually got decisions -- do you think that
10 that would be the impetus?

11 It seems to me that if the courts
12 talk about traditions inside Cumberland County
13 out where they like to give this -- not break
14 but this option to the juvenile defendant,
15 can't that same thing be accomplished through
16 the use of more consent decrees? And if this
17 is passed will your office use more consent
18 decrees?

19 MR. EBERT: I obviously would. As
20 I've indicated, I think there are -- I am not
21 opposed to the concept of juvenile justice
22 trying to correct a problem before it becomes
23 a serious problem as an adult.

24 A lot of these offenses aren't
25 particularly egregious. The ones that do come

1 up, those people should feel the weight of
2 both the juvenile and adult system if they do
3 wrong after 18.

4 I -- I'm certainly prepared to,
5 you know, I'm trying to get a juvenile
6 prosecutor right now and revamp the system so
7 that I can get my word in in the first and
8 say, okay, we can do it, a consent decree.
9 Frankly, that wouldn't even require a hearing
10 at all, you know. We could move on to that.

11 MR. PRESKI: My second question is
12 this: Given the recent changes in sentencing
13 procedure that the General Assembly does with
14 the three strikes and you're out in all of the
15 offenses, that now that if you have a second
16 or subsequent conviction, have you found in
17 your adult prosecutions that many of these
18 people are first-time offenders because they
19 have not had the juvenile adjudications, where
20 they're kind of getting another bite of the
21 apple?

22 MR. EBERT: Again, I don't want to
23 overstate the problem, in like it's not 50
24 percent of the cases. What I am finding,
25 though, is that serious offenders seem to have

1 started early, and under our system they get
2 to the end of their juvenile years and they
3 don't have any prior record. And we don't
4 seem to be at all concerned about when you
5 talk about just to sort of be applied equally
6 across the state.

7 You know, a kid in Dauphin County
8 does something over there, he gets
9 adjudicated, comes in to Cumberland County and
10 does a burglary, he's going to have a prior
11 record score. One of my own kids does
12 something, he was deferred adjudication, he's
13 a zero. That's not right. I mean, they did
14 the same type of activity and one gets a break
15 and one doesn't. That doesn't seem fair
16 across the board.

17 MR. PRESKI: Okay. And my last
18 question is this: Inside the Kenney
19 Legislation there's a safe harbor, I guess,
20 for the courts and for the juvenile where you
21 can extend these time limits based upon the
22 agreement of the Commonwealth, which would be
23 you as the district attorney.

24 Just offhand, what do you think
25 your position would be with respect to

1 granting those -- those extensions? I mean,
2 you've lived in a universe where you've kind
3 of, from what you've told us, gotten the shaft
4 for a while. What do you think you're going
5 to do?

6 MR. EBERT: I don't really refer
7 to it as the shaft. It's the idea of it is
8 that we don't have any problem making the
9 decision, the fact-finding decision that the
10 guy was guilty -- this morning as I was
11 driving out of here I finally drawn the line
12 in the sand that said I'm really going to
13 appeal. And I'm in a small county. I got
14 five judges. I have to be in front of them
15 every day. You pick and choose your battles
16 very carefully about -- and our county always
17 has the tradition that the President Judge is
18 the juvenile court judge. And I personally
19 like this man. Don't get me wrong here.

20 The key, however, is that this
21 morning a 13 year old was in court on an
22 aggravated indecent assault. He grabbed a
23 young woman about the same age, grabbed her by
24 the breast, then put his hand down the front
25 of her clothing and inserted his finger in her

1 vagina. That's a felony. Felony one. It's a
2 serious offense.

3 Deferred adjudication. He
4 admitted the charge. I mean, he admitted the
5 charge. The Juvenile Act says if you commit a
6 felony you are in need of treatment barring,
7 some other testimony. And he was treated.
8 He's going to go, you know, he's being placed
9 a little while and then put on probation. But
10 the point is he still doesn't have a record.
11 There's just no record, and that will go on
12 and it will just go away.

13 If he becomes a sexual predator
14 later on -- frankly, it does impact the idea
15 of registration under the Megan's Law thing.
16 He becomes a sexual predator later on and
17 hurts somebody, and they'll be looking around
18 saying, gee, Cumberland County, why didn't you
19 do something about it, you knew he had this
20 problem all along. If he stays straight at
21 18, if he is a good citizen and stops, what's
22 the remedy? He's totally entitled to
23 expungement of his juvenile record and it's
24 not to be used against him. What incentive is
25 there if you don't give him any record anyway,

1 okay? Points later he got, here we go.

2 MR. PRESKI: Thank you.

3 CHAIRMAN BIRMELIN:

4 Representative Kenney has one more question.

5 REPRESENTATIVE KENNEY:

6 Mr. Ebert, in your testimony -- I'm not an
7 attorney. I just come from a common sense --
8 you use statistics 1735 offenses were reported
9 through the Juvenile Probation Office in
10 Cumberland County resulting in 784
11 substantiated offenses. So that's 784 that
12 admitted guilty to something?

13 MR. EBERT: Not particularly
14 admitted guilty. There was enough evidence to
15 get all kinds of -- even in an adult court you
16 get plenty off charges that don't end up in
17 court because you just can't -- the
18 allegations are made but you don't get that
19 far.

20 REPRESENTATIVE KENNEY: Okay.
21 We'll go here. You go on to say, "165 of
22 these offenses were felonies." So let's
23 say -- let's just use that statistic. "Only
24 three of which were adjudicated delinquent."
25 So that --

1 MR. EBERT: That means of that
2 entire packet, if everything --

3 REPRESENTATIVE KENNEY: What's --
4 if I'm the victim, I'm one of these -- say
5 they were all different offenses -- I mean
6 different victims, that's like 162 victims
7 were just told there will be no record on
8 these?

9 MR. EBERT: They weren't probably
10 even told that. I mean, that's one of the
11 legal finesses that you -- you know what I
12 mean. That would be something my office would
13 have to explain to a victim and say, you know,
14 as long as this stays in deferred adjudication
15 status, when this person gets to be 18, he's
16 not going to have any record at all. That's
17 hard for a lot of people to swallow. And
18 again, in good faith, the people who are doing
19 this are -- it's for the good of the child, we
20 don't want to really interfere with -- and
21 I'm saying, the system, if we were doing it as
22 the law indicated, gives you that benefit when
23 you're 18 that you -- you shouldn't be
24 counting juvenile record if you remain good
25 after 18.

1 REPRESENTATIVE KENNEY: You have
2 that option.

3 MR. EBERT: Yeah.

4 REPRESENTATIVE KENNEY: Right.
5 Because, I mean, serious offenses, whether
6 they be burglary, robbery, I mean, they don't
7 have -- weapons in school, they're all serious
8 to the victim or those --

9 MR. EBERT: Absolutely.

10 REPRESENTATIVE KENNEY: Okay.

11 MR. EBERT: Absolutely.

12 REPRESENTATIVE KENNEY: Thank
13 you.

14 CHAIRMAN BIRMELIN: We want to
15 thank you, District Attorney Ebert, for
16 coming. We appreciate your testimony.

17 MR. EBERT: Not at all. Thank
18 you.

19 CHAIRMAN BIRMELIN: We have a
20 gentleman scheduled at 1:35 who's not here
21 yet, so I'm going to skip to the 2:00 time
22 slot, and that's John Delaney, Chief of the
23 Juvenile Unit, Philadelphia DA's Office, and
24 Gary Tennis, Chief Legislative Unit from that
25 same office.

1 Gentlemen, we welcome you. It's
2 my understanding, Mr. Delaney, that you're
3 going to do most of the talking and that we
4 will not have any written remark, but you're
5 going to be speaking basically on the subject
6 at hand; is that correct?

7 MR. DELANEY: Yes.

8 CHAIRMAN BIRMELIN: You may begin.

9 MR. DELANEY: Thank you. I
10 appreciate the opportunity to be here. I'm
11 here on behalf of Lynne Abraham, District
12 Attorney of Philadelphia County. And to put
13 this issue in the context a little bit, unlike
14 the criminal court where there are really two
15 critical stages -- the verdict and then if the
16 verdict is guilty the sentence -- the juvenile
17 court there are three stages.

18 The first is the finding of guilt
19 where the prosecutor, my burden, is to prove
20 the defendant guilty beyond a reasonable doubt
21 of a misdemeanor and/or a felony.

22 The second stage is does the
23 defendant need, in the words of the law,
24 rehabilitation, supervision, or treatment.
25 And that's where the issue presents itself.

1 The third stage would be the
2 disposition or the functional equivalent of
3 sentencing.

4 The law, as its currently written,
5 provides that after the court finds the
6 defendant guilty, the court can immediately or
7 at a postponed hearing hear evidence on the
8 issue of whether the defendant needs
9 rehabilitation, supervision, or treatment.

10 And the law provides a time limit
11 if the defendant is in custody. That time
12 limit is 20 days. If the defendant's not in
13 custody, the law provides a time limit, a
14 reasonable period, and it provides that time
15 limit for one purpose, a reasonable period for
16 the court to receive evidence on the issue of
17 whether the defendant needs rehabilitation,
18 supervision, or treatment.

19 Our experience in Philadelphia
20 County over the last two years is that the
21 judges have misinterpreted the phrase
22 reasonable period and, therefore, there's an
23 urgent, immediate need for the legislature to
24 define that time limit. And we support
25 Representative Kenney's bill, which fashions

1 that time limit at 60 days. And I should
2 point out that the 60-day period can be
3 extended if both sides agree that there are
4 extraordinary circumstances that would warrant
5 a further continuance.

6 But I think, to supplement what
7 District Attorney Ebert said, lengthy deferred
8 adjudications do nothing to further the
9 purposes of the Juvenile Act, which the
10 legislature redefined in 1996 to give us three
11 mandates in every delinquency case; protect
12 the community, hold the offender accountable,
13 and help the offender become a productive
14 member of the community.

15 I would submit to you that lengthy
16 deferred adjudications do none of those. And
17 I would take issue with one thing that
18 District Attorney Ebert said. He said in
19 Cumberland County he believes the judges are
20 acting in *parens patriae*. I would suggest to
21 you that none of you as parents nor as
22 legislators, in the form of a governmental
23 parent, would say to your child on today,
24 February 23rd, you committed a transgression
25 today; I find that you did it; I find you

1 guilty; and then wait till next October, next
2 November, or April of 2,001 to impose the
3 consequences.

4 That is absurd. No one agrees
5 with that; not a defense attorney, not a
6 prosecutor, not a judge, not a child
7 development specialist. That's ridiculous.
8 But that's what's happening in Philadelphia
9 County.

10 We have cases where the judges are
11 saying to people in the courtroom I find you
12 guilty, but I don't know if you need treatment
13 or not, so what I'm going to do is
14 rehabilitate, supervise, and treat you while I
15 make that decision.

16 Now, I'm not even going to
17 speculate on the total cost to the
18 Philadelphia tax payers of rehabilitating,
19 supervising, and treating these people whom we
20 do not know whether or not they need
21 rehabilitation, supervision, and treatment;
22 but I think the suggestion that this follows
23 some sort of child development approach or, in
24 fact, is in parens patriae is absurd.

25 And I'll quote you just one writer

1 who studied case processing for the Annie E.
2 Casey Foundation. This is what D. Allen Henry
3 had to say, When an arrest for an alleged
4 offense is followed by months of inaction
5 before disposition, the juvenile will fail to
6 see the relationship between the two events.
7 Any lesson that might be learned about
8 accountability and responsibility is lost.

9 So not only does lengthy deferred
10 adjudication not further purposes of the
11 Juvenile Act, I would submit to you they
12 contravene the purposes of Juvenile Act. And,
13 in effect, it's a judicial rewriting of the
14 law.

15 I would suggest to you that you
16 would be hard pressed to find another area of
17 the law where a judge can hold a lawsuit
18 hostage. Now, we may not like to think of
19 these as lawsuits, but that's, in essence,
20 what they are, and appropriately so.

21 When the government accuses a
22 young person of committing a crime, it ought
23 to happen with procedural safeguards. Those
24 safeguards occur in the lawsuit. But what
25 happens now is the judge said I've heard

1 everything I need to hear, but I'm not going
2 to make up my mind.

3 And I think it's important to
4 point out what the prosecutors are not asking
5 for. As in other states, we are not asking
6 that the juvenile court be dismantled. We're
7 not asking that the juvenile court become more
8 or less punitive, more or less rehabilitative.
9 All we're asking the legislature to do is to
10 direct Pennsylvania judges to make a timely
11 decision; far from asking that their
12 discretion be circumscribed, we're just asking
13 that they be ordered to exercise it.

14 And in talking to people who
15 advocate for this practice of deferred
16 adjudication, there are two common responses.
17 One is that it rarely occurs. It's in the
18 unusual or extraordinary case in which this
19 happens. Well, I'm here to tell you in
20 Philadelphia that's not true.

21 We've started measuring deferred
22 adjudications in September of 1998. In 17
23 months, from September of '98 through January
24 of year 2,000, Philadelphia judges deferred
25 adjudication over 5,700 times.

1 Now that's not 5,700 cases,
2 because what happens is one case is subject to
3 many deferrals. And what we did is every time
4 a judge deferred adjudication, we looked at if
5 the case were to be disposed at its next
6 listing -- which is not a guarantee -- but if
7 it were to be disposed, how much time will
8 have passed between the time the offender was
9 pronounced guilty and the time of the
10 delinquency adjudication or the dismissal, if
11 the child is found not to be in need of
12 treatment.

13 And of those 5700 times when it
14 happened, over 70 percent of them were for
15 over 60 days, and fully one-quarter of them
16 were for over six months.

17 So I get back to the question I
18 posed at the beginning. How many of us as
19 parents would say to our child today, you are
20 guilty of an offense, you broke some rule that
21 I imposed, and I am not going to decide if you
22 need a penalty until August the 23rd or
23 September the 23rd or longer?

24 And by the court's own count, in
25 December of 1999 of every six cases that it

1 had in its inventory that were not yet
2 disposed, one of them was in deferred status,
3 a total of almost 800 of the 5100 cases.

4 Another response that people who
5 advocate for the propagation of this practice,
6 if you will, is that it doesn't happen for
7 long periods of time.

8 And I would just like to cite to
9 you thumbnail sketches of some cases and allow
10 you to determine whether you think this time
11 period is too long.

12 A 14-year-old boy who raped a
13 17-year-old sister -- I'm sorry -- his
14 seven-year-old sister, the case was disposed
15 for 40 -- I'm sorry -- deferred for 45 months.

16 This person is now over the age of
17 18 and the court has yet to decide if he needs
18 treatment, rehabilitation, or supervision for
19 having raped his seven-year-old sister.

20 A stabbing case 38 months; a
21 burglary case 30 months and still not
22 resolved; 24 months for a 13 year old who
23 raped his sister and his cousin, separate
24 incidents; and 20 months for a robbery.

25 Advocates of this practice also

1 say that it happens in minor cases, these
2 aren't serious things and judges ought to have
3 the ability to put off the decision whether
4 the child needs treatment, rehabilitation, or
5 supervision.

6 And I'll submit a couple more
7 thumbnail sketches for you to decide whether
8 you think these cases are serious or not.

9 A 15 year old in a Philadelphia
10 public high school possessed a fully loaded
11 .25 caliber semiautomatic pistol, deferred for
12 six months.

13 A 17 year old sold crack. Two of
14 the buyers were arrested. Crack was seized
15 from them. From the defendant was seized a
16 pager, cash, and the car from which he was
17 obtaining the drugs contained 116 packets of
18 crack and a loaded .40 caliber semiautomatic
19 pistol, deferred for six months and still not
20 a decision. That case is still open.

