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**HOUSE OF REPRESENTATIVES**  
COMMONWEALTH *of* PENNSYLVANIA

**Disability & Mental Health Summit Legislative Panel**  
**Tuesday, April 13, 2021 | 9 a.m.**

*Hosted by*  
State Representative Dan Miller

**Panel one: The faces of medical assistance for workers with disabilities (MAWD)**

- Josie Badger
- Matthew Berwick
- Kaitlin Kerr
- Jessica Keogh
- William Del Toro Vargas

*Questions from legislators*

**Panel two: The systemic criminalization of disabilities in juvenile justice**

- Rebecca Hudock, Deputy Director, Juvenile Division  
**Allegheny County Office of the Public Defender**
- Laura McWilliams, Managing Attorney, Juvenile Division  
**Allegheny County Office of the Public Defender**
- C. Christine Porter Education Attorney, Juvenile Division  
**Allegheny County Office of the Public Defender**

*Questions from legislators*

# The Faces of MAWD

## Josie Badger



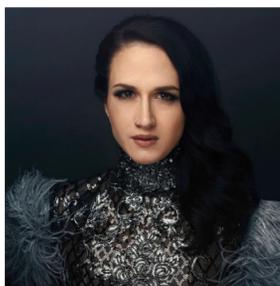
Dr. Josie Badger has a Bachelor's from Geneva College in Disability Law and Advocacy, a Master's from the University of Pittsburgh in Rehabilitation Counseling, and a Doctorate from Duquesne University in Healthcare Ethics. In 2014, she founded J Badger Consulting Inc. where she provides disability consulting services. She is the Director of the national transition center, RAISE. She is the Campaign Manager of the United Way if Southwestern PA's #IWantToWork Campaign, the Senior Field Organizer for the Family Care Act with the Women and Girls Foundation, and is the Project Director of TRAIL, a statewide advocacy and lobbying training program. She is on the boards of the United Way of Southwestern PA, Woodlands Foundation, the Mary Grace Hospice Foundation, and FISA. In 2012, Dr. Badger was crowned Ms. Wheelchair America.

## Matthew Berwick



Matthew Berwick is the Program Manager, Disability Accommodations in Clinical Services for the UPMC Health System in the Disabilities Resource Center and teaches part-time at the University of Pittsburgh. He has worked in the area of disability services for almost a decade, serving on local, state and national boards for people with disabilities, and currently serves as the President of The United Spinal Association of Western PA. Prior to joining UPMC, Matthew worked in higher education and as a Youth Specialist focusing on youth transition services. Matthew has a B.A. in Elementary Education, and an M.A. in Adult Learning and Training. He is very active in the Pittsburgh disability sports community and advocating in many areas for people with disabilities.

## Kaitlin Kerr



Kaitlin A. Kerr is a disabled artist and advocate. She holds degrees in English Literature, Nursing, and Nursing leadership (MSN, CNL). She had to leave the profession after her disabilities progressed several years ago. Kaitlin focuses on running a Shakespearean theatre company with her partner, Jonathan. She is also a published poet and actor. She has three beautiful cats that take-up over half the photo space on her phone. Kaitlin also volunteers for PAAR (Pittsburgh Action Against Rape) as a sexual assault counselor and an intimacy choreographer/ director for theatre (a role grounded in boundaries and consent in order to protect artists and create better art when physical intimacy is involved). Much of her artistic work grows out of the reality of living with a rare chronic pain disorder and finding meaning in art, beauty, and connection with others.

## Jessica Keogh



Jessica Keogh, M. Ed resides in West Chester, Pennsylvania where she teaches students who have difficulty regulating their emotions. Being born with a yet to be diagnosed type of Muscular Dystrophy, Jessica has dedicated her life to educating, advocating, and empowering people with disabilities (and those without) so they can live their most empowered lives! Jessica has done this through the way she lives, teaches, and advocates for meaningful policy change for people with disabilities. She is currently pursuing her doctorate in educational policy, leadership, and administration. Jessica's research surrounds critical disability studies and representation in curriculum. Once she earns her EDD, she will write policies and curriculum that help all children.

