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EASTERN DISTRICT

Nos. 8 EAP 2023 & 9 EAP 2023

IN THE INTEREST OF: N.E.M.

APPEAL OF N.E.M., A CHILD IN CUSTODY

BRIEF OF JUVENILE LAW CENTER AND PENNSYLVANIA ADVOCACY ORGANIZATIONS AND EXPERTS AS *AMICI CURIAE* IN SUPPORT OF APPELLANT N.E.M.

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Organizations

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

The **Abolitionist Law Center** (ALC) is a non-profit public interest organization dedicated to defending and expanding rights of incarcerated people and challenging state violence through advocacy, public education, and litigation. The ALC has litigated numerous cases against Pennsylvanian jails and prisons for violating the constitutional and statutory rights of those held in custody at the facility, including cases challenging excessive force, unconstitutional solitary

[1] Pursuant to Rule 531, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

confinement, denial of medical and mental health care, inadequate precautions in response to the COVID-19 pandemic, and infringement on the rights provided to people with disabilities under the Americans with Disabilities Act.

Founded in October 2014, **Amistad Law Project** works to abolish death by incarceration and longterm sentences, create alternatives to policing and get our communities the material resources and political power they need to thrive.

Coalition to Abolish Death by Incarceration of Delaware County fights against the injustices in the judicial penal and prison system.

Community Legal Services of Philadelphia provides free legal assistance to low-income Philadelphia residents in a broad range of civil matters. For more than 30 years, the Family Advocacy Unit (FAU) has provided high quality, multidisciplinary representation to hundreds of parents each year in dependency and termination of parental rights proceedings. The FAU works to ensure that vulnerable low-income families involved with the child welfare system receive the due process to which they are entitled and have meaningful access to justice in these extremely important proceedings.

Disability Rights Pennsylvania (DRP) is the protection and advocacy system designated by the Commonwealth of Pennsylvania pursuant to federal law. DRP's mission is to protect the rights of and advocate for Pennsylvanians with disabilities so that they may live the lives they choose, free of abuse, neglect, discrimination,

and segregation. DRP has a long history of bringing litigation to protect the rights of juveniles and adults with disabilities who are incarcerated. DRP is currently litigating a case against the state Department of Human Services over the abusive treatment of youths in the state's Youth Development Centers (YDCs). *See Disability Rights Pennsylvania v. Pennsylvania Department of Human Services et al.*, 1:19-cv-00737 (M.D. Pa.). DRP thus has a strong interest in ensuring that the rights of youth with disabilities are protected and that they are not unnecessarily confined.

The **Juvenile Defenders Association of Pennsylvania** (JDAP) is an organization comprised of attorneys from all counties in Pennsylvania who represent youth in delinquency proceedings across the Commonwealth. The main role of JDAP is to improve such representation by providing training, both virtually and in person, at little or no cost to our member attorneys.

Let's Get Free: The Women & Trans Prisoner Defense Committee is a group working to end perpetual punishment, build a pathway out of the prisons back to our communities through commutation reform, support successful possibilities for people formerly and currently incarcerated, and shift to a culture of transformative justice.

The **Luzerne County Public Defender Office**, especially since the infamous "Kids for Cash" scandal, is vitally interested in the treatment of youth by our courts.

The failure of any court, whether Common Pleas or appellate level, to protect the interests of children substantively or procedurally, will always be of interest to us.

The **Pennsylvania Association of Criminal Defense Lawyers** (PACDL) is a professional association of attorneys admitted to practice before the Supreme Court of Pennsylvania who provide criminal defense representation. As *Amicus Curiae*, PACDL presents the perspective of experienced criminal defense attorneys who aim to protect and ensure by rule of law those individual rights guaranteed by the Pennsylvania and U.S. Constitutions. PACDL's membership includes more than 900 private criminal defense practitioners and public defenders throughout the Commonwealth. PACDL works to achieve justice and dignity for defense lawyers, defendants, and the criminal justice system itself. PACDL addresses the Court in this matter because fundamental fairness affects every criminal defendant and, by extension, the perception and realization of justice in criminal proceedings.

Since 1787 the **Pennsylvania Prison Society** has served as Pennsylvania's independent monitor of correctional facilities. For 237 years, the Society has worked to safeguard the health, safety, and dignity of Pennsylvanians in custody.

Temple Legal Aid Office (TLAO) and the **Sheller Center for Social Justice** (SCSJ) at Temple University Beasley School of Law work on behalf of Pennsylvania children and families through litigation, research and policy advocacy. TLAO's Family Law Litigation Clinic provides direct representation to low-income litigants

in child custody, child and spousal support, adoption and other family law matters. SCSJ works on a variety of policy issues affecting children and families in the dependency, delinquency and education systems. Both organizations are committed to ensuring strong protections for children's rights in family court proceedings.

Voices for Children is a coalition representing over 140 social service providers and community members all with a vested interest in Child Well-being in Delaware County.

Founded in 1974, **Women's Law Project** is a nonprofit public interest legal organization working to defend and advance the rights of women, girls, and LGBTQAI people in Pennsylvania and beyond. We prioritize work on behalf of people facing multiple forms of oppression based on sex, gender, race, ethnicity, class, disability, incarceration, pregnancy, and immigration status. We leverage impact litigation, policy advocacy, public education, and direct assistance and representation to dismantle discriminatory laws, policies, and practices and eradicate institutional biases and unfair treatment based on sex or gender.