21 A 16 year old who sold under --
22 who sold crack to undercover police, deferred
23 for 21 months.

24 A 15 year old who set the -- set
25 fire to the hair of another student in a

1 Philadelphia public high school, 21 months,
2 still not decided.

3 A 16 year old who sold drugs to
4 three buyers -- one of the buyers was arrested
5 and crack cocaine seized from the buyer, the
6 stash house where the drugs were kept yields
7 182 packets of crack, 56 packets of heroin,
8 and nine -- I'm sorry -- a fully loaded nine
9 millimeter semiautomatic pistol -- it took a
10 Philadelphia judge seven months to determine
11 if that drug dealer needed rehabilitation,
12 supervision, or treatment.

13 A 15 year old who raped a
14 four-year-old visitor to his home, eight
15 months and counting.

16 A 17 year old who sold crack and
17 possessed more crack, it took a Philadelphia
18 judge almost two years to decide if that
19 person needed to be rehabilitated, supervised,
20 or treated.

21 And finally, a strong-armed
22 robbery by 13 year old of a 12 year old at a
23 city playground -- a place that the city is
24 struggling mightily to preserve so people
25 don't fly from Philadelphia to other counties

1 or to other states, so that people can enjoy
2 the amenities provided to them by city
3 government -- 14 months it took the judge to
4 decide whether that robbery needed to be
5 treated, rehabilitated, or supervised.

6 And I'll cite to you three cases
7 in detail because I think, while some may
8 argue this exaggerates the point, I think it
9 puts it into a different context.

10 On April 2nd, 1999, in the 19th
11 Police District, which is in West
12 Philadelphia, police responded to a call about
13 a disturbance. They saw a 17 year old -- this
14 is in front of uniform police -- punched a
15 31-year-old man in the face. The victim tells
16 the police that prior to their arrival this
17 young man had pulled a gun. The police
18 weren't able to find the gun.

19 In July of '99, after a trial,
20 this young man was found guilty of simple
21 assault. At adjudication disposition, the
22 adjudication of delinquency was deferred, but
23 he was ordered to perform community service
24 and participate in a GED program, which by the
25 way are common elements of probationary

1 sentences in juvenile court, but he was not
2 adjudged delinquent.

3 The case was further deferred in
4 court hearings on August 2nd, 1999; September
5 22nd, 1999; and scheduled for January 5th of
6 the year 2,000.

7 On October 26th, 1999, however,
8 this defendant and another were arrested for
9 the gunshot murder of a 16-year-old high
10 school student outside of his high school at
11 dismissal time. The offender is now in a
12 county prison pending his murder trial, is
13 being held for court but the trial hasn't been
14 scheduled. And that wasn't enough for the
15 judge.

16 This case has been further
17 deferred until June 14th of the year 2,000 to
18 decide if this young person needs
19 rehabilitation, supervision, or treatment.

20 Another argument made about this
21 practice is it happens only for first-time
22 offenders.

23 In 1994, this young person was
24 adjudged delinquent and committed to a
25 residential facility for robbery as a felony

1 of the second degree, robbery in which bodily
2 injury is threatened or attempted or caused.

3 On May 8th, 1999, while he was a
4 fugitive because he had been scheduled for
5 court for having violated his after care,
6 after having been in this residential
7 facility, he doesn't appear for court and he's
8 wanted by court on a bench warrant. He gets
9 arrested on May 8th, 1999, after police were
10 told by a citizen who pointed this person out
11 saying he's selling, selling drugs the police
12 arrest him and recover 3 packets of marijuana
13 and \$114.

14 Fourteen days late -- we're very
15 quick at trying people in Philadelphia.
16 Fourteen days later he's found guilty of drug
17 possession and the adjudication is deferred
18 and he's placed on something which I, despite
19 having been a prosecutor for 18 years and
20 having graduated from law school, I cannot
21 explain to you what this phrase means, interim
22 probation.

23 He's placed on interim probation
24 and his case is further deferred on August
25 17th, despite the fact that on June 29th he

1 was arrested for drug sales. This case is
2 continued again till October the 8th, deferred
3 again on October the 8th and again deferred
4 again on December the 8th.

5 It was scheduled for February 17th
6 of this year, just last week; however, he did
7 not appear for his trial because he's in the
8 county prison, having been arrested for the
9 January 11th -- I'm sorry, January 11th 2,000
10 gunshot murder of a 24-year-old man.

11 And the last one was a young man
12 who was -- who robbed a 14 year old at
13 gunpoint, found guilty of robbery but only as
14 a felony of the second degree. The court
15 defers the adjudication pending psychiatric
16 examination in June of 1998.

17 It's further deferred at court
18 hearings on July 3rd, 1998 despite the fact
19 that the psychiatric evaluation by the court's
20 own doctor comes back and says that he's
21 failed in school for three years, he needs
22 in-home therapy, and he ought to be in a
23 special school. It's deferred again on July
24 14th, 1998; July 31st, 1998; and August 28th,
25 1998 when he's discharged because the court

1 finds he doesn't need treatment. Three weeks
2 to the day later he's shot and killed.

3 Now, I would just ask again that
4 you consider when deciding whether
5 Representative Kenney's bill makes sense,
6 although he appropriately says that issue is
7 very simple, I'm here to state on behalf of
8 District Attorney Abraham, it's a pressing
9 matter. And I would ask you are there other
10 areas of the law where the court can hold a
11 lawsuit hostage or which you as a parent wait
12 months and months and months to decide the
13 consequences for your child's transgression.
14 Thank you.

15 CHAIRMAN BIRMELIN:

16 Representative Kenney.

17 REPRESENTATIVE KENNEY: Thank
18 you. Thank you, Mr. Delaney. And I guess I
19 use that term simple because I, as I said, I'm
20 not in the system, I am not a lawyer, I
21 just -- I really just don't get what takes so
22 long.

23 Unless there's some of those cases
24 you mentioned about the 17 year old that
25 punched the 30 year old, in reality that --

1 that young man may have gotten some help if he
2 was adjudicated delinquent and maybe not gone
3 out and killed, and this case of murder is
4 coming up in June. But in some way he may
5 have gotten help that could have prevented the
6 murder, is that it?

7 MR. DELANEY: That's a
8 possibility. I don't mean to suggest the lack
9 of that help caused the murder. But I just
10 want to -- I just tried to demonstrate these
11 decisions have -- or lack of decisions have
12 consequences.

13 REPRESENTATIVE KENNEY: And
14 that's right. I mean, not only my -- my
15 primary interest is the victim or the victim
16 and the communities, you know, that have to
17 put up with this, but at the same time part of
18 the Juvenile Code is to help rehabilitate and
19 make these young people productive citizens.
20 And I think delay even further -- justice
21 delay is justice denial on both ends. And I
22 just don't understand the opposition to the
23 legislation, but certainly thank you for your
24 testimony.

25 CHAIRMAN BIRMELIN:

1 Representative Manderino.

2 REPRESENTATIVE MANDERINO: Thank
3 you, and thank you for coming today.

4 A couple clarifying questions
5 about the numbers that you gave us.

6 In the kind of 17, 18 month period
7 where you counted deferrals and came up with
8 5,700 plus, then you said but those weren't
9 necessarily 5,700 cases because one case may
10 have been deferred more than once. My
11 question is do you know the number of cases
12 that that was in that time period?

13 MR. DELANEY: Do I know the number
14 of cases where the decision was deferred more
15 than once?

16 REPRESENTATIVE MANDERINO: Yes,
17 yes -- no, no. In the time period that you
18 were counting cases being deferred, the number
19 of cases that was deferred was what?

20 MR. DELANEY: I don't know.
21 Having seen the statistics as they come in it
22 has to be over a thousand.

23 REPRESENTATIVE MANDERINO: And
24 that -- and for that same time frame, the
25 total number of juvenile cases that -- that

1 came through the system in that time -- see,
2 I'm trying -- I'm trying to get the numbers
3 that are above the numbers you gave me.

4 MR. DELANEY: I understand.

5 REPRESENTATIVE MANDERINO: You
6 gave me number of times deferred and then
7 percentage of those cases that were deferred,
8 and I'm just trying to get a scope of the
9 problem picture. So I'm trying to get the
10 numbers above that. Say, you know, in this
11 16-month period Philadelphia had -- I don't
12 even know what to make -- had 20,000 cases, of
13 those 20,000 cases, 20 percent, 40 percent, 5
14 percent of them were in deferral status; and
15 then of those 5 percent, 70 percent were over
16 60 days, 25 percent were over six months.
17 That's the kind of sequence I'm trying to
18 understand.

19 MR. DELANEY: You want the
20 denominator.

21 REPRESENTATIVE MANDERINO: Yes.

22 MR. DELANEY: I don't know the
23 exact number of petitions that were filed in
24 1999, but for the last two or three years
25 we've been running somewhere around 8500. So

1 since I'm covering 17-year period, one and a
2 half of that number would be 13,000, say.

3 Now, some of those never make it
4 to this stage because I as a prosecutor have
5 not been able to prove the defendant's guilt
6 so I've withdrawn the case or the judge has
7 found him not guilty and discharged the case.

8 There's another number of cases
9 where we have agreed to consent decrees. The
10 juvenile court approved them, ARD or pretrial
11 probation if you will. So even if our
12 statistics in the past have borne out that
13 we -- we prove guilty about 60 percent of the
14 cases we bring, so that would be 60 percent of
15 the 1300, or let's say 8,000 cases that could
16 have been in this status. And I'm saying to
17 you at least 1,000 of them have been. And by
18 the court's own figures, when they looked at
19 the inventory in December of '99, one out of
20 every seven cases that was pending that was
21 predisposition was a deferred status.

22 REPRESENTATIVE MANDERINO: Okay.
23 Another thing that was a little confusing to
24 me about your testimony was -- and I
25 understood particularly from the prior

1 testifier's testimony the importance from your
2 perspective of having an adjudication for the
3 effect that it has on subsequent acts of that
4 juvenile either as a juvenile or as an adult.

5 But what I couldn't really
6 understand from a practical point of view is
7 that there -- in citing your examples you
8 often said to us that when things are put into
9 deferred adjudication the judge was yet to
10 decide whether this person needed treatment,
11 supervision, or rehabilitation, meaning that
12 was the -- the impact of having put something
13 in deferred adjudication, but at the same time
14 as they were deferring, they were sending
15 people to treatment, community service, et
16 cetera. So are they really -- how often are
17 they delaying the actual treatment,
18 supervision, and rehabilitation versus putting
19 the mark down on the record? That's what I'm
20 having trouble understanding.

21 MR. DELANEY: It has become more
22 common that the judge will order the defendant
23 to be treated, rehabilitated, or supervised
24 while they await making the decision on
25 whether they need treatment, rehabilitation,

1 or supervision.

2 REPRESENTATIVE MANDERINO: So they
3 made the decision, they just haven't put it on
4 the record. I mean, if they're sending them
5 for the treatment, supervision, or whatever,
6 they've in essence made the decision and are
7 meeting out the punishment, but they haven't
8 marked the record yet.

9 MR. DELANEY: I believe if you
10 were to sit in juvenile court and see Gary
11 Tennis placed on probation and ordered to
12 perform a hundred hours of community service
13 and get his GED and have no contact with the
14 victim, and have John Delaney found guilty and
15 placed in deferred status with the same
16 conditions, you would be hard pressed to
17 explain the difference.

18 MR. TENNIS: Just one point on
19 that. I think that putting the juvenile into
20 treatment is probably an illegal act. I
21 suspect there's probably a civil rights
22 violation because the court, not having
23 adjudicated delinquent, has no authority to
24 order anything of the juvenile.

25 One of the points that District

1 Attorney Ebert made is that one of those kids
2 gets hurt or whatever, I think that there is
3 probably -- there are probably grounds for
4 liability. It seems pretty clear to me, and
5 Mr. Delaney may have something else to say
6 about that, but it appears to me that those
7 are probably illegal orders because there's
8 just -- if there's no legal basis on which the
9 court can act.

10 REPRESENTATIVE MANDERINO: My last
11 question, and again I'm not offering this by
12 way either in defense or excuse, just by way
13 of understanding how all these pieces work
14 together, but I know from what I read in the
15 paper and what I hear from you folks and
16 everyone else that we have a whole systems
17 problem, not only at the adult court level,
18 but at the juvenile court level and the youth
19 detention center and capacity problems and all
20 that kind of stuff.

21 Is that part of what's going on
22 with this, and what impact on a practical
23 day-to-day operation might legislation like
24 this have on the Philadelphia situation, if I
25 can call it that?

1 systems impact that's different from what
2 we're seeing now.

3 This legislation, to the best of
4 my predictive ability, is not going to fill up
5 the Youth Study Center. It's not going to
6 fill up placement facilities. It's not going
7 to fill up probation case loads because these
8 kids are already --

9 REPRESENTATIVE MANDERINO: It's
10 just going to mark the record sooner rather
11 than later.

12 MR. DELANEY: Well, at least that,
13 but let me add it's also an indication of
14 reality. It says to the victim and the
15 community who, by what you did in 1995 had
16 been made co-clients of the juvenile system
17 along with the offender, here is what we find
18 happened. It's not this fiction. And the
19 other difficult thing is if I'm on a deferred
20 adjudication and I have all these conditions
21 and I don't meet them, Gary Tennis will have
22 his probation violated. John Delaney will be
23 adjudged delinquent. So I would be told eight
24 months from now that not because of what I
25 did, not the crime I committed, but because of

1 my failure to abide by what the court told me,
2 now I'm a delinquent. To me it makes no
3 sense.

4 REPRESENTATIVE MANDERINO: My last
5 question, I don't know if you know the answer
6 to this, who pays for what things and whether
7 that is any impact on decisions that are being
8 made? Does the city pay for things if they're
9 in one status and the state pays for them if
10 they're in another status and is that anything
11 of what's going on?

12 MR. DELANEY: Totally unrelated to
13 this.

14 REPRESENTATIVE MANDERINO: Okay.
15 Thank you. Thank you, Mr. Chairman.

16 CHAIRMAN BIRMELIN: Staff Member
17 Mike Rish.

18 MR. RISH: I do have one follow-up
19 on the idea of who pays. If -- if you send a
20 delinquent to one of the state facilities or
21 to any of the juvenile facilities of the
22 state, the process is one of a drawdown or
23 reimbursement by the state through Act 148 I
24 think. If the child is never delinquent and
25 is not dependent, how do you -- how does the

1 city justify the drawdown of the funding,
2 since it's only for those children? So I
3 mean --

4 MR. DELANEY: That's a great
5 question that's going to merit serious inquiry
6 if the legislation doesn't get passed, because
7 I've raised it with the Philadelphia people
8 who -- who administer our contracts. How can
9 you put somebody into a delinquent program if
10 they're not delinquent? And the vast majority
11 these kids are never alleged to be nor found
12 to be dependent.

13 MR. RISH: So they have no status
14 as far as their eligibility for Children and
15 Youth money?

16 MR. DELANEY: Well, that's an
17 interesting question. I don't know.

18 MR. RISH: Okay. In most cases,
19 are the kids put somewhere, placed somewhere
20 or are they at home?

21 MR. DELANEY: No, vast majority of
22 them are in the community at home.

23 MR. RISH: With probation services
24 being provided?

25 MR. DELANEY: Yes, and conditions

1 akin to what they would have if they were on
2 probation.

3 MR. RISH: How well is
4 Philadelphia's probation office able to
5 monitor these kids as they should.

6 MR. DELANEY: It's an open
7 question. The probation officers have posed
8 the question to me, What do I do if this kid
9 doesn't do what the judge orders? If he was
10 on probation I could torque up the conditions
11 of his probation, make an earlier curfew, put
12 conditions on him that don't otherwise exist.
13 But if he's in this deferred status, all I can
14 do is go to the judge and say now you have to
15 adjudicate him delinquent. It's caused a
16 number of systemic problems because no one
17 ever envisioned this.