## William Del Toro Vargas



WILLIAM DEL TORO VARGAS  
CURRENT SUPPORTER, FORMER LEGISLATIVE ADVOCATE

For Anybody to Work  
Every-Body Needs Supports

**#LiftTheLimit**



**#IWantToWork**

# Americans with Disabilities

- 40.6 million or 12.6%
  - The total civilian noninstitutionalized population with a disability in the United States in 2018.
- 7.6 million
  - The total civilian noninstitutionalized population ages 18 to 64 employed with a disability in 2018.

# Pennsylvanians with disability

- In 2017, 1,795,800 of the 12,608,800 individuals of all ages in PA reported one or more disabilities
- Pennsylvania disability prevalence rate 11.8%

# In America, jobs are a foundational part of our identity.

- When first meeting someone what are the two things you ask them?
- Making employment for people with disabilities should be a [unifying issue](#)

# The Value Empowering Workers with Disabilities

## **Return on Investment**

- Employees with disabilities often work harder with fewer days off.

## **Diversity**

- Employees with disabilities bring unique experiences, knowledge, and skills that enrich product development and services

## **Increased innovation**

- Increased problem-solving skills, agility, persistence, forethought and a willingness to experiment

## **Workers are consumer**

- Customers with disabilities and their networks represent a trillion-dollar market.
- The GDP could get a boost up to \$25 billion if just 1 percent more of persons with disabilities joined the U.S. labor force.

## **By the Way**

- Tax incentive
- Support from VR or career services

# Federal Legislation

- **Americans with Disabilities Act (ADA)**
  - Helps people with disabilities get accommodations
  - BUT employers only have to provide “reasonable” accommodations if they are informed of the disability and needs before a problem occurs
- **Rehabilitation Act**
  - Prohibits discrimination on the basis of disability in programs conducted by federal agencies or receiving federal funding
  - Establishes Vocational Rehabilitation (OVR)- Every state has a vocational rehabilitation agency that is designed to help individuals with disabilities meet their employment goals. Vocational rehabilitation agencies assist individuals with disabilities to prepare for, obtain, maintain, or regain employment.
- **Workforce Innovation and Opportunity Act**
  - Job seekers with and without disabilities may receive and benefit from job search and placement assistance, career counseling, skills training, and other supportive services.

# Disability Benefits' Work Incentives

## **SSI**

- Ticket to Work, Earned Income Exclusions, Plan to Achieve Self Support (PASS), Student Earned Income Exclusion (SEIE), Impairment Related Work Expenses (IRWE)

## **Medicaid**

- Doesn't count all wages

## **SSDI**

- Trial work period, Extended Period of Eligibility, Ticket to Work, IRWE

## **Medicare**

- Continue receiving benefits for 7 years after an individual is no longer eligible for cash

## **Home and Community Based Service Waivers**

- Can continue to receive under Buy-In
- Some employment supports are available

# The #IWantToWork Campaign

Received unanimous bipartisan, bi-cameral support in the Legislature and was signed into law by Governor Wolf on May 17, 2016.

**Act 26 of 2016: Work Experience for High School Students with Disabilities Act**  
Requires OVR to help high school students with disabilities find, obtain, and keep summer, night, and weekend jobs.

## [Act 36 of 2018](#): Employment First PA

Provides structure and better oversight to increase competitive employment in an integrated setting in state, county and local agencies for individuals with disabilities.