The **Youth Sentencing & Reentry Project** is a nonprofit organization based in Philadelphia that uses direct service and policy advocacy to transform the experiences of children charged and prosecuted in the adult criminal justice system, and to ensure fair and thoughtful resentencing and reentry for individuals who were sentenced to life without parole as children ("juvenile lifers"). YSRP partners with

court-involved youth and juvenile lifers, their families, and lawyers to develop holistic, humanizing narratives that mitigate the facts of each case; get cases transferred to the juvenile system or resentenced; and make crucial connections to community resources providing education, healthcare, housing, and employment. YSRP also provides trainings on mitigation, and recruits, trains, and supervises students and other volunteers to assist in this work. YSRP's ultimate goals are to keep children out of adult jails and prisons and to enhance the quality of representation juvenile lifers receive at resentencing as they prepare to reenter the community.

Individuals

Dorothy E. Roberts is the George A. Weiss University Professor of Law & Sociology at University of Pennsylvania, with joint appointments in the Departments of Africana Studies and Sociology and the Law School, where she is the inaugural Raymond Pace and Sadie Tanner Mossell Alexander Professor of Civil Rights. She has written and lectured extensively on the interplay of race, gender, and class inequities in U.S. institutions, especially related to reproductive justice, child welfare, and bioethics.

SUMMARY OF ARGUMENT

Embedded throughout Pennsylvania's Juvenile Act and associated court rules are strict restrictions on when a court may order a youth into placement or any confinement settings. To give meaning to those restrictions, and provide oversight and accountability, youth have the right to specialized appellate review of any order that places them out of the home. *See* Pa. R.A.P. 1612. In dismissing N.E.M.'s petition without explanation, the Superior Court violated the letter, purpose and history of Appellate Rule 1612. Its error is particularly egregious in view of the juvenile court's wholesale failure to state the reasons it ordered the placement, as Juvenile Court Procedural Rule 512(D) and Appellate Rule 1612 require. Pa.R.J.C.P. 512(D); Pa. R.A.P. 1612(f). Allowing the Superior Court's Order to stand would render Rule 1612 meaningless and put youth at serious risk. *Amici* write to urge faithful adherence to the Rules in view of the myriad devastating harms youth face in out-of-home placements.

ARGUMENT

I. THE SUPERIOR AND JUVENILE COURT ORDERS CONTRAVENE THE LETTER AND PURPOSE OF THE LIMITATIONS ON YOUTH CONFINEMENT IN THE JUVENILE ACT AND RELATED COURT RULES

N.E.M. was prejudiced twice over: first, when the juvenile court ordered out-of-home placement without explaining the reasons for doing so or providing a record for the Superior Court to review as required by Juvenile Court Procedural Rule

512(D) and Appellate Rule 1612(f); second, when the Superior Court denied his petition for specialized review under Rule 1612 without even issuing an opinion. At both stages, the courts failed to follow the clear language of applicable court rules and ignored the important historical and policy justifications for the rules. The courts' errors subvert the Juvenile Act's longstanding protections for the care and safety of youth, including limitations on judges' authority to confine youth, and contravene recent reforms expressly enacted to effectuate those principles.

Pennsylvania's juvenile justice system has always endeavored to provide youth with care, protection, and safety, and to support youth in building skills. 42 Pa.C.S.A. § 6301(b)(1)-(3); *see also In re Tasseing H.*, 422 A.2d 530, 535 (Pa. Super. Ct. 1980); *In re J.F.*, 714 A.2d 467, 471 (Pa. Super. Ct. 1998) (noting that, even after amendments to Pennsylvania's Juvenile Act, "concern for the juvenile remains a cornerstone of our system of juvenile justice"). While principles and policies underlying the juvenile justice system have since evolved toward more punishment and correctional oriented policies, "particular importance is still placed upon rehabilitating and protecting society's youth." *J.F.*, 714 A.2d at 471; *see also* 42 Pa.C.S.A. § 6301(b)(1)-(3). Pennsylvania's Juvenile Act explicitly limits juvenile courts' ability to impose confinement, requiring the "least restrictive intervention" and permitting confinement "only if necessary and for the minimum length of time" consistent with the Act's goals. 42 Pa.C.S.A. § 6301(b)(3). The Pennsylvania

Juvenile Delinquency Benchbook emphasizes that the Juvenile Act clearly designates placement as a "'last resort' disposition" and that "[r]esearch and experience demonstrate that the many youth placed in residential settings do not need to be in secure facilities to ensure community protection." Pa. Juv. Ct. Judges' Comm'n, *Pennsylvania Juvenile Delinquency Benchbook* 9.31 (2018), https://www.jcjc.pa.gov/Publications/Documents/Juvenile%20Delinquency%20Benchbook/Pennsylvania%20Juvenile%20Delinquency%20Benchbook_10-2018.pdf. "The Juvenile Act dictates the strongest possible preference for noncustodial dispositions over custodial ones," the Benchbook instructs juvenile court judges. *Id.* It explains to judges that, "[a]mong the Act's stated purposes is to 'preserve the unity of the family whenever possible,' and to respond to delinquency through measures that operate 'in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety.'" *Id*. (quoting 42 Pa.C.S.A. § 6301(b)(1)-(3)).