18 As I said, prior to 1996, '97,
19 this was an extraordinary case. And there are
20 -- I will freely admit to you there are a
21 number of cases, a small number where we agree
22 to the deferral of an adjudication because
23 there are compelling reasons to. But the
24 cases I'm describing to you are all done over
25 our objection.

1 MR. RISH: And last question is,
2 so let's say the kid goes to St. Gabe's and
3 goes there for, I don't know, seven months,
4 comes out and still not adjudicated
5 delinquent. Could that child then just have
6 no adjudication?

7 MR. DELANEY: Can and has.

8 MR. RISH: Okay.

9 CHAIRMAN BIRMELIN: Counsel
10 Preski?

11 MR. PRESKI: Mr. Delaney, my
12 question is this: I guess when you talk about
13 a defendant who's in deferred, he gets
14 adjudicated guilty of the offense and then
15 he's given a 60 days, you talked about some of
16 them in your examples who were bench warrants.
17 Do you have any numbers on those who are bench
18 warrant for the deferral date and then they're
19 in fugitive status for a while? Or I mean,
20 because I don't assume that every defendant
21 gets a date and then shows up for another 30
22 day deferral. I mean, is it true that these
23 kids are not showing up, they're going into
24 bench warrants and then they're on bench
25 warrant status for a while?

1 MR. DELANEY: That's true. How
2 many there are I don't know. My experience
3 tells me it's not anywhere close to majority.
4 It's a small number.

5 MR. PRESKI: Okay. And the next
6 question is this: This is a -- and I want to
7 try to gather -- tie together something else
8 that we worked on in this committee, the
9 school violence. One of the things that we
10 saw with the school violence reports from
11 Philadelphia was that they were universally
12 condemned because of the way they calculated
13 their numbers. Assume that -- and we'll use
14 the Delaney Tennis group again -- John Delaney
15 has a weapon on school property. He's
16 adjudicated properly guilty and then he's
17 found to be in need of treatment within 30
18 days. Gary Tennis, though, we're going to
19 defer him for 18 months or whatever amount of
20 time it takes him to carry out over to the
21 next year.

22 Do you know, sir, whether that --
23 that offense, that weapon on school property
24 then is counted in the year that it actually
25 occurred, counted in the next year if he's

1 ultimately adjudicated, or if it's just never
2 caught or captioned in the statistics.

3 MR. DELANEY: Counted by whom?

4 MR. PRESKI: I assume it would be
5 counted as a school violence offense within
6 the school district's numbers.

7 MR. DELANEY: Well, the school
8 district -- it's -- to the best of my
9 knowledge the school district keeps statistics
10 totally independent of what the judicial
11 outcome is. If they -- if they arrest me in
12 high school and there was a gun next to me in
13 the boy's room and they -- they charge me
14 either internally or they call the police and
15 have me physically arrested and charged
16 legally with possession of the gun, they're
17 going to count as a possessor of the gun in
18 the school regardless of whether the judge
19 suppresses the gun or I'm acquitted of having
20 a gun. So in answer to your hypothetical, it
21 would be at the time of the offense.

22 MR. PRESKI: Arrest.

23 MR. DELANEY: Right.

24 MR. PRESKI: My next question is,
25 and I asked this of District Attorney Ebert

1 too: Given that there will now be a limit on
2 the judge's ability to go over 60 days, do you
3 think that that would increase the number of
4 consent decrees that your office would enter
5 into?

6 MR. DELANEY: No.

7 MR. PRESKI: Or would have some
8 effect?

9 MR. DELANEY: No, because what one
10 of the interesting things is that we had heard
11 that the court was doing this in response to
12 the Philadelphia's District Attorney's
13 stinginess in giving out consent decrees. I
14 haven't heard that because I've been told by
15 the court through their own statistics that
16 the number of consent decrees from 1998 to
17 1999 doubled from 400 to 800. And it doubled
18 not because of deferred adjudications. It
19 doubled because what we had done was go to the
20 court and said when you put a kid on consent
21 decree you don't really supervise him. If you
22 could supervise him and impose conditions that
23 he was obligated to comply with, and got
24 reports back to us about his level of
25 compliance, we would entertain doing more

1 consent decrees. The court agreed to do that
2 and as a result we've agreed to more consent
3 decrees.

4 And that's an interesting --
5 interesting point, because the kids we're
6 talking about who were in deferred status, let
7 me just briefly summarize for you what they've
8 had to go through. They've been arrested.
9 Police, under the Juvenile Act, have the power
10 to remedial a case or in essence tell a
11 defender to go and sin no more. The police
12 have chosen not to do that.

13 He's been charged, not declined by
14 the district attorney. And in Philadelphia
15 the district attorney charges all juvenile
16 delinquencies. So we haven't declined a case
17 for lack of evidence and we haven't diverted
18 them. And we divert about 700 kids a day to
19 our youth aid for first time misdemeanor and
20 some other level felonies. We chose not to
21 divert him. He's been charge by court's. In
22 that unit they have a straight power to inform
23 early adjudication cases. They've decided not
24 to do this. He's been sent to a pretrial
25 hearing. We haven't agreed to consent decree.

1 He's -- he's gone to adjudicatory hearing and
2 either pled guilty or been found guilty and
3 hasn't been withdrawn, it hasn't been
4 dismissed. He hasn't been acquitted and now
5 those are the kids we're talking about. To
6 get back to Representative Manderino's
7 formula, those are the kids who comprise the
8 numerator. They've overcome all these
9 procedural barriers and been found guilty of
10 felonies or misdemeanors.

11 MR. PRESKI: Next question is
12 this: You come now to this Committee and
13 ultimately to the General Assembly. Have you
14 attempted to work this out with the courts?

15 MR. DELANEY: Yes. Speaking to
16 the judges individually, and an ongoing
17 discussion with the administrative judge that
18 began with -- formally began with a letter in
19 the fall of 1998, and it was only because of
20 our inability to solve our problem in-house
21 that we came to the General Assembly and began
22 to find out places like Cumberland County that
23 were having the same problem we were having.

24 MR. PRESKI: Next question is
25 this: Anticipating either a potential

1 amendment or a concern, the 60 days, my
2 understanding is that most presentence are
3 done within 30 days. How did you get to the
4 60 day number?

5 Is this a -- not a give away but
6 is this, in working with Representative
7 Kenney, almost an understanding that sometimes
8 you need a little more so write it in now
9 rather than go back? Or where did the 60 day
10 number come from?

11 MR. DELANEY: I believe it was at
12 the request of the judges. They --

13 MR. PRESKI: Okay.

14 MR. DELANEY: They wanted no time
15 limit. We came in and said 30 days, because
16 we thought 30 days was reasonable, given the
17 law defines what the delay can be for. It's
18 to amass the evidence on whether the kid needs
19 to be treated. So we said, well, if 30 days
20 isn't enough we can agree to 60 days. So it
21 was a concession on our part. I still
22 don't -- I'm still not aware of what's going
23 to be done between the 31st and the 60th day
24 that won't get done between 0 and 30.

25 And I would just point out as one

1 last complement, the legislature, I think in
2 its wisdom, has filled the Juvenile Act with
3 time limits, because of the need for the
4 consequences to follow closely on the heels of
5 the cause. Most of those time limits are in
6 terms of hours, some in days. So what we're
7 asking for is not a radical departure in at
8 least in my belief in the spirit of the rest
9 of the Act.

10 MR. PRESKI: I'm done. Thank you.

11 CHAIRMAN BIRMELIN: Thank you,
12 gentlemen. We appreciate --

13 REPRESENTATIVE PETRARCA: One last
14 question. I just have a question about the
15 rest of this. Not being from Philadelphia
16 County, certainly can appreciate what's going
17 on over here but I'm just curious about other
18 areas of the state. We heard from Mr. Ebert.
19 Do you have any other facts and figures?

20 MR. TENNIS: I don't have figures,
21 but we did raise the issue at the District
22 Attorney's meeting two weeks ago. And at that
23 time going into the meetings we thought the
24 problem was limited to Cumberland County and
25 to Philadelphia County. And at that time the

1 juvenile prosecutors from both Montgomery
2 County and Lebanon County approached and said
3 they have a serious problem with the same
4 issues in their counties, too. Nobody else
5 came up to me. I don't know whether this is a
6 practice that's starting to grow. It appears
7 to be a practice that's starting to grow.

8 What it effectively does is it
9 overrules the legislature. The legislature,
10 one of the first bills I worked on when I
11 took -- when I started doing this job 13, 14
12 years ago was a juvenile justice reform piece
13 where the legislature ended up passing a law
14 saying that to do a consent decree there
15 really has to be consent on all sides. The
16 prosecutor has to agree, the juvenile's lawyer
17 needs to agree, the judge needs to agree.
18 Before then it used to be just up to the
19 defense attorney and the judge. And this is
20 really like ARD for juveniles.

21 And the legislature said that's
22 how it should be treated, all sides should
23 agree base -- what I was -- really my way of
24 describing what's occurring here is this -- is
25 there's a growing practice where the judges

1 are basically overruling the statute by really
2 what I think is an illegal practice. By
3 imposing these illegal sentences where there's
4 been no deferral, it's like sentencing
5 somebody to a probation in an adult system
6 without convicting them, without finding
7 they're guilty first and saying we're going to
8 sentence you without a conviction. I don't
9 think you could do it.

10 REPRESENTATIVE PETRARCA: Thank
11 you.

12 CHAIRMAN BIRMELIN: Thank you,
13 gentlemen. We appreciate your testimony.

14 MR. DELANEY: Thank you.

15 CHAIRMAN BIRMELIN: Our next
16 testifier is Attorney Robert Listenbee. He's
17 the chief of the Juvenile Unit of the Defender
18 Association of Philadelphia. Mr. Listenbee,
19 if you would come forward, please. We have a
20 copy of your testimony and.

21 MR. LISTENBEE: I have with me
22 Miss Anne Marie Ambrose. She is the Assistant
23 Chief of the Juvenile Unit of the Defender
24 Association of Philadelphia.

25 MR. PRESKI: Ms. Ambrose, could

1 you spell your last name?

2 MS. AMBROSE: Sure.

3 A-M-B-R-O-S-E.

4 MR. PRESKI: Thank you.

5 CHAIRMAN BIRMELIN: I want to
6 thank you for coming and you may begin your
7 testimony when you're prepared to do so.

8 MR. LISTENBEE: Thank you very
9 much. First of all, thank you for inviting us
10 to participate. We have prepared a written
11 statement, which we will go through briefly.
12 And we'll try and address a variety of
13 questions that I'm sure you have concerning
14 the practice that we've already referred to
15 cases in Philadelphia.

16 We come here representing Defender
17 Association and the Defender Ellen T.
18 Greenlee. By way of background, I'm currently
19 chief of Juvenile Unit. I've been in that
20 position for two years. Prior to that I
21 worked for approximately seven years as the
22 assistant chief, and I've been working for
23 about ten years doing juvenile work primarily
24 here in Philadelphia, a variety of different
25 capacities handling what would be the

1 equivalent of direct file cases now as well as
2 what we had as special defense unit that
3 handled some of the complicated physical cases
4 both in juvenile unit and on the adult side in
5 prior years.

6 Miss Ambrose has been working for
7 ten years working primarily with juveniles,
8 and has been an assistant chief of the
9 juvenile unit for approximately two years.

10 She, too, has worked in a variety
11 of different capacities and all kinds of cases
12 on the adult side and the juvenile side with
13 young people.

14 The juvenile unit is
15 court-appointed counsel for approximately 70
16 to 80 percent of the cases that come up in
17 Philadelphia.

18 I believe Mr. Delaney's numbers
19 are right in that about 8500 cases this past
20 calendar year, and of that 8500 we handle
21 between 5300 and 6,000 of those cases. We
22 have a staff of 19 attorneys, eight social
23 workers, three investigators, and nine support
24 staff. And we staff six court rooms in
25 Philadelphia. Four of them are trial rooms,

1 one of them's a pretrial and also a detention
2 hearing room. The other is a review room
3 which we call J court, which occasionally
4 handles detention hearings as well.

5 The Philadelphia system, which I'd
6 like to focus on a little bit, is the largest,
7 the busiest, and we believe the most complex
8 juvenile justice system in the Commonwealth.

9 I've recently had occasion
10 working -- to work for His Honor the new Mayor
11 of Philadelphia on a transition team where
12 we've evaluated and examined some of the
13 complex issues that are currently in existence
14 in the system. And we've been involved in
15 preparing a report for His Honor so that he
16 can make some -- some changes in the overall
17 system. We've been fortunate to have
18 Mr. Delaney appear in His Honor's hearing, as
19 we tried to determine what issues need to be
20 address and so forth.

21 At the present time, for your
22 information, based upon statistics from
23 yesterday, there is a backlog of approximately
24 1700 juvenile hearings in the system. That
25 number was up around roughly 1800 in the month

1 of January.

2 On any given day in the court
3 rooms we have what I would call a major
4 backlog that compares with any other system in
5 the state.

6 An average judge will be handling
7 anywhere from 18 to 30 adjudicatory hearings.
8 Of the 18 to 30 cases, there would be a wide
9 array of cases which might range from one to
10 two rape cases, to murder cases, aggravated
11 assault. There might be a variety of school
12 assault cases; there could be some property
13 cases, maybe automobile theft or fleeing,
14 that kind of thing on that list. Lists are
15 not restricted in any way whatsoever.

16 In addition to that 30 -- or 18 to
17 30 adjudicatory hearings, there are an average
18 between, I believe, 40 and 60 reviews and
19 dispositions in a given court room on a given
20 day. And during the month of December, we had
21 an enormous sort of pressure on the overall
22 system and we saw as many as 75 reviews and
23 20 -- 25 to 30 adjudicatory hearings in a
24 given court room on a given day.

25 Judges typically start 9:30, work

1 till -- depends upon the judge and how fast
2 they're working -- till late in the afternoon.

3 I give you this background
4 information because what I see is that there
5 is a system that has enormous backlog, a large
6 number of cases. I see both prosecutors and
7 defense attorneys being worked very hard to
8 address a lot of very complex issues.

9 One of the things that's important
10 though, also, is in the pretrial status of
11 cases in Philadelphia juvenile system,
12 according to a report that's prepared by the
13 Department of Human Services, the Juvenile
14 Justice Services Division, we have on average
15 or during the last quarter of the year 1999
16 calendar year there were 1,000 youngsters on
17 pretrial -- under pretrial supervision. So
18 there are large numbers of kids in the system
19 who are waiting to have their -- their issues
20 addressed. And I think that that's critical
21 as you go about the process of making
22 legislation, to consider how the different
23 parts of the system work together.

24 One of the big issues that we deal
25 with regarding deferred adjudications is

1 dependent children.

2 These children come from
3 Philadelphia County. They are children who
4 are sometimes adjudicated delinquent -- or I'm
5 sorry -- adjudicated dependent outside
6 Philadelphia or inside of Philadelphia. In
7 some cases these dependent children have been
8 placed as far away as Texas or Colorado. As
9 dependents, they come back into the system,
10 sometimes with offenses that -- that are
11 delinquent offenses, and they stand before the
12 court.

13 Many of these youngsters have what
14 we would characterize as some pretty complex
15 problems. They have mental health issues,
16 they have behavioral issues, they have drug
17 and addiction issues, many of them have been
18 either abused physically or sexually, and
19 along with the fact that they also have in
20 many cases dependent issues, meaning they
21 often don't have a place to stay.

22 When these cases come to the
23 courts, one of the things that the judges have
24 to address is whether or not they are still
25 dependent. The judges do -- we have in

1 Philadelphia a split court system, one where
2 we have a dependent side and a delinquent
3 side. Once these youngsters are adjudged
4 dependent, the judge on the delinquent side
5 can't also handle that case. So often what we
6 have are youngsters who in particular have a
7 misdemeanor property or in some cases assault
8 behavior kinds of offenses. They are sitting
9 in one of the detention statuses waiting for a
10 final decision on what's going to happen to
11 them.