# #IWantToWork

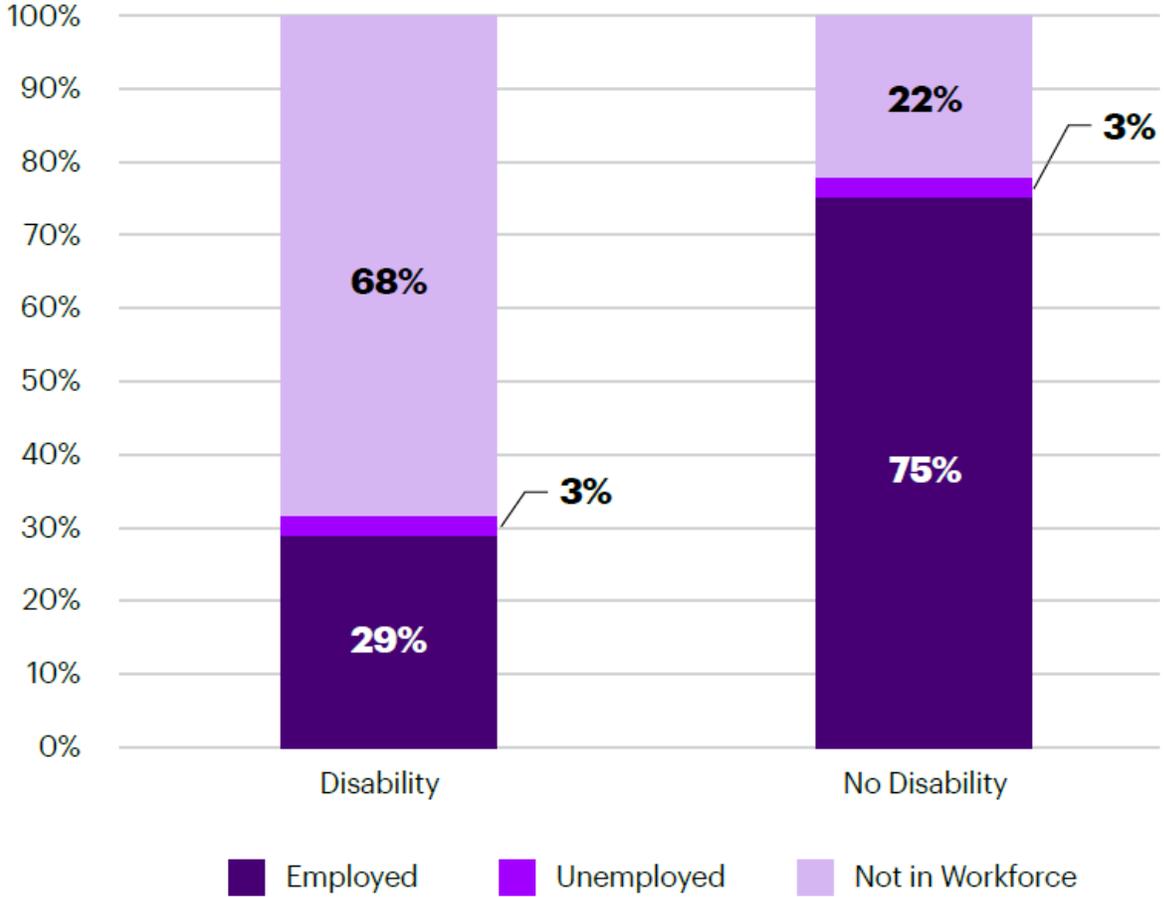
# State Legislation

- **ABLE-**

- A person with a disability can save up to \$100,000 without losing benefits. Money can be contributed up to \$15,000 per year by anyone. <https://www.paable.gov/>
  - Only applicable to those who acquired their disability before age 26
  - Some restrictions apply
  - For employed individuals, the annual contribution is higher (+FPL for one person)

These are great  
and...

# The disability community has the highest unemployment level of any minority group.



# Maslow's Hierarchy of Needs



# Medicaid and Waivers are often only options

People with disabilities continue to have disabilities (and needs) regardless of income.