Effective and timely appellate review is necessary to ensure judges fairly apply these standards and appropriately limit out-of-home confinement. In Pennsylvania, juvenile appellate rights grew more robust through a series of reforms following the infamous "Kids for Cash" scandal in which corrupt Luzerne County juvenile court judges were alleged to have accepted monetary kickbacks from the developer and co-owner of two for-profit detention centers. Interbranch Comm'n on

Juv. Just., *Report* 5 (2010), https://www.pacourts.us/Storage/media/pdfs/20210208/161601-interbranchcommissiononjuvenilejustice.pdf. The scandal spurred scrutiny of the various rights violations taking place in Judge Ciavarella's courtroom, and eventually led the General Assembly to establish an "Interbranch Commission" to study the tragedy and make policy recommendations. *Id*. After multiple stakeholder hearings, the Interbranch Commission issued a report highlighting the numerous systemic failures that allowed and exacerbated the sweeping denial of youth rights in Luzerne County, and promulgated recommendations designed to prevent any reoccurrence. *Id*. at 5, 8-17, 41-58. The Commission pointed to the need for robust appellate review to check abuse of judicial power and create a path to releasing or sparing youth from placements. *Id.* at 55. The Interbranch Commission emphasized, "[a]ppellate review by the Superior Court of Pennsylvania is essential to the proper functioning of the juvenile justice system because it provides an aggrieved party an opportunity to seek review of the juvenile court judge's decision, and provides a mechanism to correct legal and procedural errors that may have been made by the judge." *Id.* at 55-56.

To make appellate review more meaningful, the Commission suggested various remedies. First, finding that many youth in Luzerne "were subjected to disproportionately harsh dispositions for minor offenses with no justification," the Commission recommended that juvenile courts state on the record the reasons for

ordering out of home placement. *Id*. at 53. This would foster transparency and help judges adhere to the principles of the Juvenile Act: "[a]dditional emphasis on the court's justification for orders requiring out-of-home placement would serve both as a reminder that out-of-home placement should occur only when there is a 'clear necessity' to remove the child from the home, but also would assure children and families that juvenile court judges did not take this step lightly." *Id.* Adding this explanation to the record would also support meaningful appellate review, as "appellate courts would have a clear record to review." *Id.* Consequently, the Juvenile Court Procedural Rules now require that when a juvenile court removes the youth from the home, it must state on the record "why the court found that the out-of-home placement ordered is the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare." Pa.R.J.C.P. 512(D)(4)(b); *see also New PA Rules Require Juvenile Courts to Address Education and Health Care Needs of Youth in Child Welfare, Juvenile Justice Systems*, Juv. L. Ctr. (May 9, 2011), https://jlc.org/news/new-pa-rules-require-juvenile-courts-address-education-and-health-care-needs-youth-child.

The Interbranch Commission also recommended an expedited process for juvenile appeals, finding that "[t]o be meaningful . . . appellate review must be completed before the child's placement, or other disposition, has been completed"

and noted that many juvenile dispositions are completed in fewer than 120 days. Interbranch Comm'n on Juv. Just., *supra*,. at 56. Indeed, lead plaintiff in the "Kids for Cash" lawsuit and juvenile reform spokesperson H.T., who was ordered to spend three months in a treatment facility for making a MySpace parody of a school official, would have completed her disposition long before her appeal concluded. Juv. L. Ctr., *Lessons from Luzerne County: Promoting Fairness, Transparency and Accountability* 17-18 (2010), https://www.jlc.org/resources/lessons-luzerne-county-promoting-fairness-transparency-and-accountability. Following the Interbranch Commission's Report, the Appellate Rules Committee circulated a public proposal to add Rule 1770 (which is now 1612, *see* Pa. R.A.P. 1770, Official Note), with the following explanatory comment:

> New Rule 1770 provides a mechanism for the expedited review of an order of out of home placement entered pursuant to the Rules of Juvenile Court Procedure. In juvenile matters, out of home placements can evade effective appellate review, especially when the placement is shorter than the time period to process an ordinary appeal. The Interbranch Commission has recommended an expedited appeal procedure for out of home placements. Proposed new Rule 1770 would permit the juvenile to use a petition for review as the procedural vehicle for limited expedited appellate review of the out of home placement only.

App. Ct. Procedural Rules Comm., *Proposal to Amend Pennsylvania Rules of Appellate Procedure 901, 1501, 1512, 1516, 1517, 1541 and 1561, and Add New Rule, Pa. R.A.P. 1770* 2 (2011), https://www.pacourts.us/storage/rules/rec93appct%

20-%20002027.pdf. Rule 1612 also requires judges who failed to follow Rule 512(D)'s instruction to state the reasons for ordering an out-of-home placement on the record to file a brief statement doing so. Pa. R.A.P. 1612(f).

Here, the juvenile court and Superior Court gutted these rules, stripping N.E.M. of procedural protections implemented specifically to protect youth like him from unnecessary exposure to harmful out-of-home placements.