12 The process of determining what's
13 going to happen to a dependent child, and
14 there are literally hundreds and hundreds of
15 these cases, is what takes an awful lot of
16 time in Philadelphia.

17 Part of the problem or the
18 difficulty we have is that, in comparison to
19 other counties, Philadelphia is the only
20 county out of the entire Commonwealth that has
21 both a Department of Juvenile Justice Services
22 and also has the court system with the
23 probation department working together to try
24 and address a lot of the problems of these
25 dependent children. In most other

1 jurisdictions, the probation department itself
2 handles all the issues related to disposition
3 for these kinds of children.

4 When you have to have two
5 departments as large as these work together to
6 try and solve problems, they have to be very
7 communicative and they have to work
8 effectively together. We're very fortunate in
9 Philadelphia to have, I believe, a very
10 dynamic probation department as well as a very
11 dynamic division of Juvenile Justice Services.
12 And they have been extraordinarily creative,
13 collaborative, trustworthy as partners in
14 trying to address these children's issue, but
15 some of the issues are basically so complex
16 that they require these children be sent to
17 other jurisdictions in order to find a place
18 that can address their problems.

19 Some of the problems that the
20 children face are so complex that it is
21 impossible to find more than one or two
22 institutions in the entire United States that
23 can address those issues.

24 The deferred adjudication status
25 is used by many of the judges to provide them

1 with a time period during which they can
2 analyze the situation involving the children
3 and make a decision as to whether the child
4 should remain dependent or whether the child
5 should be delinquent.

6 As I move on, one of the -- to
7 point number two, one of the big problems we
8 have in Philadelphia, which is not simply a
9 problem in Philadelphia, is that we have a
10 large number of female offenders in the
11 system. And any study in the State of
12 Pennsylvania that will look at the number of
13 pretrial facilities, the number of disposition
14 facilities, the number of placement and state
15 institutions, be it in the youth development
16 centers, would find that there are very, very
17 few that can address the complex issues that
18 the girls actually face. We have lots of
19 abuse, physical and sexual. We have lots of
20 mental health, mental retardation, other kinds
21 of issues that the females face.

22 And quite frankly, what we've
23 discovered as we tried to address these
24 problems is that we often have to send these
25 young women to places like the Pines in

1 Virginia, to places like High Point out in
2 Oklahoma, to places like the Browns School
3 where my colleague, Miss Ambrose, just
4 returned from this past weekend, to find
5 places for them to go.

6 Now, the process of determining
7 where these young ladies should go, the
8 process of working through RTF placements is a
9 long, long process.

10 It takes many months. Many of
11 these young ladies have sat in Youth Study
12 Center for two or three months, many times in
13 deferred adjudication status waiting for
14 someone to work out the issues.

15 That is something that is fairly
16 common. Miss Ambrose has been instrumental in
17 making a study of this issue and, in fact,
18 will be doing a presentation in Washington
19 next week on this very problem.

20 So I think it's something that
21 needs to be thought about as you look at how
22 you're going to change legislation that is
23 going to have a direct impact on what's going
24 to happen with these girls.

25 Another issue that I'd like to

1 raise involves an approach that the judges
2 have developed in Philadelphia which I believe
3 to be very creative, and deferred
4 adjudications have been a center stage --
5 center point for that, that approach.

6 A lot of times we have problems
7 with the parents call -- call us as defense
8 attorneys and they say Johnny is misbehaving,
9 he will not follow curfew, we think he's
10 smoking pot, we think he's hanging out with
11 the wrong crowd. The parents will find that
12 something happens, such as something comes up
13 stolen in the house, and they then turn Johnny
14 in and ask that Johnny be prosecuted.

15 Those families bring those cases
16 into the courts. The youngsters are often
17 sent into the judges and at that point the
18 judge will step in and the judge will hear the
19 facts, often times there's an admission to a
20 misdemeanor charge.

21 And the judges will step in and
22 assume the role of parent in the life of
23 Johnny. And many times these youngsters do
24 not have fathers in the home and the judge
25 will declare himself I am your parent -- out

1 of the old concept of family court room,
2 parens patriae -- and the judge will say,
3 Johnny, these are the rules; either you follow
4 the rules or I'm going to place you. These
5 are the rules: You must obey curfew for mom.
6 You must attend school. You must behave in
7 school and have no suspensions. You must
8 attempt to do well academically.

9 The judges will then also order
10 psychologicals and educational testing to
11 determine what Johnny's problems are. Once
12 judges do that, they're able to better
13 determine whether Johnny should be doing
14 better academically. So the judges basically
15 step in as parents and they tell Johnny that.
16 Now, if Johnny complies with the rules -- and
17 the judge may keep Johnny under supervision to
18 get through the first one or two report
19 cards -- the judges then turn around and say,
20 okay Johnny, you're doing well, I'm going to
21 let you go back home with your mother and I'm
22 going to discharge this case, because the
23 issues that I was addressing was whether or
24 not I could be your parent and I could get you
25 to abide by the rules.

1 Now, if parents felt that their
2 children were going to come to the court
3 system and the judges were going to help them
4 but then turn around and adjudicate their
5 children delinquent and place their children
6 in situations where they felt the children
7 were being punished by giving them a record,
8 then a lot of parents would feel that they
9 would not want to come to this particular
10 family court in Philadelphia.

11 I think that having seen this
12 happen literally hundreds of time in the court
13 room myself, having had that reported to me by
14 the trial attorneys in the court room that
15 this is exactly the case, what the judge is
16 using the family court for, I think I would
17 ask that you give serious consideration to
18 placing a limitation on this particular role
19 of the judges in family court.

20 I would like to remind you that
21 one of the things that these judges in
22 Philadelphia believe is that they believe that
23 they are still in the traditional family
24 court, the one that existed prior to en re
25 Gault. They believe that they are in parens

1 patriae to some extent, that they should do
2 good, do well, on behalf of the youngsters.
3 And so I'd like you to consider that.

4 Two other points, and I'll be
5 brief and then we'll be -- have questions or
6 try and address questions and also address
7 some of the concern points that Mr. Delaney
8 went over.

9 We believe that the judges have --
10 they are very experienced. The judges are
11 sitting on the bench -- we have two judges
12 that have been there for ten -- I believe ten
13 or more years. And they have been very
14 creative in a variety of ways in trying to
15 address the complex problems that I think you
16 won't find outside of Philadelphia, or
17 certainly you won't find in large numbers of
18 cases outside of Philadelphia.

19 And I ask you to consider the fact
20 that they have learned how to be creative in
21 addressing the children's problems and that if
22 you were to do a satisfaction poll on the
23 base -- from the parents themselves on whether
24 they feel that the children are better
25 behaved, whether they feel that the children

1 are less likely to be recidivists, I think you
2 would find that the parents would tell you
3 that they like what the judges are doing and
4 they like the kinds of approaches that the
5 judges are taking dealing with their children.

6 Finally, in my capacity in working
7 with the Transition Committee, I believe it's
8 safe to say -- though the Mayor has not issued
9 reports there so I'm not going to go into
10 report itself -- but the committee as a whole
11 decided that its top priority is to build a
12 new Youth Study Center and that it wants to do
13 that in the context of looking at a wide
14 variety of other issues that impact upon that
15 decision and that a lot of these issues work
16 together.

17 And I think that if you're going
18 to look at how to address Philadelphia's
19 problems, one of the things that needs to be
20 considered is how what you're going to do is
21 going to impact a lot of current practices,
22 including the issue regarding new Study
23 Center.

24 In that context I would only say,
25 again, that these issues work together. There

1 are lots of different aspects that we are
2 certainly willing to comment upon as we go
3 into our discussions and try and answer some
4 of your questions, but that we ask you to take
5 that into consideration. Thank you.

6 CHAIRMAN BIRMELIN: Thank you,
7 sir. I ask -- for just a few minutes, I'm
8 going to ask Representative Manderino to chair
9 the committee. Thank you.

10 REPRESENTATIVE MANDERINO:
11 Questions?

12 MR. PRESKI: Miss Ambrose, did you
13 have a statement?

14 MS. AMBROSE: No, I don't.

15 MR. PRESKI: Mr. Listenbee, my
16 question, I assume, is this: You made it a
17 point during your testimony to talk about how
18 placement issues was one of the big concerns
19 that you have for these children. Basically,
20 some need to go to programs out of state, some
21 need to go to programs that are within state.
22 But basically it's an understanding that this
23 child or this juvenile defendant needs
24 placement, needs a program to go to.

25 Given the testimony that we've

1 heard today, isn't that exactly what the
2 juvenile court is deferring the adjudication
3 on? They're basically saying -- and you
4 weren't here for Mr. Ebert's testimony and all
5 of Mr. Delaney's testimony, but basically they
6 say the courts have no problem at the first
7 stage to say the child did it, but now we want
8 to defer to see whether they need placement or
9 not.

10 Well, if the decision that's being
11 made while they're deciding whether or not the
12 child needs placement or not is where are we
13 going to put them in placement, shouldn't the
14 court then just simply say, yes, the child
15 needs placement; however, we don't have a
16 place for them yet, let's use the resources we
17 have here in Philadelphia or within the State
18 of Pennsylvania and then if it takes six
19 months to get them the spot in West Virginia
20 or all the other places that you mentioned,
21 then we'll send them there. But what's the
22 purpose, I guess, of saying -- and this is
23 just a short answer -- they need to go to
24 placement, the place we want to send them is
25 West Virginia or some other state, but we're

1 not going to decide that they need treatment
2 until we can find a place to put them?

3 MR. LISTENBEE: Let me see if I
4 can address your question. Placement issues,
5 as we look at them, are either placement as
6 dependents or placement as delinquents.

7 And fetometries the kinds of
8 children that we're dealing with, given the
9 complex problems that they have, are being
10 placed as dependents, inspite of the fact that
11 they may have admitted to or committed an act
12 that would be characterized as a misdemeanor
13 if they were an adult. So they're being
14 placed as dependents.

15 And what I wanted to just point
16 out to you is that the deferred adjudication
17 are used for a variety of purposes and that
18 one of them is to address this problem of
19 dependency. And I don't believe that, from
20 what I heard, that anyone had talked about
21 that.

22 Now, there are a lot of deferred
23 adjudications that are used to -- where the
24 judge basically does not know what the child
25 needs as he sets about to look at the child,

1 observe the child. The judge will order
2 psychological, a psychiatric, school reports,
3 the judge may have psychologist come in and
4 testify. The judge will look at the reports
5 from the pretrial detention status of the
6 child and the judge will then make a decision.
7 But if you look at what's happening on a given
8 day in a court room in Philadelphia, with the
9 large number of cases that are going on, the
10 first time that that child comes before the
11 judge, that's not likely to happen because
12 that information's not available.

13 Then if you look at the cycle and
14 the time limits, right now cases in
15 Philadelphia are being continued on average, I
16 would say, for six weeks to eight weeks for
17 court out cases. So you're looking for at a
18 month and a half to bring that child back to
19 try and address the issues if they're not in
20 any kind of supervised or treatment facility
21 or they're not in Youth Study Center or not in
22 community-based shelter center --
23 community-based shelter.

24 If they're in a dependent status,
25 they'll be back in ten days, but if they're

1 not in detention they'll not be back for six
2 to eight weeks. And that's because the
3 system's overcrowded. That's because there's
4 a backlog of cases. That's because, as I see
5 it as an advocate, there are not enough judges
6 sitting to address these issues.

7 I think both Mr. Delaney and I
8 would agree on that; and we certainly would
9 recommend that there be more judges,
10 particularly at pretrial stage, because
11 Mr. Delaney and I have talked about this at
12 great length.

13 So we agree that there's a problem
14 there, but I want you to see that deferred
15 adjudications are used in very constructive
16 ways by the judges to address a wide variety
17 of different kinds of issues. And whereas
18 Mr. Delaney has a particular kind of concern,
19 he has not -- what I heard of his testimony --
20 I apologize for not being here earlier to hear
21 more of it -- what I heard did not address
22 some of the more complex issues that we face
23 in Philadelphia where the deferred have been
24 very constructive, very helpful in addressing
25 the needs of children and where, as I said, if

1 you were to bring parents in who have been the
2 parents of these children who had deferred, or
3 even many of the victims themselves that they
4 would all, I believe, tell you that they
5 thought this was a constructive and wise use
6 of judicial power and judicial resources and
7 court resources and state resources.

8 MR. PRESKI: Okay. Then I guess
9 it would be fair to say from what you've just
10 told us, all in all you don't see the deferred
11 as a strain on your office --

12 MR. LISTENBEE: Absolutely not.

13 MR. PRESKI: -- but just rather a
14 constructive way of dealing with the child in
15 what I assume the way most beneficial toward
16 them?

17 MR. LISTENBEE: Absolutely. And
18 also I don't think that there -- there -- I
19 mean, I have not seen any written complaints
20 from victims. I have not heard of any written
21 summaries or evaluations where victims have
22 complained about the specific manner in which
23 these young people are being dealt with. I
24 think it's a constructive, positive way of
25 approaching the issue. It doesn't just take

1 into consideration the offender's interest.
2 It looks at the community interest. And I'll
3 tell you time and time again a lot of these
4 youngsters are adjudicated delinquent and
5 placed and in the days that they're
6 adjudicated delinquent they're hauled off in
7 the placement the same day.

8 When Johnny comes back to court --
9 and there are lots of cases like this. I've
10 seen it happen on many, many occasions,
11 standing in Judge Reynold's court room --
12 Johnny has not been going to school, he's not
13 been abiding by curfew, Johnny has new arrest,
14 the judge holds him and adjudicates him
15 delinquent and orders him to go to plan for
16 placement.

17 These are not idle kinds of
18 concerns. The judges take these cases -- the
19 judges take these cases seriously and they do
20 adjudicate these youngsters delinquent and
21 they do place them often over our objection,
22 and often over our appeals and often over our
23 appeals to the State Superior Court and on the
24 Supreme Court.

25 So we disagree with them when they

1 do some of these things, but that's part of
2 the advocacy process. We are engaged in that.

3 MR. PRESKI: Okay. Thank you.

4 REPRESENTATIVE MANDERINO:

5 Representative Kenney.

6 REPRESENTATIVE KENNEY: Thank
7 you. Thank you for your testimony. What's
8 going on during this six to eight week
9 period -- you said if you're not detained or
10 brought back in front of the court within ten
11 days or so. So six to eight weeks, this
12 juvenile that was found guilty of a crime is
13 floating around, going to my kid's school,
14 your kid's school, my neighborhood. We bring
15 him back six, eight weeks later, and I think
16 you used the word these judges are very
17 creative. Do they have something creative to
18 stay within those six to eight weeks about
19 what they're going to do with this.

20 MR. LISTENBEE: Representative
21 Kenney, I believe that they have been doing
22 just that. They developed the concept which
23 they call interim probation, where they assign
24 someone to work with the youngsters. The
25 youngsters have constant reports that are

1 submitted by the probation officer or the
2 interim probation officer to the court.

3 So there's an ongoing record. And
4 that record may be two or three times a week
5 with the probation officer seeing the child
6 and reporting back to the judge. And if -- if
7 the probation officer feels that Johnny's
8 going down -- downhill, that he's not abiding
9 by some preconditions that are set, or he's
10 not abiding by mom's rules, or in some cases
11 the judges leave them under a pretrial
12 supervision status, prehearing intensive
13 supervising, if the child starts going
14 downhill, the probation officers have the
15 power to go directly to the judge, file a
16 report, and that report is then used. The
17 judge then has a child brought in
18 immediately -- he doesn't wait till that
19 period is expired -- and something is done
20 with that child at that time. Typically that
21 child is held.