- Long term supports and services may include: personal aide, nursing, therapies, coaching and training, durable medical equipment
- No private insurance provides long-term home and community-based services
- The approximate cost for people with disabilities to access these services may be prohibitive regardless of income.
  - In PA in 2014 the average monthly cost
    - HCBS- \$3,899
    - Residential care- \$8,670
  - In many cases an individual would need to earn over \$100,000 to break even

# Medical Assistance for Workers with Disabilities (MAWD)

- Health insurance program currently supporting 30,000 Pennsylvanians employees with disabilities to work and not lose the supports (MA and HCBS), which make it possible for them TO work. Enrollees (including their household) can earn up to 250% of the FPL per year and have \$10,000 in assets

# Limitations of MAWD

Complicated eligibility criteria and lack of knowledge or energy from benefits counselors or local county assistance office encourages people to not pursue MAWD

- If an individual is employed and earns \$1 more than allowed, they are at great risk for losing these critical benefits
- Cap can prevent workers with disabilities from:
  - Taking additional hours at work
  - Taking a raise or bonus
  - Getting married
  - Pursuing employment at all

## Income Limits—Effective *January 13, 2021*

250% of the Federal Poverty Income Guidelines				
Family Size	Monthly Limits		Annual Limit	
	<i>2021</i>	2020	<i>2021</i>	2020
1	<i>\$2,684.00</i>	\$2,659.00	<i>\$31,900.00</i>	\$31,900.00
2	<i>\$3,630.00</i>	\$3,592.00	<i>\$43,100.00</i>	\$43,100.00

MAWD only goes up to a family size of two in regards of allowable monthly income limits in spite of actual family size

# MAWD Caps

## Income (household)

- Income under 250% FPL (2021)
  - 1 person household = \$31,900, 2 or more person household - \$43,100
- Person with earned and unearned income (settlements, unemployment...)
  - Deduct any impairment-related work expenses
  - Subtract \$20 from monthly unearned income
  - Count 100% of remaining unearned income
  - Subtract \$65 from earned income
  - Count 50% of remaining earned income
- Person with only earned income
  - Deduct any impairment-related work expenses
  - Subtract and \$65 from total monthly income
  - Count 50% of earned income