II. MEANINGFUL AND TIMELY APPELLATE REVIEW IS NECESSARY TO CURTAIL THE GRAVE HARMS OUT-OF-HOME PLACEMENTS CAUSE

The Juvenile Act's limitations on youth confinement stem from a deep history and research that underscore the trauma and other harmful effects of removing youth from their homes and placing them in institutional settings, with no substantial benefit to public safety. Adhering to the court rules, including a timely, fair and meaningful appellate process, is crucial to preventing youth from unnecessarily enduring the risk of physical abuse, disruption of healthy development, and denial of quality education that plague placements in Pennsylvania and disproportionately fall on youth of color and youth with disabilities.

A. Pennsylvania's Overuse Of Placements Disproportionately Harms Youth Of Color And Youth With Disabilities

Despite the Juvenile Act's restrictions on youth confinement, Pennsylvania disproportionately removes its youth from their homes, relying on placements far more than other states. Overall, Pennsylvania confines its youth at a rate of 129 per

100,000 youth, 13 percent higher than the national average. *Statistical Briefing Book: Juvenile Residential Placement Rates by State, 2019*, Off. of Juv. Just. & Delinq. Prevention (May 21, 2021), https://www.ojjdp.gov/ojstatbb/corrections/qa08601.asp?qaDate=2019. Pennsylvania particularly places youth at high rates for non-criminal acts such as status offenses and technical violations, with the fourth highest rate of juvenile confinement for these acts nationally. *Juveniles in Custody for Noncriminal Acts*, Pew Charitable Trusts (Oct. 15, 2018), https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2018/juveniles-in-custody-for-non criminal-acts. The vast majority of youth (73 percent) statewide are removed from their homes for their first adjudicated offense. Pa. Juv. Just. Task Force, *Report and Recommendations* 18 (2021), https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajuvenilejusticetaskforcereportandrecommendations_final.pdf.

Though institutional placements can harm all youth, these harms fall disproportionately on youth of color and youth with disabilities. In Pennsylvania, Black Non-Hispanic youth make up only 14.4 percent of the statewide youth population and 37.3 percent of all delinquency allegations. Pa. Juv. Ct. Judges' Comm'n, *2021 Juvenile Court Annual Report* 7 (2021), https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2021%20Juvenile%20Court%20Annual%20Report.pdf. Yet Black Non-Hispanic youth represent 60.8 percent of youth held in detention prior to adjudication, and 40 percent of youth sent to residential

placement. *Id.* at 34-35. Judges place Black youth in Pennsylvania at a rate over five times higher than white youth. Charles Puzzanchera et al., Nat'l Ctr. for Juv. Just., *Youth and the Juvenile Justice System: 2022 National Report* 193 (2022), https://ojjdp.ojp.gov/publications/2022-national-report.pdf. Racial disparities in Pennsylvania are magnified even further once gender is considered: Black Non-Hispanic males make up 7 percent of the youth population, but make up 28 percent of written allegations and 42 percent of placement dispositions. Pa. Juv. Just. Task Force, *System Assessment: Placement and System Costs* 44 (2020), https://www.pacourts.us/Storage/media/pdfs/20210508/154427-file-9928.pdf. Even when youth are charged with the same offense, they are treated disparately. *See* Pa. Juv. Just. Task Force, *Report and Recommendations, supra*, at 27. For example, for "misdemeanor drug possession−the second-most common offense leading to the removal of youth from their homes−Black Non-Hispanic males make up 16 percent of written allegations but 33 percent of residential placements." *Id*. at 28. In the City of Philadelphia, where N.E.M. resides, youth in placements across the child welfare, juvenile justice, and psychiatric systems are "disproportionately teens of color" (91 percent Black or Hispanic). Youth Residential Placement Task Force, *Report and Recommendations* 7 (2019), https://www.phila.gov/media/20210805122144/Youth-Residential-Placement-Task-Force-report-and-recommendations.pdf. Black youth

only make up 47 percent of Philadelphia's under 18 population but make up 75 percent of residential placements across these systems. *Id*.

Youth with disabilities are also substantially overrepresented in juvenile delinquency placements. The National Council on Disability reports that up to 85 percent of children in juvenile detention facilities have disabilities that make them eligible for special education services. Nat'l Council on Disability, *Breaking the School-to-Prison Pipeline for Students with Disabilities* 5 (2015), https://ncd.gov/publications/2015/06182015. Other studies have shown that 65 to 70 percent of youth involved in the juvenile justice system have mental illness. Kathleen R. Skowyra & Joseph J. Cocozza, Nat'l Ctr. for Mental Health & Juv. Just., *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System* 127 (2007), https://njjn.org/uploads/digital-library/resource_349.pdf. Locally, a Defender Association of Philadelphia study found 62 percent of youth in delinquency placements have a documented disability or mental health diagnosis. Lisa Pilnik et al., Juv. L. Ctr., *Transforming Justice: Bringing Pennsylvania's Young People Safely Home from Juvenile Justice Placements* 9 (2019), https://jlc.org/sites/default/files/attachments/2019-10/Transforming_Justice_final.pdf.