22 I mean, one of the facts I gave
23 you here today is that you have in
24 Philadelphia 1,000 youngsters on average each
25 day under pretrial supervision. This is -- it

1 hasn't gotten to the dispositional stage.
2 That is an enormous number. And that number
3 has gone up since 1996, when it was about 650.
4 So the courts have gotten a lot tougher. And
5 I don't have the stats here with me, but I
6 believe if you were to look at the stats in
7 Philadelphia those stats would say that there
8 are a lot more youngsters being placed now
9 than there were before the new Juvenile Act of
10 1996 went into effect.

11 We thought we had removed from the
12 juvenile system in 1996 most of the serious
13 violent offenders when those youngsters were
14 placed in direct file category. And I believe
15 at that time we started having about 6- to 700
16 or 800 of those youngsters pulled directly out
17 of the juvenile system and sent right into the
18 adult system.

19 What we had left was a juvenile
20 system where we as advocates were supposed to
21 try and address the traditional types of
22 problems that juveniles have. We weren't
23 supposed to -- we didn't have the impression,
24 at least even under the new principles, that
25 we were supposed to be looking at these

1 juveniles and punishing them, because most of
2 the real serious offenders had been pulled out
3 of the system. That was what I was -- my
4 understanding.

5 MS. AMBROSE: If I may,
6 Representative Kenney, one of the things that
7 our office does in this intervening six to
8 eight weeks is we may assign a social worker,
9 we may try to look at the individual child and
10 determine what kind of treatment needs this
11 child has, what problems are going on in the
12 family, make some referrals to some
13 community-based programs to try and solve
14 whatever those problems are. Get to know the
15 child a little bit better so that when we do
16 go back to court we have more information for
17 the judge, we have more information for the
18 probation officers who are going to be able to
19 make a more informed decision about what
20 should happen with this child.

21 REPRESENTATIVE KENNEY: Now, when
22 you do that, Miss Ambrose, and I think
23 Mr. Delaney used he doesn't know where this
24 term interim probation has its legality in the
25 system I think is that he said. What is

1 interim probation? Is that something the
2 judge --

3 MS. AMBROSE: I think that
4 Mr. Delaney made the statement that he didn't
5 think that deferred adjudications were a
6 direct response of the system not having
7 enough consent decrees. Frankly, we think
8 that it is. We think that the judges sort of
9 saw that children weren't getting enough
10 consent decrees for cases like two kids
11 fighting in school.

12 You know, many of us fought in
13 school with another kid, we never got hauled
14 off, put in handcuffs and taken away in front
15 of all of our peers at the age of eleven
16 without some sort of intervention on the part
17 of the school if this is a first-time offense.

18 Some of the cases we see who
19 have -- that have gone through this process
20 that Mr. Delaney outlined of all these
21 diversionary programs are cases like kids
22 writing with White-out on some blinds at
23 school and getting arrested for something like
24 that.

25 So some of the cases that we see

1 are fairly ridiculous kinds of cases that we
2 did frankly think should have been diverted at
3 an earlier stage and have no place in the
4 juvenile justice system. And I think those
5 are the kinds of cases that sometime we feel a
6 little outraged about. And I think that the
7 judges share our outrage and they think that
8 sometimes there should have been some
9 diversionary process that would have taken
10 this case out of the criminal justice system.
11 And their response is to give this child a
12 deferred adjudication.

13 MR. LISTENBEE: Representative
14 Kenney, if I --

15 REPRESENTATIVE KENNEY: Why won't
16 the judge then just find the allegations and
17 throw it out, something like that.

18 MS. AMBROSE: Because if you look
19 at the Act, if you look at the Crimes Code,
20 technically it might be a crime.

21 REPRESENTATIVE KENNEY: But the
22 judge can make that decision.

23 MS. AMBROSE: And sometimes they
24 have thrown them out. I believe Mr. Listenbee
25 tried --

1 MR. LISTENBEE: If I can answer
2 your question, I think it's -- you know, a lot
3 of times, I mean, the judges and the
4 philosophy of Philadelphia courts is still to
5 a great extent, and we fight against this,
6 it's *parens patriae*. We are -- we are
7 standing in the shoes of the parents. And if,
8 therefore, we're going to do good and do right
9 by this child.

10 Now, we can't appeal these cases
11 either, until such time as there's a
12 disposition. So we feel the judges make
13 horrible mistakes on the legal side. They
14 find kids guilty of things that they shouldn't
15 or -- but we can't do anything about it until
16 after there's a disposition. And those kinds
17 of cases the judge really feels that this
18 child doesn't have appropriate parent in the
19 home, this child doesn't -- isn't going to
20 school the way the child should, and this
21 judge feels that this may be the only
22 opportunity that I have as a judge to stand
23 here and do something on behalf of this child.
24 And a lot of times that information is in the
25 J file. It's available because there's a

1 psychological or psychiatric and the judge can
2 see that the child has problems. In many
3 cases these youngsters will be youngsters
4 whose parents may be in custody; and the judge
5 says, well, if I don't do something who will.

6 This is society's problem. I'm a
7 representative of the -- of the state and I'm
8 supposed to do something. And I'm not saying
9 something that's imaginary for me. I didn't
10 come up with these ideas. I've heard the
11 judges make these pronouncements from the
12 bench.

13 Now, one other thing I'd just like
14 to add which is unique, I believe, in
15 Philadelphia. We have eight social workers on
16 our staff. There's only one other office in
17 the entire nation that we know of, and that's
18 New York, that has social workers on its
19 staff. And we use our social workers during
20 this interim period to try and work out
21 different kinds of arrangements at home and in
22 the various kinds of programs that are
23 available, either within the juvenile justice
24 system or outside to try and do something for
25 some of these youngsters. In addition, we

1 also have on our staff a specialist in special
2 education. And a lot of times some of the
3 problems that happen with these youngsters who
4 come into the juvenile justice system that is
5 that they have educational problems. They
6 cannot read, they've never been properly
7 referred for special education, the
8 Philadelphia School System has not addressed
9 their educational needs. And when we come in
10 we then go with these youngsters into the
11 school system, we work out arrangements to try
12 and have them properly evaluated and get them
13 into the proper educational setting. Doing
14 that often solves their problems and
15 eliminates some of the different kinds of
16 acting out that these youngsters have
17 demonstrated in the school setting.

18 REPRESENTATIVE KENNEY: And what
19 do we say to -- since -- do you think the
20 judges are -- sometimes make mistakes I guess,
21 do you ever think they make mistakes when they
22 find that the allegations have not been
23 established and throw the case out?

24 MR. LISTENBEE: They do sometimes,
25 yes.

1 REPRESENTATIVE KENNEY: And you
2 think they should be kept under court
3 supervision or is that rare?

4 MR. LISTENBEE: It's an opinion.
5 We -- we are advocates. We are
6 constitutionally mandated advocates. If we
7 did something like told them they should bring
8 a case back that they threw out, we would be
9 disbarred for it. We have limitations of what
10 we can do. Judges make mistakes, though, on
11 all sides and all kinds of decisions, but
12 we're limited on those kinds of decisions.

13 REPRESENTATIVE KENNEY: But when
14 you hear these cases where the judge takes
15 like two years to come up with a decision and
16 the child's performing poorly in school, he's
17 getting bad grades, he's been suspended -- and
18 because I think the other issue there is the
19 victims. And maybe they don't write to you
20 but they're out there. There are those people
21 that are just playing by the rules sitting at
22 home in Philadelphia that read these cases and
23 can't believe it that no decision can be made
24 after two years. You don't think a judge
25 should come to some decision in any time

1 period? Or it should just be left to his
2 create -- or her creativity?

3 MR. LISTENBEE: As a legislature,
4 I certainly think it's within your power to
5 say that there ought to be some time limits.
6 And but if you ask me if after looking at
7 it -- and I see every one of these cases that
8 we hear. I see them because I'm required by
9 my supervisor to review them all. I mean, I
10 can't tell you that I see three or four or
11 five cases that have been around that -- that
12 I've seen three or four, five cases that have
13 been around for two years. I have not. I
14 have not seen that.

15 Now, I mean there may -- I mean,
16 if you ask me are there cases that are around
17 for three, four, five months, yes, there are.
18 But I haven't -- you know, maybe one case or
19 two cases that I've ever seen around for that
20 period of time and there was some
21 extraordinary circumstances to them. So, I
22 mean, that's not the norm. That's the
23 exception. And in every system, especially
24 one as large as this, you're going to have
25 exceptional cases. I don't -- I can't tell

1 you what the reason for it was, but I can tell
2 you what one might be.

3 If you have a child who has
4 significant mental health issues, more than
5 likely a child will be sent to a mental health
6 facility. Often times the problem may be that
7 the child is competent when he goes to trial,
8 not competent at the dispositional stage, goes
9 into mental health treatment and stays there
10 for several years, coming back on a status of
11 deferred adjudication. But really, it's a
12 status to determine whether or not the child's
13 competent. That happens on many occasions.
14 And some of those youngsters have gone out of
15 state to mental health facilities that deal
16 with a variety of different kinds of issues
17 that youngsters might have. Those issues
18 might be both mental health disorders as well
19 as addiction kinds of problems and a variety
20 of other kinds of things.

21 So those kids might, in a
22 situation like that, come back repeatedly
23 until such time as the child is competent.
24 Otherwise, I mean, the district attorney has
25 an option under those circumstances to just

1 discharge the case. We might ask the district
2 attorney not to discharge the case because we
3 don't want the judge to lose jurisdiction over
4 the case because we're trying to figure out
5 how help that particular child. I have seen
6 that kind of case stick around the system for
7 a long time.

8 But query, what would you have us,
9 as advocates, do when you have a child with
10 that kind of significant mental health
11 problem? We want, as members of society, to
12 address that problem while that child is
13 young. And that's what we, as advocates,
14 believe that we're trying to do in many of
15 these kinds of situations.

16 REPRESENTATIVE KENNEY: But what
17 about delinquency-triggered treatment,
18 supervision, and rehabilitation, are you --
19 can you -- can all that trigger all this?

20 MR. LISTENBEE: If the child's not
21 competent can you do a dispositional hearing?
22 The child has to be competent at every stage
23 of the hearing, certainly at dispositional
24 stage.

25 REPRESENTATIVE KENNEY: Say the

1 child is competent, wouldn't the
2 delinquency -- a judge ruling on delinquency
3 trigger those services that you want this
4 child to have?

5 MR. LISTENBEE: In the appropriate
6 circumstance, yes, sir. But what the question
7 that I was attempting to address was how would
8 a case be kicking around the system for two
9 years in a deferred adjudication status. And
10 I was trying to theorize about what kinds of
11 cases I might have seen. And again, some of
12 the most complex and difficult cases we deal
13 with are mental health cases, where we're not
14 look solely at -- we're not expecting the
15 child to get out of some kind of institution.
16 They're just not in a delinquent institution
17 but they're in a mental health institution.
18 And they stay there for some years but coming
19 back to court on a periodic basis, usually on
20 a three- or six-month basis so we can review
21 the status of those cases.

22 REPRESENTATIVE KENNEY: And can I
23 indulge you?

24 MR. LISTENBEE: Sure.

25 REPRESENTATIVE KENNEY: Just on

1 page three of your testimony, point three you
2 use this parent's support, I guess, from the
3 court system, your last sentence here -- I
4 guess I'm reading it -- is that parents are
5 afraid their child may be punished if they
6 were adjudicated delinquent.

7 MR. LISTENBEE: Yes, sir. One of
8 the big --

9 REPRESENTATIVE KENNEY: What
10 is -- is that what the whole -- they break the
11 law, you're punished?

12 MR. LISTENBEE: Let me give you an
13 example of what I'm talking about.

14 REPRESENTATIVE KENNEY: I
15 couldn't figure it out.

16 MR. LISTENBEE: I can sit here and
17 give you examples until the cows come home,
18 quite frankly, on that one. You have a child
19 who has got into some problems and steals
20 money in the home. Child steals money from
21 the parent.

22 Now a parent, when I child steals
23 money from a parent, a parent can address that
24 problem a number of different ways. One of
25 the ways is simply to discipline the child

1 within the home. A lot of times parents try
2 that and fail, and then they decide that they
3 want the court to step into the situation.
4 They want the power of the judge to look over
5 the shoulder of that kid and tell the kid if
6 you don't behave and stop doing that,
7 demonstrate that type of behavior, we're going
8 to take you out of the home and place you.

9 The parent will come to court with
10 that child. The case will go all the way
11 through to the trial process. The child will
12 usually admit, because there's no defense, and
13 at that stage the judge will place the child
14 under deferred adjudication and tell the
15 parents, I am now Johnny's probation officer.
16 If Johnny does not behave properly, I will
17 place Johnny. And the threat by the judge
18 serves as a sufficient deterrent for that
19 child. And that child comes back to court
20 periodically on the deferred status and brings
21 in glowing reports.

22 And there was a time when we could
23 go to court and you would hear day after day
24 of children whose grades had improved, whose
25 behavior had improved in school, and who had

1 stopped misbehaving because the judge was
2 looking over their shoulder. And then after a
3 while, usually at the end of the calendar or
4 the school year, what would happen is the
5 judge would discharge those cases.

6 So that's the kind of thing where
7 the judge steps in as parent. And this is a,
8 again, out of the old philosophy of the court
9 *parens patriae*, the due process era came in
10 with *en re Gault*. We stand by due process
11 because that's how we as lawyers got involved.
12 But the judges are old school judges in that
13 sense. And the idea of *parens patriae* has not
14 died with a lot of them.

15 And in a lot of ways if you ask
16 parents and you ask victims -- and in this
17 case the victims are the parents -- whether
18 this is a good thing or a bad thing, I think
19 they would tell you unequivocally that this is
20 a good process, the court should be involved
21 in it and they would ask to go forth.

22 The flip side of that is that if
23 they adjudicate the children delinquent, the
24 children are not eligible for expungement of
25 those records until after five years after the

1 adjudication of delinquency. Even with the
2 deferred adjudication the prosecutors are
3 not -- are not expunging the records until
4 after five years. But the parents view it as
5 a mark against their children, and given the
6 fact this these records are now readily
7 available to schools and throughout the
8 systems, the parents feel that their children
9 are marked children.

10 I get constant calls from parents,
11 we -- just happened today in court just before
12 I came over here. I want to go join the
13 military. I can't go because military won't
14 take me because I have a misdemeanor
15 conviction. Can you get the record expunged?
16 No. Well, we go to the prosecutors -- and the
17 prosecutors are reasonable. I'm not saying
18 they're unreasonable. We deal with Mr. Angel
19 Flores who's assistant chief of the juvenile
20 division. But in a lot of cases his hands are
21 tied because of certain policies in the
22 District Attorney's office and these kids
23 cannot go -- and these kids cannot go into the
24 military. Or also many of them want jobs and
25 when they go to fill out the job application

1 many of the youngsters believe that if they've
2 been adjudicated delinquent that they have a,
3 quote unquote, conviction, not an adjudication
4 of delinquency. They do not make a
5 differentiation between a conviction and
6 adjudication of delinquency. They believe
7 they have a record; they put it down and they
8 don't get jobs. They come back and tell us
9 this all the time. And it's happening more
10 and more throughout the system. I get more
11 calls for expungements than I get for cases,
12 because it is such a serious matter out here
13 in our society. And I think that this is
14 something that needs to be considered as you
15 go look at what it is the judges are doing,
16 look at how it impacts the overall system.

17 REPRESENTATIVE KENNEY: Thank
18 you.

19 CHAIRMAN BIRMELIN:
20 Representative Manderino.

21 REPRESENTATIVE MANDERINO: Thank
22 you. I think you may have just touched on a
23 part of what was bothering me through most of
24 this testimony, because it is clear to me -- I
25 mean, I very much see the prosecutor's point

1 of view. When I read the definition of
2 dependency and what I know to be or at least
3 what I thought I understood to be a dependent
4 child, it's not a child who is has committed a
5 crime. And yet we're taking children who have
6 committed crimes and putting them in a status
7 because we don't want to put them in the
8 delinquent status, that's what the DA's
9 explained.