## Assets (spouse's assets are counted and regardless of dependents)

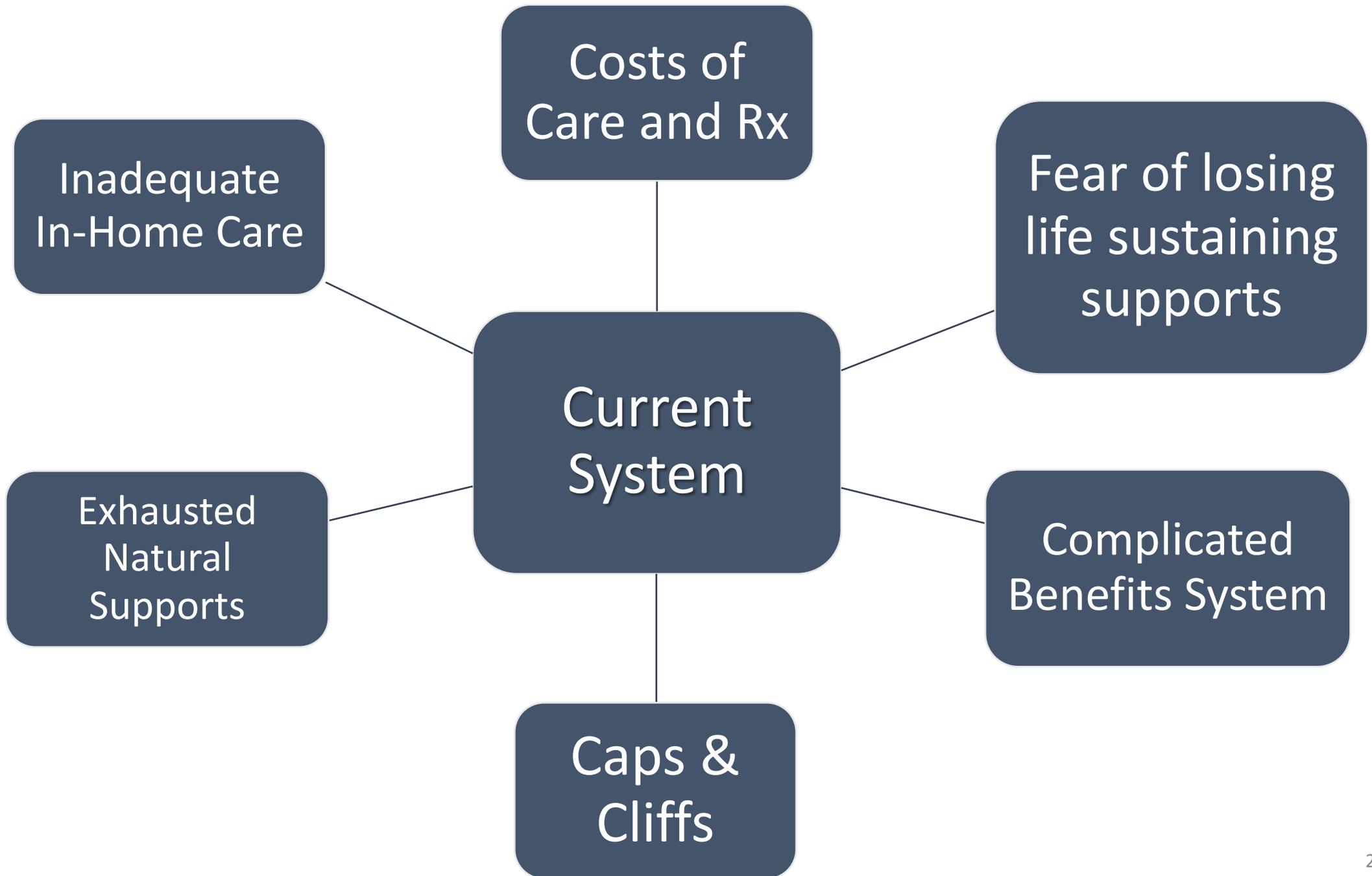
- Less than \$10,000 in resources (excluding 1 car and 1 house) regardless of family size

# Unearned income includes, but is not limited to:

- Retirement benefits, pensions and annuities
- Social Security benefits
- Veterans Administration benefits.
- Unemployment compensation
- Workers compensation.
- Dividends, royalties, and interest
- Loans and gifts
- Educational assistance.
- Rental income
- Life insurance benefits.
- Inheritances.
- Lottery winnings.
- Past-due court-ordered support payments.
- Prizes and awards.
- Cash payments from insurance policies

# And then there is marriage

- Although people with disabilities are legally able to marry, there are significant financial barriers, including the loss of benefits
- Marriage penalties are inconsistent, affecting some disabled people and not others.
- **BOTTOM LINE** - nothing about single vs. couple finances can make up for a disabled person losing eligibility for Medicare or Medicaid. Especially if they rely on many meds, assistive devices, procedures, or attendant care.