B. Youth In Placement Suffer Serious Physical Violence And Harsh Conditions Of Confinement With Little Recourse

Pennsylvania's high placement rates are of critical importance, especially given the grave harms youth face in out-of-home placements. The scientific research suggests that incarcerating children is inherently harmful. *See infra* Section II.C. In addition, youth in Pennsylvania's juvenile residential placement facilities and detention centers[2] continue to be physically abused with little recourse for relief. This systemic failure to safeguard youth from violence in placements underscores the need for timely and meaningful appellate review before sending youth into potentially dangerous situations. In N.E.M.'s home of Philadelphia, the city found that its youth have been harmed in residential placements through assaults, solitary confinement, threats, and inappropriate use of physical restraints. Youth Residential Placement Task Force, *supra,* at 10. A study conducted by Children's Rights and the Education Law Center found that children in Pennsylvania residential facilities were physically maltreated 156 times (114 times by staff), exposed to inappropriate sexual contact 73 times (39 times by staff), and suffered at least 43 incidents of verbal maltreatment by staff during the period between May 2010 and May 2018. Elissa Glucksman Hyne et al., Children's Rts. & Educ. L. Ctr., *Unsafe and Uneducated:*

[2] Although Appellate Rule 1612 governs longer-term placements, rather than detention facilities, the harms youth face in detention facilities are illustrative of the harms children face when taken into custody – wherever, whenever.

Indifference to Dangers in Pennsylvania Residential Child Welfare Facilities 9 (2018), https://www.elc-pa.org/wp-content/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf.

Additionally, the report found that 44 percent of the entities reviewed had repeated violations for physical or sexual maltreatment of children. *Id.* There were also 92 incidents involving the use of inappropriate restraints, with 28 of those incidents resulting in the documented injury of a child. *Id*.

Sadly, youth throughout the state have been victims of abuse when sent to residential placements and detention centers. Youth advocates with lived experience in these placements recalled incidents where they were slammed against walls and floors, burned with flat irons, secluded in rooms without food for significant periods of time, and punched and beaten up by staff. Juvs. for Just. & Juv. L. Ctr., *Broken Bridges: How Juvenile Placements Cut Off Youth from Communities and Successful Futures* 13-16 (2018), https://jlc.org/sites/default/files/attachments/2018-12/2018BrokenBridges-FINAL-WEB_0.pdf. These abusive encounters−often for minor behaviors such as being on social media during school hours, not cleaning up an area in a timely manner, not doing schoolwork, and not wanting to eat breakfast−left the youth with scars, busted lips, and broken ribs. *Id*. Many youth were also subjected to extended periods of solitary confinement and isolation as a form of punishment

or de-escalation; solitary confinement could last from one day to a week with nothing more than a desk and chair, or sometimes nothing at all. *Id*. at 17-18.

The number of recent abuse scandals plaguing Pennsylvania's juvenile justice system is staggering. Maltreatment is commonplace. In October 2016, 17-year-old David Hess was killed by a staff member during a restraint. Nancy Philips & Chris Palmer, *Death, Rapes, and Broken Bones at Philly's Only Residential Treatment Center for Troubled Youth*, Phila. Inquirer (Apr. 22, 2017), https://www.inquirer.com/philly/news/pennsylvania/philadelphia/Death-rape-Philadelphia-Wordsworth-residential-treatment-center-troubled-youth.html. This tragic death was just one of many instances of violence at Wordsworth Academy in the last decade. The Philadelphia Inquirer found that at least 49 sex crimes, including 12 rapes, had been reported at Wordsworth, and that the police were called over 800 times in the preceding 10 years. *Id.* On October 24, 2016, the Pennsylvania Department of Human Services sent a letter to Wordsworth Academy notifying its CEO that DHS would be revoking the facility's license for "failure to comply with the Department's regulations and gross incompetence, negligence and misconduct in operating the facility" based on several inspections conducted between April 2016 and October 2016. Letter from Kevin Brumbach, Enforcement Manager, Bureau of Hum. Servs. Licensing, Dep't of Hum. Servs., to Debra S. Lacks, President/CEO, Wordsworth Acad. (Oct. 24, 2015), http://media.philly.com/documents/WordsworthReport.pdf.

In Chester County in 2018, a 16-year-old resident with autism reported to a program supervisor at Devereux Advanced Behavioral Health that he had been sexually assaulted continuously by a staff member since he arrived at the facility four months prior. Lisa Gartner & Barbara Laker, *At the Nation's Leading Behavioral Health Nonprofit for Youth, Devereux Staff Abused Children in Their Care for Years–While Red Flags Were Dismissed*, Phila. Inquirer (Aug. 11, 2020), https://www.inquirer.com/news/inq/devereux-advanced-behavioral-health-abuse-children-pennsylvania-20200811.html. This incident sparked an investigation concluding in 2020 by the Inquirer which found that at least 41 children as young as 12, and with IQs as low as 50, had been raped or sexually assaulted by Devereux staff members over the past 25 years. *Id*. Of those 41 children, 10 were assaulted at the 3 Deveraux facilities in Southeastern Pennsylvania. *Id*. The investigation also found that Devereux understaffed its campuses and failed to provide adequate supervision of patients and staff members despite millions in revenue and a $40 million contract with the federal government. *Id*.; Barbara Laker & Wendy Ruderman, *Philly to Remove 53 Kids from Devereux's Live-In Facilities After it Finds Lax Supervision*, Phila. Inquirer (Sept. 24, 2020), https://www.inquirer.com/news/philadelphia/devereux-philadelphia-abuse-council-remove-children-20200924.html.