10 Now, I remember when we made the
11 change to the Juvenile Act in '96 and I think
12 you just told me what was the heart of the
13 problem. Because I remember there being great
14 discussion about the fact that if we made
15 changes -- and I couldn't remember exactly
16 what it was, but now you told me that if we
17 extended a time frame of five years before
18 someone could apply for expungement.

19 MR. LISTENBEE: No, ma'am.

20 REPRESENTATIVE MANDERINO: We did
21 some changes that people said were going to
22 push back on the system and just have judges
23 find more creative ways to get around it. And
24 that's what I'm trying to get to the heart of
25 is what's really happening and what really

1 created this problem.

2 MR. LISTENBEE: No, actually what
3 you did with expungements is that you made
4 them more available, because you lowered the
5 age to 18 where an expungement can occur. And
6 also you gave the prosecutor discretion after
7 age 18 to grant expungements. So you lowered
8 the age for expungements. It's not -- you
9 didn't make it more difficult.

10 But children -- what I'm saying
11 is children don't understand the rarified
12 error of distinctions between convictions and
13 adjudication of delinquency.

14 REPRESENTATIVE MANDERINO: But
15 judges should.

16 MR. LISTENBEE: The judges
17 understand that.

18 REPRESENTATIVE MANDERINO: And
19 what we're hearing today is that judges don't.
20 Judges are taking children who have committed
21 a crime and not wanting to put a label of
22 delinquency on them. And I'm trying to
23 understand why. Why aren't they doing that.
24 A dependent child is a child who the court has
25 come in or the Commonwealth has come in and

1 said this child's home situation is such that
2 we need to protect him or her. We need to
3 protect him or her from the situation that
4 they're in and we're going to step in that
5 parental role.

6 And we're there to protect that
7 child in that case. But when that child --
8 whether they were dependent before they got to
9 the court or whether they weren't dependent
10 before they got to the court -- having
11 committed a crime -- whether misdemeanor or
12 felony -- that then the judge is saying, yeah,
13 you committed this crime or I found that you
14 did this act that is a crime against society,
15 but I'm not going to put you into the
16 delinquency category.

17 They're complaining of that and
18 saying that's a problem. You're saying that,
19 well, the judge is being smart. I don't
20 understand why the judge is being smart. I
21 don't. Why doesn't that judge want to put --
22 if you committed the crime, misdemeanor or
23 felony, why don't they want to put them in the
24 delinquency category and get them the help
25 that they need in the proper category under

1 the law, particularly when you've just told me
2 now we didn't make it more difficult for them
3 to get the records expunged when they reach
4 the age of majority.

5 MR. LISTENBEE: Well, basically if
6 I can answer your question, the Juvenile Act
7 says that there are two stages to a hearing.
8 The first stage is to determine whether or not
9 a delinquent act has been committed. The
10 second stage is to determine whether or not
11 that child is in need of supervision,
12 treatment, and rehabilitation within the
13 juvenile system.

14 REPRESENTATIVE MANDERINO: Okay.
15 So let's start with just number one.

16 MR. LISTENBEE: Okay.

17 REPRESENTATIVE MANDERINO: Has the
18 delinquent act occurred?

19 MR. LISTENBEE: Assuming the
20 delinquent act has occurred -- but some of the
21 delinquent acts that we have occurring in our
22 system, let me -- I can give you examples all
23 day long. If you have a child who is in a
24 special education class and that child gets in
25 a fight with another child in the special

1 education class, is that child acting out of
2 his special education or her special education
3 disability or is that child doing something
4 that is behavior that society now wants to
5 characterize as a delinquent act?

6 When you get to court with that
7 case you might have an admission and say --
8 that says the child committed the act, but
9 when the judge looks at the whole range of
10 special education services that are available,
11 the whole -- the purpose of the Special
12 Education Act, the federal regime and state
13 regime, the judge might decide that this child
14 is not in need of supervision, treatment, and
15 rehabilitation within the juvenile system
16 because the child can get better treatment in
17 other system all together.

18 The same goes for the mental
19 health system. The same goes for other
20 aspects of educational systems.

21 REPRESENTATIVE MANDERINO: Okay,
22 so --

23 MR. LISTENBEE: And that's what
24 I'm saying is going on. The analysis is
25 what's key. It's doesn't happen

1 automatically.

2 REPRESENTATIVE MANDERINO: Okay.
3 And the analysis of the child's competency
4 comes at what you've defined as stage two?

5 MR. LISTENBEE: No, ma'am.

6 REPRESENTATIVE MANDERINO: So
7 you're saying it's still in stage one, because
8 it goes to -- to culpability?

9 MR. LISTENBEE: If a child is not
10 competent to assist the attorney in handling
11 the trial, then the child cannot go to trial.
12 I cannot, as an attorney, take a child to
13 trial who is not competent to stand trial. If
14 the child is competent at the trial stage, you
15 have to check and see if the child is also
16 competent at the dispositional stage. If the
17 child is not competent at the dispositional
18 stage, which is just one example -- this does
19 not happen often, just understand that.

20 REPRESENTATIVE MANDERINO: I would
21 hope not. I can imagine that, I mean, I
22 haven't looked at the Juvenile Act to see if
23 we've defined competency in the case of
24 Juvenile Act different than we have from an
25 adult, but I have to think that it's still a

1 very small percentage of people.

2 MR. LISTENBEE: Very, very small.

3 REPRESENTATIVE MANDERINO: And
4 much smaller than the problem that everyone's
5 complaining about.

6 MR. LISTENBEE: Yes, ma'am, it is.

7 REPRESENTATIVE MANDERINO: So
8 something else is acting in there. That's
9 what I can't understand.

10 MS. AMBROSE: I think one of the
11 things that the deferred adjudication does is
12 it gives us time to look at the individual
13 child and decide whether the delinquency case
14 that brings him before the court is the
15 overriding issue. And in many of these
16 cases --

17 REPRESENTATIVE MANDERINO: But,
18 well, if there's a victim it is the overriding
19 issue from you, the victim's point of view.

20 MS. AMBROSE: Well, but the judge
21 needs to take into consideration everything
22 that surrounds that child. And sometimes in
23 many of these cases the overriding issue may
24 be dependency issues, instead of the act, such
25 as Bob described about the two children

1 fighting in a special education class. And
2 then the judge's job becomes diverting the
3 child to a more appropriate system that can
4 deal with that child's needs. And the
5 deferred adjudication gives the judge the time
6 to make that decision, given all the
7 information that can be brought to him; not in
8 a week, not -- sometimes in a month, but
9 sometimes it takes more time to gather
10 information because, as Mr. Listenbee pointed
11 out in his testimony, there's a complex array
12 of issues that confront many of the children
13 who are in the juvenile justice system.

14 REPRESENTATIVE MANDERINO: If
15 you're the parent of the special ed. student
16 who was attacked by that person, would they
17 define the overriding issue the same way and
18 didn't -- didn't we all acknowledge that we're
19 supposed to be taking community and victim
20 into account here?

21 MS. AMBROSE: I think as the
22 parent of another special education child I
23 might have a little sympathy for that child
24 and understand all of the complex issues that
25 are confronted by that child and by that

1 family. And I might approve of the sort of
2 disposition that some of the judges give in
3 these kinds of cases.

4 REPRESENTATIVE MANDERINO: Okay.
5 This law is recommending 60 days. Sixty days
6 is about eight weeks. If I understood your
7 testimony, six to eight weeks is probably the
8 average time frame?

9 MR. LISTENBEE: The average time
10 frame for a first hearing after the case is
11 gone to court for the first time. The
12 first --

13 REPRESENTATIVE MANDERINO: So
14 that's not coming to what you described as the
15 first question is the delinquent act?

16 MR. LISTENBEE: Yes.

17 REPRESENTATIVE MANDERINO: It is
18 coming to that point?

19 MR. LISTENBEE: Yeah, once you've
20 determined guilt, the next hearing in the
21 system at the present time, those hearings are
22 coming somewhere between six and eight weeks.

23 Now, query, will you have all the
24 pieces lined up by that time? My difficulty
25 with your legislative proposal is that from

1 what I see in this system every day, a lot of
2 cases are going to occur where you're just not
3 going to have answers there. And what is
4 supposed to happen at that point in time?
5 That's the problem I have with this
6 legislation.

7 We -- the system is not geared up,
8 for now, doesn't have the resources now to
9 address the questions that you're talking
10 about in the time frame that you're proposing.
11 And that's what I -- I have real difficulty
12 with.

13 I think -- I think you're going to
14 skew the system in ways that I cannot foresee
15 at the present time but ways that are going to
16 be detrimental to the overall purpose of the
17 system, which is to develop competencies among
18 the offenders, which is what we're talking
19 about, and also to protect -- to make sure the
20 other basic principles of the bar which are
21 protection of the community as well as
22 developing competencies and holding children
23 accountable.

24 I don't think those are going to
25 happen if you put too much pressure on a

1 system that's already highly pressurized.

2 REPRESENTATIVE MANDERINO: Let me
3 just ask one last question.

4 MR. LISTENBEE: Yes, ma'am.

5 REPRESENTATIVE MANDERINO: Because
6 I think there is a perception that when we
7 have these delayed or deferred adjudications
8 we have lack of protection of community or
9 society. I think that it's fair to say that
10 about the adult system, meaning that -- that
11 if somebody goes out on bail and before they
12 get through this long, whole process that
13 finally kind of puts a stamp of guilt or
14 nonguilt on their case, they're kind of out
15 there on their own without any kind of
16 oversight unless, of course, they weren't let
17 out on bail.

18 But I'm not sure that same
19 scenario applies in the --

20 MR. LISTENBEE: I would say it
21 does not.

22 REPRESENTATIVE MANDERINO: --
23 juvenile court system. And so I guess my
24 question is what is the supervision -- how
25 does the supervision differ of that juvenile

1 before the judge makes their decision and
2 after the judge makes their decision?

3 MR. LISTENBEE: My experience is
4 that a lot of the supervision that's in place
5 before the -- before the decision remains in
6 place until the time the judge makes a
7 permanent decision. And those types of
8 supervision are as follows: House arrest,
9 electronic monitoring, interim probation,
10 in-home detention, prehearing intensive
11 supervision. So a lot of those same
12 supervisions remain right in place. I think
13 the juvenile system is very, very different
14 from the adult system in that sense.

15 Now, I don't have any stats that
16 show that these kids are out committing crimes
17 and are therefore a threat to community. I
18 have not seen any reports that verify that.
19 I've not even heard any sustained or
20 substantial anecdotal information to that
21 effect.

22 So I would submit to you based on
23 my experience that that is not what's
24 happening. That the judges are maintaining
25 close supervision and control over these

1 youngsters, they're just trying to do the
2 analysis and that that's the heart and soul of
3 this matter. And that's what I thought they
4 were hired for.

5 Once you got rid of the serious
6 offenders, you had kids left in the system and
7 we were supposed to try and figure out what
8 their problems were and fix them. And I think
9 that's going on.

10 I would ask you before you reach a
11 conclusion about this legislation, go to the
12 Philadelphia courts and see for yourself,
13 because you can see in a direct way that a lot
14 of positive things are happening with these
15 kinds of cases. I think that it's too serious
16 and too positive to be at this point
17 eliminated without a lot more consideration
18 being given to it.

19 REPRESENTATIVE MANDERINO: Thank
20 you. Thank you, Mr. Chairman.

21 CHAIRMAN BIRMELIN: Mr. Listenbee
22 and Miss Ambrose, we want to thank you for
23 coming.

24 MR. LISTENBEE: Thank you for the
25 opportunity.

1 is Marsha Levick. I've been introduced. I
2 appreciate that. I appreciate the opportunity
3 to appear before you this afternoon to offer
4 testimony with regard to the pending deferred
5 adjudication legislation.

6 I am appearing here before the
7 committee today on behalf of Juvenile Law
8 Center'. The Juvenile Law Center is a
9 nationally-recognized organization that has
10 been advocating on behalf of children for just
11 about 25 years. And we have been at the
12 forefront promoting children's rights,
13 particularly in the juvenile justice system,
14 throughout that lengthy time period.

15 As a result of our work on behalf
16 children in Pennsylvania, we are here today to
17 oppose the legislation that is proposed with
18 regard to the deferred adjudication. And we
19 oppose the legislation for three principal
20 reasons.

21 The first is that we oppose it as
22 an unwarranted incursion into the power,
23 authority, and discretion of the juvenile
24 court judiciary to enforce the Juvenile Act
25 wisely and with balanced attention to the

1 interest of the youth, the community, and the
2 victim.

3 We also oppose it as an
4 inappropriate transfer and seeding of the
5 authority to the Commonwealth and to the
6 district attorney in these proceedings.

7 And we also oppose it because we
8 believe it is a measure that will strip the
9 juvenile court of its ability to meet its
10 obligations which the legislature has imposed
11 on it. And those obligations are to determine
12 on an individual basis whether a child who has
13 committed a delinquent act is, in fact, in
14 need of treatment, supervision, and
15 rehabilitation.

16 I've had the opportunity -- and I
17 think this is a great advantage actually to be
18 the last person to testify, to hear lots of
19 interesting remarks being made prior to my
20 coming to this table. And while I have
21 prepared remarks, I think that much of what I
22 have said -- and you all have it before you
23 and you obviously can read it -- I think it
24 might be more useful for me to take the time
25 that I have to really respond to some of the

1 remarks that I've heard and some of the
2 questions that I've heard you pose and to
3 offer my perspective on some of those comments
4 and questions.

5 First of all, and I'm just
6 starting with Mr. Delaney's testimony because
7 he came first and his remarks in are my notes
8 first.

9 One of Mr. Delaney's remarks --
10 and I think it's a theme that actually he
11 repeated several times during the course of
12 his testimony -- was his complaint and
13 challenge as to whether or not the -- the
14 process of deferring adjudications was, in
15 fact, a developmentally sound thing to do.

16 He raised a concern before this
17 committee that as parents we would not
18 discipline our children in the way that he
19 characterized the deferred adjudication
20 process to be working in Philadelphia and
21 apparently in Cumberland County, though
22 apparently really not anywhere else in the
23 state, which I think is an important point, by
24 the way.

25 I'm a parent. I have two

1 children. And I'm not the least bit troubled
2 with what the deferred adjudication process is
3 all about, because I think it's been
4 mischaracterized. I think that at this point
5 what I'm sure you all understand about this
6 process is that it is not a situation where
7 children are being brought before the juvenile
8 court, told that they have done something
9 wrong and then sent home and a year later or
10 six months later saying, oh, by the way, we
11 think we're ready to punish you now.

12 That's not, of course, what's
13 happening. What's happening is that the court
14 is exercising its discretion. It is finding
15 in many of these cases that the children have,
16 in fact, done an act which would be a criminal
17 act if committed by an adult, and they are
18 imposing conditions on these children.

19 They are giving these children a
20 set of conditions to live by which if they
21 meet them will give them an opportunity to
22 avoid an adjudication, to avoid the mark,
23 which I think was a word that you used.

24 So the very first point that I
25 want to make is that this is not the type of

1 situation that Mr. Delaney referred to the
2 Casey Foundation remark the research reported,
3 which I'm very familiar with, where they
4 talked about the danger in juvenile court
5 about the delay between -- between a finding
6 of guilt and an imposition of consequences.
7 That's not what Casey was talking about.

8 What the Casey Foundation was
9 concerned with was the delays that we
10 frequently see -- and not so often in
11 Philadelphia, by the way -- a delay between
12 arrest and trial and resolution of those
13 cases.

14 A deferred adjudication is not a
15 lack of resolution. It is a creative way of
16 dealing with a particular set of circumstances
17 that a particular child presents to the court
18 and trying to come up with an individualized
19 approach to that child.

20 That is an approach that is at the
21 heart of the juvenile justice system. I think
22 that it is a mistake for us to abandon at
23 least some of the ideals that the juvenile
24 court has adopted and established in this
25 country to -- to foster.