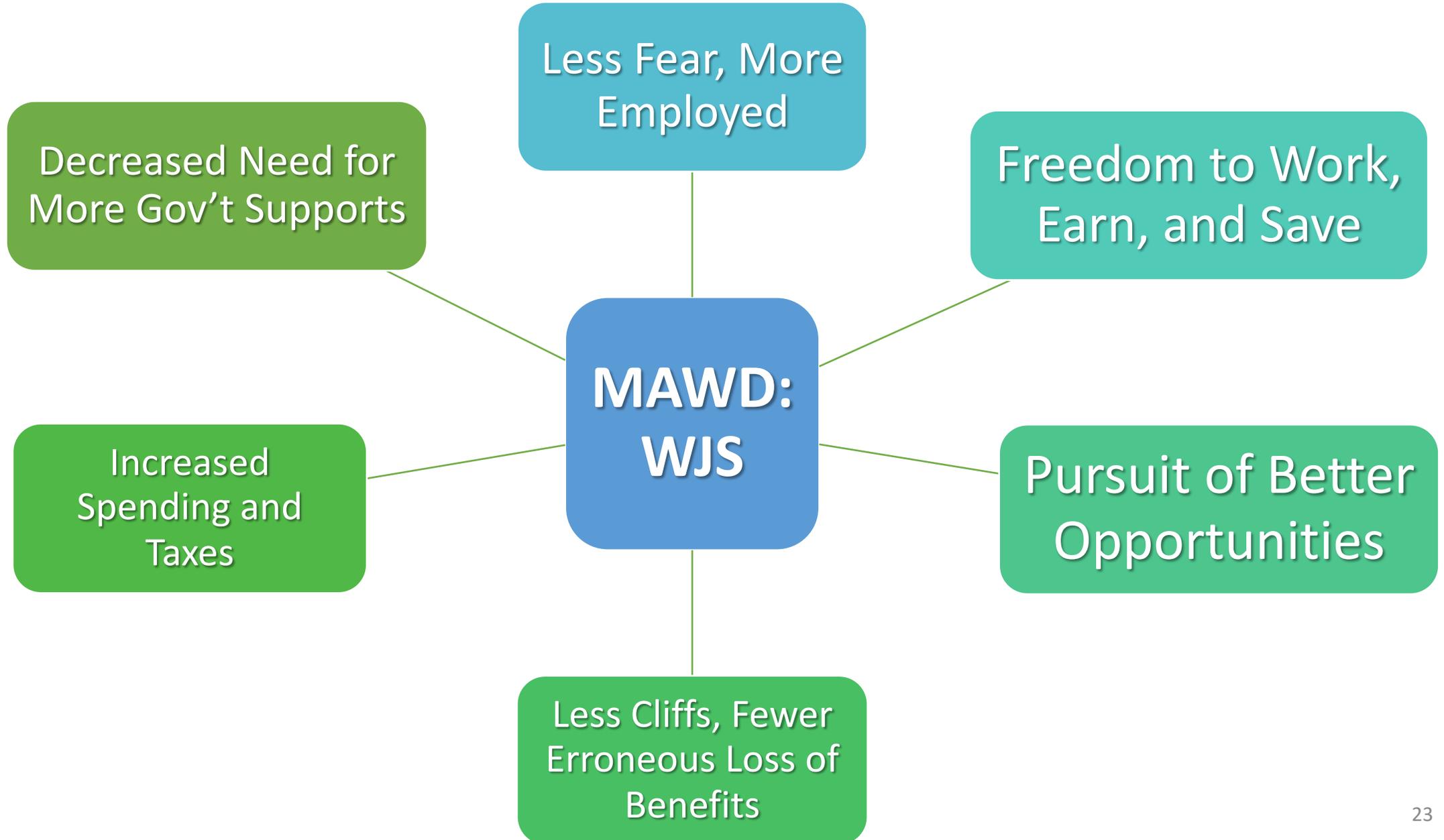
# Proposed Policy Solution

# MAWD: Workers with Job Success

## [SB156](#)

- Eliminate the Caps for Medical Assistance for Workers with Disabilities
- Remove the income Cap on MAWD waivers (asset & marriage penalty).
- Allow individuals to buy healthcare through their employer and/or Medicaid; while maintaining Medicare and Home and Community Based Services.
- Remove asset limits for MAWD users.
- Under the proposed bill, a new MAWD eligibility group would be created, Workers with Job Success. Individuals would be able to join this new eligibility group if they have been enrolled in the program for at least one year, work at least 40 hours per month, maintain other eligibility requirements for MAWD (such as disability status), and are at risk of losing their benefits due to the income and asset limits.