In Delaware County, Glen Mills Schools (Glen Mills) was finally closed in

2019 after the Inquirer published its investigation on the widespread violence and abuse that youth had experienced for decades at the reform school. Lisa Gartner, *Beaten, Then Silenced*, Phila. Inquirer (Feb. 20, 2019), https://www.inquirer.com/crime/a/glen-mills-schools-pa-abuse-juvenile-investigation-20190220.html. After dozens of interviews with students, staff, and others, the Inquirer found that students endured rampant abuse by their peers and Glen Mills staff, Glen Mills leadership disregarded and covered up the violence and abuse for at least two decades. *Id*. The Pennsylvania Department of Human Services (DHS) eventually issued an emergency removal order in March 2019, and revoked Glen Mills' licenses to operate a residential facility in April 2019. Letter from Cathy A. Utz, Deputy Sec'y, Dep't of Hum. Servs., to Christopher Spriggs, Assistant Exec. Dir., Glen Mills Schools (Apr. 8, 2019), https://s3.documentcloud.org/documents/5798371/Glen-Mills-Schools-040819.pdf.

In March 2021, the president judge of Delaware County ordered the closing of the county's juvenile detention center following several abuse allegations. Kenny Cooper, *Grand Jury Investigating Abuse Allegations at Delaware County Juvenile Detention Center Chooses Not to Recommend Charges*, WHYY (Dec. 13, 2022), https://whyy.org/articles/delaware-county-juvenile-justice-center-grand-jury-report/. A grand jury eventually found that the detention center had created a culture of violence, cover ups, and sexually inappropriate conduct by male staff. *Id*. The

grand jury further highlighted that "the 'collective failure of many' allowed the detention center to function as a prison built on punishment—instead of reform." *Id*.

In September 2021, the Pennsylvania Department of Human Services revoked the license of the Shuman Detention Center in Allegheny County following an inspection the month prior. Tom Davidson, *Pa. Report Describes 'Gross Incompetence' at Shuman Juvenile Detention Center*, Pittsburgh Trib.-Rev. (Aug. 24, 2021), https://triblive.com/local/pa-report-describes-gross-incompetence-at-shuman-juvenile-detention-center/. The inspection cited violations of "gross incompetence, negligence, and misconduct," including Shuman's failure to provide at least 22 children with their prescribed medications because the facility did not have a nurse employed during that period. *Id*. DHS stated in its letter to Allegheny County officials that in addition to the life-threatening violations found in August 2021, the facility had repeatedly violated standards dating back to 2018, which further influenced the decision to revoke the facility's license. *Id*.

Youth who are abused are also often deterred from reporting, and those who do so may face reprisals for speaking out. Pennsylvania's youth grievance protections primarily trust individual institutions to self-regulate. Christina K. Sorenson, Juv. L. Ctr., *Screaming Into the Void: Youth Voice in Institutional Placements* 12 (2023) (citing 55 Pa. Code § 3800.31), https://jlc.org/sites/default/files/attachments/2023-02/Screaming%20Into%20the%20Void%20Full%20Report.

pdf. While children and their families have the right to file a grievance free of the fear of retaliation, Pennsylvania law provides no protections for anonymity or independent evaluations of grievances. *Id*. at 35-36, 49. Staff intimidation may further prevent youth from feeling comfortable speaking out. Juvs. for Just. & Juv. L. Ctr., *supra*, at 16.

Moreover, no assistance is guaranteed for filing grievances, leaving youth to navigate complex procedures on their own at a traumatic moment. Sorenson, *supra*, at 39. Facility staff and leadership often fail to take youth complaints seriously. *Id.* at 11-12. Staff at residential facilities may face no consequences for their actions, while youth can be placed in solitary confinement or lose contact with their families as retaliation. Juvs. for Just. & Juv. L. Ctr., *supra*, at 16. These limitations further underscore the need for meaningful appellate review of the decision to place youth out of the home in the first place.

C. Removing Youth From Their Homes Interferes With Healthy Development, Disrupting Youth's Transition To Adulthood

Placements are extremely harmful to young people even absent physical abuse. Because of their unique developmental stage, teenagers are particularly susceptible to the harms of placement. Adolescence is a time of tremendous growth and personality development during which youth's brains undergo important changes to prepare for adulthood. *See* Nat'l Acads. of Scis., Eng'g & Med., *The Promise of Adolescence: Realizing Opportunity for All Youth* 46-47 (Richard J.

Bonnie & Emily P. Backes eds., 2019), https://doi.org/10.17226/25388. The United States Supreme Court has repeatedly reminded us that youth is a "time and condition of life" marked by behaviors, perceptions, and vulnerabilities that change with age. *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982); *J.D.B. v. North Carolina*, 564 U.S. 261, 272-73 (2011). Teenagers' brains are particularly vulnerable to negative experiences such as resource deprivation or harsh and coercive relationships. Nat'l Acads. of Scis., Eng'g & Med., *supra,* at 58. Youth are at greater risk from the harms of toxic stress, which occurs when someone is "unable to cope effectively with the stress" due to a lack of support. *Id*. at 89. This results in long-lasting maladaptations in the brain, organ, and metabolic systems. *Id.* Children whose brains develop in response to constant threat and danger find that as they age, they are less able to control their moods and impulses and to engage in thoughtful decision making and planning. *Id*. at 91. Even periods of youth incarceration of less than one month are "associated with depressive symptoms as an adult." Pilnik et al., *supra*, at 9. Periods of one to 12 months are "associated with worse general health," and longer periods are "associated with suicidal thoughts, depressive symptoms, and functional limitations." *Id*.