1 I mean, here we are celebrating
2 the hundredth year of the juvenile court, our
3 courage, and the Act which we are proposing to
4 amend today was an Act in 1972. That Act was
5 adopted in 1972 to reflect the
6 constitutionalization of the juvenile court
7 that had been imposed on the court by the
8 United States Supreme Court in a series of
9 decisions in the late 1960's, including en re
10 Gault.

11 The 1972 Act has gone through a
12 series of amendments, dramatic amendments in
13 1986 which, in fact, were the amendments that
14 seeded the authority to the district attorney
15 to consent to consent decrees, to veto consent
16 decrees if they chose to, and most
17 dramatically and most sweeping the amendments
18 in 1995 that became effective in 1996 that
19 drastically altered the jurisdiction of the
20 court, sent scores of children charged with
21 serious offenses into -- directly into the
22 criminal court, significantly dismantled the
23 confidentiality provisions of the juvenile
24 court, changed the purpose clauses of the
25 juvenile court, ratcheted up very dramatically

1 the consequences of the juvenile court
2 adjudication.

3 And I think Representative
4 Manderino, with respect to your question about
5 what happened in '95 or '96, what changed
6 things, and Mr. Listenbee of course pointed
7 that actually you did -- you did loosen, you
8 liberalized some of these expungement
9 procedures, but you also and quite
10 deliberately and intensionally ratcheted up
11 the consequences of delinquency adjudication,
12 the very things that district attorneys is
13 concerned about. If I don't get a delinquency
14 adjudication I don't have the opportunity to
15 use it as a prior score --

16 REPRESENTATIVE MANDERINO: As I
17 prior score.

18 MS. LEVICK: -- in an adult
19 proceeding. That was a deliberate purpose and
20 outcome of those amendments.

21 I can't speak for the judges. I
22 wouldn't under no circumstances endeavor to
23 speak for the judges. I don't know if it is
24 in their minds that a concern about the
25 ratcheting up of those consequences, of those

1 collateral consequences has driven them to
2 adopt the deferred adjudication process. But
3 I can speak as an advocate for children that
4 it is a creative process that strikes me in
5 conjunction with the loss of their authority
6 to decide on their own, exercising their
7 wisdom and their discretion, whether or not to
8 grant consent decrees, a pretty creative way
9 to deal with the scenario that they have been
10 presented with.

11 It's a result of many significant
12 changes that have been made in the court in
13 which they sit. And I think Mr. Listenbee, I
14 think it was good to point out that you have a
15 very experienced judiciary in juvenile -- in
16 juvenile court in Philadelphia. And again we
17 are dealing with largely a Philadelphia court
18 problem.

19 These are judges who have sat
20 there for ten years. They have seen the
21 changes in the court. They've seen what's
22 happened with the court, and they have
23 attempted to respond to those changes.

24 Another significant point that I
25 think is also reflective of the changes that

1 these judges have witnessed has been the
2 change in the children who come before the
3 court.

4 Mr. Listenbee touched on this at
5 length in his testimony. The notion that we
6 are today -- and I hear this all the time from
7 probation in juvenile court, from social
8 workers in juvenile court, from Philadelphia
9 court officials, the children who come before
10 the juvenile court today are very different
11 than the children who came before juvenile
12 court 10, 15, and 20 years ago.

13 And not for the reasons that you
14 might think I'm going say, which is, well,
15 because they're all wielding guns. What's
16 really different about these kids is that they
17 come into court with a very significantly more
18 complex set of social and emotional problems,
19 more complex family histories, more likely to
20 come from very dysfunctional families.

21 We have seen an extraordinary
22 increase in the number of girls coming into
23 the juvenile justice system. Those numbers
24 are no more higher than in Philadelphia
25 because you have the largest population there.

1 We are seeing the girls that are coming into
2 this system have chronic history of child and
3 sexual and physical abuse in their families.

4 They come into the system
5 presenting many more profound psychological
6 and emotional problems and having many more
7 psychological and emotional needs.

8 The type of deferred adjudication
9 that we're seeing in Philadelphia -- and
10 Mr. Listenbee referred to -- is often adopted
11 in response to the need to take more time to
12 assess and evaluate these kids. And that is
13 an entirely appropriate, creative, and wise
14 decision for these judges to make.

15 The Juvenile Act -- for better or
16 worse, this is the act that we're all living
17 under right now -- does have a two-step
18 process. It's not criminal court. We haven't
19 yet thrown out juvenile court. That two-step
20 process is both on the one hand a finding that
21 an act has been committed, and on -- at -- the
22 other hand a finding that there is a need for
23 treatment, supervision, and rehabilitation.

24 And I would suggest to you that
25 deferred adjudication's doing two things.

1 Number one, it is absolutely responding to the
2 need to simply take more time.

3 The kids are more complex. That's
4 the point that Mr. Listenbee made. And they
5 often may take six to eight weeks, which is
6 often within 60-day time period to figure out
7 to assess and evaluate these kids to find
8 placements, to determine what is the best way
9 to deal with a particular set of complex needs
10 that these kids present.

11 It is also an opportunity to do
12 what the juvenile court has historically tried
13 to do, and that is to not treat these kids as
14 criminals. To give them a second chance, to
15 give them a better chance, to give them an
16 opportunity to be rehabilitated and to return
17 as productive members of their community.

18 When I sat and listened to the
19 testimony today, a lot of what I heard from
20 the district attorney was frankly a lament
21 that they don't get to control the situation.
22 A concern that, you know, if a child is on
23 deferred adjudication status, if they come
24 back into court because they've committed
25 another crime, if they were on probation you

1 could violate them on probation. If they come
2 back into court, gee, all we can do is
3 adjudicate them. I don't understand why
4 that's a problem. They get adjudicated and if
5 at that juncture they need to be placed
6 they'll be placed.

7 I think it's important to remember
8 that we have a host of secured detention
9 alternatives -- let me rephrase that. We have
10 secured detention in Philadelphia and 236
11 security detention centers around the
12 Commonwealth. We have hundreds of detention
13 alternative placements in Philadelphia and a
14 few in other parts of the state.

15 If children need to be taken off
16 the street, if they pose such a risk to the
17 community, the juvenile court judge can detain
18 that child pending disposition. That happens
19 hundreds of times, thousands of times a year
20 in Philadelphia.

21 Children are detained following a
22 determination that they've committed a
23 criminal act, they are detained pending
24 disposition. They are placed in the
25 Philadelphia Youth Study Center or placed in a

1 community-based alternative. They are under
2 very strict supervision, either locked
3 security in the Study Center or community
4 supervision if they are placed in one of the
5 community treatment centers. And they are held
6 there until a dispositional placement can be
7 found.

8 Many of those kids are the kids
9 who are held in Youth Study Center for 30 and
10 60 days are waiting the placements that
11 Mr. Listenbee acknowledged and pointed out to
12 you can't be found because we don't have
13 enough resources for the kinds of kids that
14 are coming into the system today.

15 If the court has made a
16 determination that that child doesn't need to
17 be taken off the streets, that child is going
18 to be placed on probation anyway. So I'm
19 hearing a semantic problem here. Either they
20 should be on formal probation so that if they
21 commit another crime we can violate the
22 probation, or they're in deferred adjudication
23 where if they commit another crime then we
24 bring them in and we adjudicate them.

25 It seems to me the community and

1 the victim are really getting the same thing.
2 In either case, the court is making a
3 determination not to place. When they're put
4 on interim probation and allowed the child to
5 have an opportunity to abide by various kinds
6 of conditions, interim probating as it's
7 called, and to see if the child can abide by
8 those conditions and if so then the
9 adjudication will, in fact, be withheld.

10 We heard lots of -- not lots of --
11 actually, I want to underscore that. We heard
12 isolated examples of horror stories today, and
13 we heard isolated examples of very, very minor
14 cases. I don't practice in juvenile court
15 every day. I have a different kind of
16 practice obviously.

17 And the kind of work I do on
18 behalf of cases tends to be more systemic, but
19 my suspicion is that the truth lies somewhere
20 in between, and that the vast majority of kids
21 who are being given the opportunity of the
22 deferred adjudication are neither the kids who
23 are bringing guns into the schools nor
24 necessarily kids who are in special education
25 kids who are engaged between fights between

1 themselves largely arising out of their
2 condition.

3 Those kids exist. We see lots of
4 those kids in my office actually -- and I
5 don't want to minimize either side -- but
6 probably the bulk of those who are kids who
7 are creating basically misdemeanor type crimes
8 or lower level felonies I have no doubt in my
9 mind -- because Mr. Delaney keeps very careful
10 records -- that, in fact, the vast majority of
11 kids that who are getting deferred and were
12 all committing gun felonies, you would have
13 heard about that today, and if they were all
14 committing aggravated assaults you would have
15 heard about that today. And I didn't hear
16 anything coming from Mr. Delaney that that's
17 the kinds of kids that we're dealing with, nor
18 did I hear very much from either of the
19 district attorneys who I heard testify about
20 crimes, very, very serious crimes being
21 committed by these kids while on deferred
22 adjudication.

23 I heard a very sad story about a
24 child being killed himself as a result of
25 some interim supervision, and a story about

1 another child killing. That other child
2 probably would have killed again anyway
3 because it sounds like whatever the original
4 offense was he may well have been placed on
5 probation. Had he been adjudicated he would
6 have been placed on probation because the
7 judge put him on the street, and that offense
8 that -- second offense might well have
9 occurred.

10 We cannot correct all of the
11 mistakes that judges make and we cannot
12 prevent all crime through any of the
13 legislation that we enact. And I think that
14 that's another important point that I wanted
15 to make here.

16 We are trying to -- I think that
17 this legislation is endeavoring to respond to
18 a problem that it perceives that may not
19 necessarily exist. There are probably a very
20 small number of cases in which one could
21 legitimately anticipate. We all might sit
22 around the table and agree that, you know,
23 that child probably should have been
24 adjudicated delinquent, but that's not a
25 reason to take away the discretion of the

1 juvenile court judge to act as he has been
2 empowered and authored to act by the
3 electorate of the state and by the legislature
4 to enforce the purpose of the Juvenile Act,
5 including the new purpose of the Act.

6 And I think that the deferred
7 adjudications -- I respectfully disagree with
8 the district attorneys who spoke to you today.
9 I think that the deferred adjudications can
10 meet the balanced objectives of the new
11 Juvenile Act, which is to meet needs of the
12 offender, of the victim, and of the community.

13 Let me just see if there's
14 anything else in here that -- that sort of
15 comes to my attention as I was listening to
16 other folks testify before me.

17 Representative Kenney, you had
18 raised a question -- issue or question or
19 comment about the adjudication of delinquency
20 triggering services. That's often true,
21 obviously. But I think that what we've also
22 seen is even through the deferred adjudication
23 process the court can extend services to these
24 children and to their families.

25 As a defense attorney myself, I

1 don't have a problem with that. And I think
2 that's kind of obvious why I don't have a
3 problem with it. And I think that
4 Mr. Listenbee addressed that question very
5 eloquently. He has a constitutional
6 obligation to represent these children. He
7 has an obligation to provide effective
8 assistance of counsel. He is not going to
9 advise his clients to accept conditions or
10 so-called interim probation if he thinks it's
11 violating their constitutional rights. He may
12 well do it because he recognizes that it gives
13 them an opportunity to, in fact, have a better
14 chance in their communities and to grow up as
15 more productive citizens.

16 So although often a delinquency
17 adjudication will allowed a child it get
18 placement, what we're seeing is in practical
19 terms a deferred adjudication has also been
20 creatively used as a way of inviting children
21 to accept services really on -- on a
22 quasi-voluntary basis. It's not really
23 voluntary because they know what the outcome
24 will be if they don't, but to get kind of
25 treatment and help that they might need. And

1 I think it's proven effective probably in most
2 those cases.

3 The other point that I would make
4 is that what we've also heard from
5 Mr. Listenbee is that many of these cases can,
6 in fact, be resolved within 60 days. I also
7 heard from Mr. Delaney's testimony that 75
8 percent of these cases are not in deferred
9 status over six months. His statistic was
10 over 25 percent over 6 months.

11 But what that says to me is the
12 following: Consent decrees under the current
13 Juvenile Act also last for six months. And
14 what we really are seeing here is you may call
15 it a shadow consent decree. And I think what
16 troubles the district attorney is that this is
17 perhaps seen as an end run around the consent
18 decree situation in a sense that it was
19 created in 1986, but in practical terms it is
20 simply no different.

21 The court is not doing anything
22 different than what it is doing in a consent
23 decree situation, which is it makes a
24 determination that a formal adjudication is
25 not warranted because it is deciding, as it is

1 empowered to do, that it -- as this judge has
2 been elected to do, that this is a child who
3 doesn't need to be adjudicated to this -- at
4 this juncture. This is a child who is
5 entitled to a chance to demonstrate that they
6 can meet the requirements and obligations of
7 the juvenile court might impose on them. And
8 that is precisely what a consent decree does.

9 I would suggest that -- I have a
10 kind of sort of radical suggestion, I think
11 that if you -- if the legislature should
12 decide to pass this legislation, I think you
13 should amend the Juvenile Act and eliminate
14 the DA's opportunity to veto consent decrees.
15 I think you need to give the court some
16 discretion. If you pass this amendment, you
17 are stripping the judge -- you're stripping
18 the --

19 REPRESENTATIVE MANDERINO: I had
20 that amendment. It didn't pass, but I had
21 that amendment.

22 MS. LEVICK: I think what you're
23 doing is you're just tying the judge's hand.
24 And there's no reason to tie the judge's hand.
25 There's no reason to distrust the judges.

1 There's no reason, frankly, to give all the
2 authority that is being given and seeded over,
3 as I said, to the district attorney.

4 The judges can make these
5 decisions. The district attorney, if he truly
6 feels that the judges are not exercising the
7 discretion that they are required to exercise,
8 file a mandamus, they're lawyers. I've done
9 that in cases that I file a mandamus and
10 mandamus the judge to enter an adjudication or
11 not. You can give the district attorney an
12 opportunity to appeal if he feels deferred
13 adjudication is inappropriate, but I think
14 that this legislation is unnecessary,
15 unappropriate, and, with all due respect,
16 unwise at this juncture to meet the problem
17 that has been addressed here today. Thank
18 you.

19 REPRESENTATIVE MANDERINO: Thank
20 you. Questions, Representative Kenney?

21 REPRESENTATIVE KENNEY: I'm just
22 going to read, because I -- page two of your
23 testimony you say we have -- We oppose it as
24 an unwarranted incursion into the power,
25 authority, and discretion of the juvenile

1 court judiciary to enforce the Juvenile Act
2 wisely and with balanced attention to the
3 interest of the youth, the community, and the
4 victim.

5 Who is -- who gave the power,
6 authority, and discretion to the juvenile
7 court judiciary?

8 MS. LEVICK: The Juvenile Act does
9 give, it's that tort. The juvenile court
10 judge has first of all.

11 REPRESENTATIVE KENNEY: Who gave
12 them this power? We don't just say you're on
13 judicial -- you're on the bench, go do what
14 you want to do.

15 MS. LEVICK: I think the court
16 isn't doing what it wants to do. The court is
17 exercising its authority under the Juvenile
18 Act. And --

19 REPRESENTATIVE KENNEY: As
20 written by the legislature.

21 MS. LEVICK: Absolutely. And
22 obviously what I'm suggesting is that this
23 is -- that this amendment would take away
24 power that at the time judges currently have.
25 Now, if what you're saying is that -- what I'm

1 saying is really unfair because if you -- you
2 have the -- you, the legislature, have the
3 power to take and you have the power to take
4 it away. Of course you do.

5 What I'm suggesting by that
6 comment is that I think that it is authority
7 that is properly given to the judge because
8 the judge is a neutral fact finder. The judge
9 is the neutral party in this room here. The
10 judge is the party in the juvenile court room
11 who has the interest of everybody.

12 REPRESENTATIVE KENNEY: Is the
13 judge always right?

14 MS. LEVICK: Absolutely not. I'd
15 be the first to acknowledge that. I have
16 appealed judges and I've sued judges. So no,
17 of course the judge isn't always right.

18 REPRESENTATIVE KENNEY: Let me
19 ask you this: And I don't -- do the -- do the
20 judges always use this deferred
21 adjudication -- adjudication in the proper
22 manner?

23 MS. LEVICK: I suspect not a
24 hundred percent. I'm sure not a hundred
25 percent; although I am not in court every day,

1 I don't have the experience or the perspective
2 or the knowledge that Mr. Listenbee has to
3 address that. But, I'm quite sure that the
4 degree to which court may occasionally be
5 wrong doesn't warrant drastic result that I
6 think this legislation proposes.

7 REPRESENTATIVE KENNEY: Dras --
8 I'm a father of four, live down the street in
9 Summerton, I mean, hopefully my kids will play
10 by the rules and not get into trouble, but I
11 just don't understand why you cannot say to
12 the court you shall not put these cases defer,
13 defer, defer.

14 If you must come up with a
15 punishment, come up with it. If you can't
16 come up with one or you don't think one's
17 warranted, then dismiss the case. But why
18 this let it go on and on and on, I don't
19 think it's the right message. And now I'm
20 not -- I'm not in this -- I'm a legislator,
21 but before I'm a legislator, I'm a husband,
22 father of four, sitting in Philadelphia, and
23 getting tired reading about these articles
24 where these things are put off, put off, putt
25 off. They may be once in a blue moon. Maybe

1 twice, we have pages of them here, but I don't
2 see why 60 days saying to a judge, judge could
3 you come up with a determination in 60 days or
4 if you cannot come up with one, then allowed
5 the -- you know, and there are -- you don't
6 like giving that power to the DA but --

7 MS. LEVICK: That's part of the
8 problem. You see, I think that what's
9 interesting about the legislation is that it
10 does a couple of different things. I'm not
11 going to sit here and say I think it's grossly
12 unreasonable to say that judges should reach
13 these decisions within 60 days. The
14 experience suggests that, in the vast majority
15 of cases a judge can figure out what a child
16 needs within 60 days.

17 Separate and apart from the
18 consent decree consideration where the court
19 gives the kid six months to get their act
20 together subject to various kinds of
21 supervision in the interim, to the extent that
22 the deferred adjudications are being used for
23 the purpose of assessment and evaluation,
24 which primarily they are in most cases 60 days
25 will do it.

1 The problem I have is with the
2 second piece of the legislation which says if
3 you can't do it in 60 days and you need 70, or
4 you need 90, the district attorney gets to say
5 no. And my objection to that is for the
6 reason that I just stated, which is the judge
7 is the only neutral person in the room.

8 Anymore than the district attorney
9 would tolerate the public defender getting to
10 determine what happens vis-a-vie his client's
11 interests. It's a problem to seed that
12 authority exclusively to the district
13 attorney. I think it has absolutely been a
14 problem on consent decrees.

15 You've heard testimony before
16 about Cumberland County. There has been --
17 although Mr. Delaney said that in the last
18 year they had, you know, two-fold increase in
19 consent decrees, I know that that has been an
20 issue.

21 In Delaware -- I know from
22 personal experience in Delaware County
23 district attorney has a policy in that office
24 no school-related case will they give consent
25 decrees. That's very problematic when we have

1 all read stories all over the state about
2 school related -- so-called school-related
3 incidents involving a plastic axe that the six
4 year old brought to school with the fireman's
5 costume and he was suspend, the kid who
6 brought the pen knife. These stories are all
7 over.

8 Why should you have an absolute
9 policy like that? And of course the problem
10 is they get to enforced because the
11 legislature gave them the authority in 1986 to
12 say no. So that's -- I mean, I think it's
13 important to understand that my objection
14 stems more from the second piece of it, okay
15 the last part of the section which is if you
16 don't do it, the district attorney has to
17 extend that, you have to get him to the extend
18 it. Sixty days -- no, I'm not an unreasonable
19 person. I can't say that 60 days on its face
20 is a ridiculous period of time to say in which
21 these can be done.

22 REPRESENTATIVE KENNEY: Thank you.

23 REPRESENTATIVE MANDERINO:

24 Counselor Preski.

25 MR. PRESKI: Ms. Levick, just a

1 few questions, if I could. Ultimately when
2 this gets before the committee I'm going to
3 have to paraphrase everyone's testimony. Just
4 so I understand it, the first is that in
5 response to your question to Representative
6 Kenney, you said that you didn't like if it
7 took longer than the 60 days that the DA has
8 the ability to veto power for anything longer.

9 My question is this: Assume the
10 judge wants to take longer than 60 days,
11 assume the DA says no. Representative
12 Kenney's legislation has no hammer for the DA
13 or for anyone else beyond the mandamus to come
14 in and force the judge to make the decision.
15 We've already heard testimony from the DA here
16 and the DA from Cumberland County, look, you
17 deal with the same five or six judges the
18 entire year, you have to pick and choose your
19 battles.

20 Just if I can volunteer an
21 observation from you, does that lack of a
22 hammer, and given your prior testimony or
23 prior statements that the reason we see these
24 deferred adjudication is because after the
25 ratcheting up of the direct filing offenses in

1 the juvenile changes the court had to come up
2 with some creative way to do what they want to
3 do within the confines of the Juvenile Act, my
4 question is do you think the judges will then
5 disregard the 60 day mandate in Kenney's
6 language.

7 MS. LEVICK: I don't have any
8 reason to believe that, because I think that
9 what you've heard to -- is that the majority
10 of these cases are being dealt with in a
11 reasonable time period. And I don't -- you
12 know, and I don't -- again , I recognize that
13 I'm not practicing in juvenile court on a
14 daily basis either as a district attorney or
15 as a public attorney.

16 MR. PRESKI: But for our purpose,
17 that makes you more neutral than either of
18 them today.

19 MS. LEVICK: Well, what I was
20 going to say, there was a time when I did and
21 I didn't hesitate to file writs of mandamus
22 and writs to prohibition -- when you could do
23 that. They don't call them that anymore --
24 against the judges that I practice before.
25 And I do believe -- and I have perhaps an

1 idealistic view of the lawyer's job -- but I
2 do believe in the extreme cases where the
3 district attorney firmly believes that the 70
4 or 90 days that the judge is requesting to
5 carry on with that child is out of line, that
6 the district attorney should and will file a
7 mandamus.

8 It's not going to be in a hundred
9 cases a year. It may be ten cases a year.

10 I mean, again, you heard maybe a
11 handful of scenarios here and you know that
12 you would have heard a lot more if they were
13 out there. And that I believe in the vast
14 majority of cases a 60-day time limit is going
15 to be more than adequate to meet the needs
16 that everybody in this system really has. And
17 you know, I mean, I certainly will leave today
18 and contemplate whether there are other ways
19 to inject measures into the process that might
20 give both sides an opportunity to weigh in on
21 this, but I think that to completely shift the
22 balance after the 60th day to the district
23 attorney is not an appropriate way or fair
24 way, frankly, to deal with the problem.

25 MR. PRESKI: My next question is

1 this: You made a lot of references to the '86
2 Act which eliminated the DA's -- or gave the
3 DA veto on the consent decree.

4 REPRESENTATIVE MANDERINO: Was it
5 '86 are '96?

6 MS. LEVICK: '86.

7 MR. PRESKI: '86. You note
8 circumstances that gave rise to that
9 legislation. My question is this: Were there
10 abuses prior to '86 where the DA or their
11 association came into the General Assembly and
12 said because so many -- the consent decrees
13 are being entered, my assumption would be
14 because they are on the horrendous cases we
15 need to have the ability to put a veto. Do
16 you know? I haven't done the research. Do
17 you know the answer to that?

18 MS. LEVICK: Well, I heard -- I
19 actually I heard a story about it that it's
20 kind of amusing. And I won't ascribe it to
21 anyone in particular. But I did hear that
22 part of it arose out of a view on the part of
23 someone in the legislature who read the word
24 consent decree is literally it's requiring
25 consent, and therefore you needed to give that

1 consent to the district attorney.

2 I was not in my current position
3 in 1986. I wasn't privy to that process.
4 There are certainly people that I work with
5 who were privy, to that process. And you have,
6 of course, better access to those people than
7 I do in your own field.

8 MR. PRESKI: Okay.

9 MS. LEVICK: But I don't -- I -- I
10 don't know exactly why and I don't know
11 whether or not Mr. Delaney has -- if
12 Mr. Delaney still has -- I don't know if he
13 knows what the impetus was for that
14 legislation.

15 MR. PRESKI: And my next question
16 is this: Your testimony was basically that
17 because the ratcheting up in '95 you've had
18 the court respond with creative ways of
19 dealing with that. This deferred adjudication
20 process that we've heard about today is one of
21 these creative ways.

22 My question is basically in
23 following all what Representative Kenney said
24 another way, are the courts, through this
25 deferred adjudication process, legislating

1 from the bench because they're not happy with
2 the way that the Juvenile Act reads now,
3 basically they don't like what's being set up
4 within the Juvenile Act by the elected members
5 of the General Assembly so they've come up
6 with another way?

7 And then my follow-up to that is
8 that, assume that this legislation passes, do
9 the courts then say okay they've done this to
10 us, what do we do now to keep doing what we
11 want because we don't like the Act that we
12 have in front of us?

13 MS. LEVICK: Well, let me respond
14 in two ways. First is that I try to make very
15 clear that I'm not speaking for any judges
16 today.

17 MR. PRESKI: Oh, I understand.

18 MS. LEVICK: And I don't know
19 what's in their minds. And whether or not I
20 may imagine that one might respond to the
21 ratcheting up of the collateral constraints of
22 delinquency adjudication by trying to limit
23 the potential for those consequences to take
24 effect in certain individual cases, in no way
25 can that be ascribed to any judge sitting on

1 any bench anywhere throughout the Commonwealth
2 of Pennsylvania.

3 Secondly, I don't think that
4 they're legislating for this reason. I think
5 that we need to remember that the Juvenile
6 Court Act is not the criminal code of
7 Pennsylvania and that the juvenile court is
8 not the criminal court.

9 And no matter what changes we have
10 imposed on that court through a series of
11 amendments between 1972 and the year 2,000,
12 the juvenile court has retained a tremendous
13 amount of authority and discretion to deal
14 with children who commit delinquent acts
15 differently than children who are either
16 charged directly in the criminal system or
17 adults who commit criminal acts, and that
18 their decision in individual cases to give
19 individual children opportunities and chances
20 and probationary services and interim
21 probation and various kinds of opportunities
22 to rehabilitate themselves and to avoid the
23 consequences of criminal behavior is entirely
24 in keeping with the spirit of the Act.

25 So no, I don't think they're

1 legislating. I think that they're carrying
2 out what the mandate of the Juvenile Court Act
3 expects them to do on behalf of the individual
4 children, because that's still part of the
5 Act.

6 MR. PRESKI: Thank you very much.

7 REPRESENTATIVE MANDERINO: Thank
8 you. I think you, in your last question, at
9 least partly answered -- or last response
10 partly answered my question. And I think that
11 I'm kind of going back to first base here.

12 I think there's a lack of
13 understanding on my part and maybe many of my
14 colleagues and the general public's part about
15 I thought the main difference between juvenile
16 court and adult court was in the punishment
17 end, if we can call it that.

18 But a couple of times here today,
19 including in your last response it's been
20 intimated that it's also in the action stage
21 that something if committed by an adult is
22 clearly a crime, I thought the difference was
23 we call it a crime if an adult did it and we
24 call it a delinquent act if a kid did it.

25 But I seem to be getting this

1 feeling from your testimony and the prior
2 testimony that we don't always call it a
3 delinquent act even if we would call it a
4 crime when it was an adult.

5 I'd like you to expand upon your
6 view of that issue.

7 MS. LEVICK: Okay. I think that
8 the act does it most deliberately and clearly
9 by still requiring two-step process for
10 adjudication. It doesn't adhere to the
11 criminal view, which is we find you guilty of
12 committing acts that constitute a crime under
13 our Crimes Code, you're guilty and we will
14 sentence you in some appropriate fashion.

15 What the juvenile court still
16 requires, what the Juvenile Act still requires
17 juvenile court judges to do is to both find
18 that a particular act or set of acts has been
19 committed and then, secondly, find that the
20 child is need of treatment, supervision, or
21 rehabilitation. That is unique to the
22 juvenile justice system. There is nothing
23 comparable to that in the adult system.

24 And what it does is it embodies
25 and it reflects the unique nature of the

1 juvenile court which is to look at children
2 who commit crimes and to determine not only if
3 they did the act that is a violation of state
4 law, but also what that act reflects in terms
5 of their need for certain kinds of treatment
6 and intervention by the juvenile court.

7 And I think that that two-step
8 process is precisely that which gives judges a
9 special kind of authority and discretion to
10 determine and look at each child individually.
11 And I think that that's -- that's what I am
12 concerned that we lose if we take away some of
13 that discretion from the judges.

14 We may get to the point -- and you
15 know, I can paraphrase Justice Blackman here
16 in the McKeever case in 1972 where the court
17 declined or the Supreme Court declined the
18 right to jury trial, we may get to the point
19 where we want to throw out the juvenile court.
20 You all may get to to that point tomorrow,
21 maybe when you go home, say why are we doing
22 this. But you haven't done that yet. And I
23 think until we do that we need to -- we need
24 to deal with the court that we have. We need
25 to deal with the court that we have created.

1 It's true you can take away as
2 much of that power as you choose to take away,
3 but until you take it away, the court has the
4 ability to -- has the right -- and I guess
5 that's in response to your question, it does
6 have the right to make individualized
7 determinations about children's needs for
8 treatment and rehabilitation and supervision
9 and to determine on an individualized basis
10 how to impose that treatment, supervision, and
11 rehabilitation.

12 And I think it gets to do it in
13 two ways. One, it gets to take the time it
14 needs to determine in the first instance what
15 is the treatment or supervision that a child
16 needs, and that's much of what Mr. Listenbee
17 spoke to about the complex types of kids who
18 are coming before the court today who often
19 times take more than 10 or 20 days to figure
20 out what their needs are.

21 And also gets to do it, I think,
22 in terms of deciding whether or not this
23 individual child is a candidate, is someone
24 who presents themselves as someone who will
25 benefit and who is entitled to the privilege

1 of actually being on the kind of interim
2 probation status, like a consent decree, that
3 will allow them to rehabilitate themselves.

4 I mean, there's no -- as I said,
5 there is no deferred punishment here. These
6 kids are not going home and getting their, you
7 know, allowance doubled. They're going home
8 and they're on probation they're subject to
9 going to school and they're having people
10 calling them and they know that the
11 consequences for not abiding by whatever rules
12 or regulations the court imposes can lead to
13 delinquency adjudication or which can then
14 lead to adjudication or not, depending upon
15 what the judge decides. But it is a unique
16 system and I think it's a system that at least
17 as of today we still adhere to.

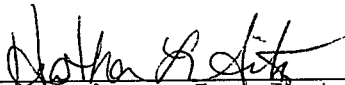
18 REPRESENTATIVE MANDERINO: Thank
19 you. Any other questions from the panelists?

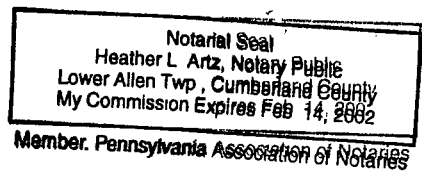
20 Thank you very much and thank
21 everybody for attending. And we're adjourned.

22 (Hearing adjourned at 3:52 p.m.)
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.


Heather L. Artz, RMR
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