Out-of-home placements can also prevent youth from establishing an identity grounded in self-worth and optimism in the future. *See* Patrick McCarthy et al., Nat'l Inst. of Just., *The Future of Youth Justice: A Community-Based Alternative to the*

Youth Prison Model 5 (2016), https://assets.aecf.org/m/resourcedoc/NIJ-The_Future_of_Youth_Justice-10.21.16.pdf. The formation of self-identity is central to adolescence. Nat'l Acads. of Scis., Eng'g & Med., *supra,* at 60-62. The development of a positive self-identity promotes healthy socialization and respect for legal authority. *Id.* at 306 (citing Nat'l Rsch. Council, *Reforming Juvenile Justice: A Developmental Approach* (2013)). Removing youth from their homes labels youth as "delinquents" or "criminals," and youth can internalize these negative messages. Pilnik et al., *supra*, at 10. The inherent design of most institutional environments further reinforces negative self-images that inhibit positive attitudes. McCarthy et al., *supra*, at 5.

Healthy adolescent development also heavily depends on access to social connections and a supportive network. Nat'l Acads. of Scis., Eng'g & Med., *supra*, at 63-67. Dr. Laurence Steinberg, a world-recognized expert on adolescence, has shown that removing youth from their supportive communities of friends, families, or other caring adults disrupts their successful transition to adulthood in multiple ways. Pilnik et al., *supra*, at 9 (citing Laurence Steinberg et al., *Reentry of Young Offenders from the Justice System: A Developmental Perspective*, 2 Youth Violence & Juv. Just. 21 (2004)). Residential facilities fail to provide youth with the support of parents and other caring adults, along with opportunities to exert their independence, which cuts off youths' ability to learn self-direction and

responsibility. *Id*. at 10. This process is vital to youth learning how to make better choices and utilize their strengths and resources to thrive in adulthood. Nat'l Acads. of Scis., Eng'g & Med., *supra*, at 68-70. Creating a sense of purpose is also important for developing critical thinking skills, learning, and healthy personal and social behaviors. *Id*. at 72-73. However, separation from "key adults and even friends and romantic partners" reduces the incentive to follow through on goals. Pilnik et al., *supra*, at 10. This leads to a loss of purpose and hope, and may cause youth to withdraw from conventional society and become more likely to engage in criminal activity. *Id*.[3]

D. Out-Of-Home Placements Fail To Meet The Educational Needs Of Students, Increasing Obstacles To The Completion Of Their Schooling

Residential facilities also typically fail to build the meaningful competencies the Juvenile Act envisions. Out-of-home placements remove children from the familiar environments that support their learning, and instead replace them with inadequate alternatives. Facilities typically provide inferior educational

[3] These harms impact youth even if they are removed from the home for a relatively brief time. One youth described the hurt she suffered after she was denied home passes from her placement because she was "only going to be there a month, but "a month is a long time to go without seeing my parents, siblings, and family members." Juvs. For Just. & Juv. L. Ctr., *supra*, at 8. Another youth was not allowed home passes while in placement for three months, and during that time she lost contact with her adoptive parents and was unable to return home to them afterwards. *Id*. at 9. She also lost many of her friends while in placement due to the inability to have much contact. *Id*. These youths and others stated that their time in placement caused them to develop trust issues, isolate themselves, and develop mindsets that were unwanted. *Id*. at 9-10.

opportunities, causing students in juvenile justice placements to fall behind or drop out altogether when they return to their home communities. Glucksman Hyne et al., *supra*, at 19-20. Nationally, barriers to school re-engagement cause roughly two thirds of youth returning from juvenile justice placements to drop out of school. Off. of Juv. Just. & Delinq. Prevention, *Education for Youth Under Formal Supervision of the Juvenile Justice System* 6 (2019), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/education_for_youth_under_formal_supervision_of_the_juvenile_justice_system.pdf. Though Pennsylvania lacks uniform, statewide mandated data collection systems or other accountability measures for placement facilities, in Philadelphia, 64% of youth involved in the juvenile justice system ultimately drop out of high school. Julia Ransom et al, *A Promise Worth Keeping: Advancing the High School Graduation Rate in Philadelphia* 12 (2015), https://williampennfoundation.org/sites/default/files/reports/PromiseWorthKeeping.pdf.

The schools located "on-grounds" at Pennsylvania's residential facilities are typically licensed by the State Board of Private Academic Schools and thus do not have to meet the same educational standards as public schools. Glucksman Hyne, *supra*, at 22. These schools often offer a more limited curriculum and fewer instructional hours. *Id.* In a survey informing a 2013 Report to the Pennsylvania State Roundtable issued by the Educational Success and Truancy Prevention Taskforce, only 2.4 percent of county teams surveyed reported that youth in

residential facilities "always" received educational services and opportunities equal to those provided by public schools. *Id*. Stakeholders further report that these facilities often group children together in multi-grade classrooms, sometimes taught by teachers that lack training or certifications, and that schools often rely on online learning or worksheets. *Id*. Often the credits students receive from these programs cannot be transferred to their home schools when they return, placing them further behind their peers and threatening their ability to finish their education. *Id*; *see also* Nadia Mozaffar et al., Juv. L. Ctr, Educ. L. Ctr, Drexel Univ. & S. Poverty L. Ctr., *Credit Overdue: How State Can Mitigate Academic Credit Transfer Problems for Youth in the Juvenile Justice System* 6 (2020), https://jlc.org/sites/default/files/attachments/2020-10/Credit%20Overdue_0.pdf (students reporting their placement never sent their credits to their school or were told they earned a different number of credits than they actually did). Even when these credits are accepted, youth can find it difficult to keep up after the poor education they received in placement. *See generally* Juvs. for Just., Youth Fostering Change & Juv. L. Ctr., *Operation: Education* (2019), https://jlc.org/sites/default/files/attachments/2019-06/Operation-Education-FINAL-DIGITAL-FULL.pdf (Pennsylvania youth describe how system involvement disrupted their education). Since placements can be so disruptive of their educational experience, these youth also often have much poorer educational and employment outcomes as adults. Pilnik et al, *supra*, at 9.

Students with disabilities are at particular risk of receiving an inadequate education. Off. of Juv. Just. & Delinq. Prevention, *supra*, at 2. The Defender Association of Philadelphia found just over half (51 percent) of youth in delinquency placement have an Individualized Education Plan (IEP) for special education needs. Pilnik et al., *supra*, at 5. Out-of-home placements are ill-equipped to properly screen students for the services they need, or to provide the necessary accommodations particularized to each student. Glucksman Hyne et al., *supra*, at 23. If a student does have an IEP at their home school, there is often a lengthy delay transferring that information to the residential facility. *Id*. In the meantime, the lack of support further compounds the myriad failings that already exist in the placement's educational environment.

E. Placements Are Counter-Productive And Impede Public Safety

Placements threaten the long-term future of youth, but they also have lasting repercussions for public safety as well. There is a strong research consensus that placing youth out of the home, including in both secure and nonsecure residential facilities, does not decrease rates of re-arrest and may actually increase them. Richard A. Mendel, Annie E. Casey Found., *No Place for Kids: The Case for Reducing Juvenile Incarceration* 11 (2011), https://assets.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf. A leading report summarizing existing recidivism research concludes that "the vast majority of studies find that

incarceration is no more effective than probation or alternative sanctions in reducing the criminality of adjudicated youth, and a number of well-designed studies suggest that correctional placements actually exacerbate criminality." *Id*. Studies that control for youth backgrounds, offending histories, and other relevant characteristics continue to find incarceration is linked with higher rates of recidivism. Richard Mendel, Sent'g Project, *Why Youth Incarceration Fails: An Updated Review of the Evidence* 12-13 (2022), https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf. All other factors being equal, youth who are removed to residential placements are also later incarcerated as adults at rates alarmingly higher than those who are arrested but not placed. *See*, *e.g.*, Amanda B. Gilman et al., *When is a Youth's Debt to Society Paid? Examining the Long-Term Consequences of Juvenile Incarceration for Adult Functioning*, 1 J. Developmental & Life-Course Criminology 33, 37, 43 (2015) (finding Seattle youth who were incarcerated as youth were nearly four times more likely to be incarcerated as adults); Uberto Gatti et al., *Iatrogenic Effect of Juvenile Justice*, 50 J. Child Psych. & Psychiatry 991, 992, 995 (2009) (finding low-income boys incarcerated in juvenile facilities in Montreal were far more likely to have an adult criminal record than those with similar backgrounds and offending histories); Rebecca A. Colman et al., N.Y. State Off. of Child. & Fam. Servs., *Long-Term Consequences of Delinquency: Child Mal-Treatment and Crime in Early Adulthood* 4, 7 (2009), https

://www.ojp.gov/pdffiles1/nij/grants/226577.pdf (finding 89 percent of boys and 81 percent of girls in New York who had spent time in state youth correctional facilities were arrested as adults by age 28). In view of the harm and inefficacy of placements, jurisdictions around the country have shifted resources from incarceration to community-based supports. *See* Shaena M. Fazal, Youth Advoc. Programs, *Safely Home* 3 (2014), https://www.yapinc.org/portals/0/Docs/safelyhome_es.pdf. States that made the largest reductions in youth incarceration from 1997 to 2007 saw a greater decline in youth arrest rates for violent crime than states that made smaller reductions or increased it. Mendel, Annie E. Casey Found.*, supra*, at 26.

CONCLUSION

The Superior Court's Order denying N.E.M.'s petition for specialized appeal under Rule 1612 without any explanation, when the lower court had similarly failed to make a record of the reasons it ordered N.E.M. to be confined, flouts every constraint on confinement in the Juvenile Act and related court rules. These rules exist precisely because youth in placement face proven, devastating harms. Wherefore, for the foregoing reasons, *amici* respectfully urge this Court to reverse the Superior Court's Order and remand with instructions to grant N.E.M.'s petition for review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 531 and 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 6,798 words. In preparing this certificate, I relied on the word count feature of Microsoft Word. I further certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that requires filing confidential information and documents differently than non-confidential information and documents.

Dated: June 26, 2023

/s/ Marsha L. Levick
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