# MAWD: WJS Benefits



# Who Benefits?

## People with Disabilities

- Ability to earn more
- Ability to achieve maximum potential
- Ability to marry

## Businesses

- Larger employment pool
- Allowing good workers to work more

## GOVERNMENT

- Decreased cash benefit expense
- Potential decrease in service need due to natural supports
- Increased tax revenue
- Revenue from Medicaid Buy-In

# MAWD: WJS is one part of the answer AND

- We should also address:
  - Marriage equality
  - Allowing people over the age of 65 to work
  - Allowing people to have savings and resources from employment, even if they do not reach the WJS category

# Resources

- [Jessica Keogh's Video Story](#)
- [Matt Berwick's Video Story](#)
- [Heather Tomko's Video Story](#)
- [Kaitlyn Kerr's Article on Disability Marriage Inequality](#)
- [Kaiser Family Foundation Report: Medicaid Financial Eligibility for Seniors and People with Disabilities: Findings from a 50-State Survey](#)
- [SB156](#)

# Let's Be Social

#IWantToWork

- Facebook - @IWantToWorkPA
- Instagram - @IWantToWork
- Twitter - @IWantToWorkPA
- <http://www.iwanttoworkpa.org>

## Contact:

Dr. Josie Badger DHCE, CRC  
josiebadger@gmail.com



# Thank You

Contact:

Josie Badger

[josiebadger@gmail.com](mailto:josiebadger@gmail.com)

## **Panelists from the Allegheny County Office of the Public Defender**

**Rebecca Hudock** grew up in Mifflinburg, PA and attended the University of Pittsburgh where she obtained a Bachelor of Arts degree in Communication Rhetoric and English Writing. She is a 2005 graduate of Loyola University New Orleans School of Law where she obtained her Juris Doctorate in Civil and Common Law Studies. While in law school, Ms. Hudock served as a Court Appointed Special Advocate in Orleans Parish Family Court. Ms. Hudock served as an Assistant Public Defender in Union County, PA prior to moving to Pittsburgh, PA to join the Allegheny County Office of the Public Defender in 2007.

In November 2015, Ms. Hudock became Deputy Director of the Juvenile Division. As the Juvenile Deputy Director, Ms. Hudock is responsible for supervising ten juvenile defenders who represent delinquent youth in all phases of the juvenile court process from detention hearings to probation violations. In February of 2021 the division expanded their services to include education advocacy.

In addition to her role in the Office, Ms. Hudock serves as a board member for the Juvenile Defender Association of Pennsylvania and as a member of the State Council for Interstate Juvenile Supervision.

**C. Christine Porter** is the new Education Attorney for the Juvenile Division of the Allegheny County Office of the Public Defender. Prior to joining the public defender's office in 2021, Christine practiced education law with a private firm in Seattle, where she represented students with disabilities and their families. She has also practiced disability and elder law with Neighborhood Legal Services in Pittsburgh and litigated employment discrimination cases as a partner with a small plaintiff-side firm in Seattle. While living in Seattle, Christine served on the boards of several nonprofits advocating for the rights of individuals with disabilities. She received her M.A. in Philosophy and J.D. degrees from the University of Washington.

**Laura McWilliams** grew up in Michigan, graduating from Wayne State University in 2003 with a bachelor's degree in fine arts. Ms. McWilliams spent time in Colorado and then Boston, and graduated from Suffolk University Law School in 2012. While in law school, Ms. McWilliams worked as an advocate for survivors of domestic violence. Ms. McWilliams began working at the Allegheny County Office of the Public Defender in 2013. She is currently a managing attorney working out of the Juvenile Division, where she advocates for using a holistic approach toward representation in order to improve case outcomes; enhance procedural justice; and move clients forward in their lives.



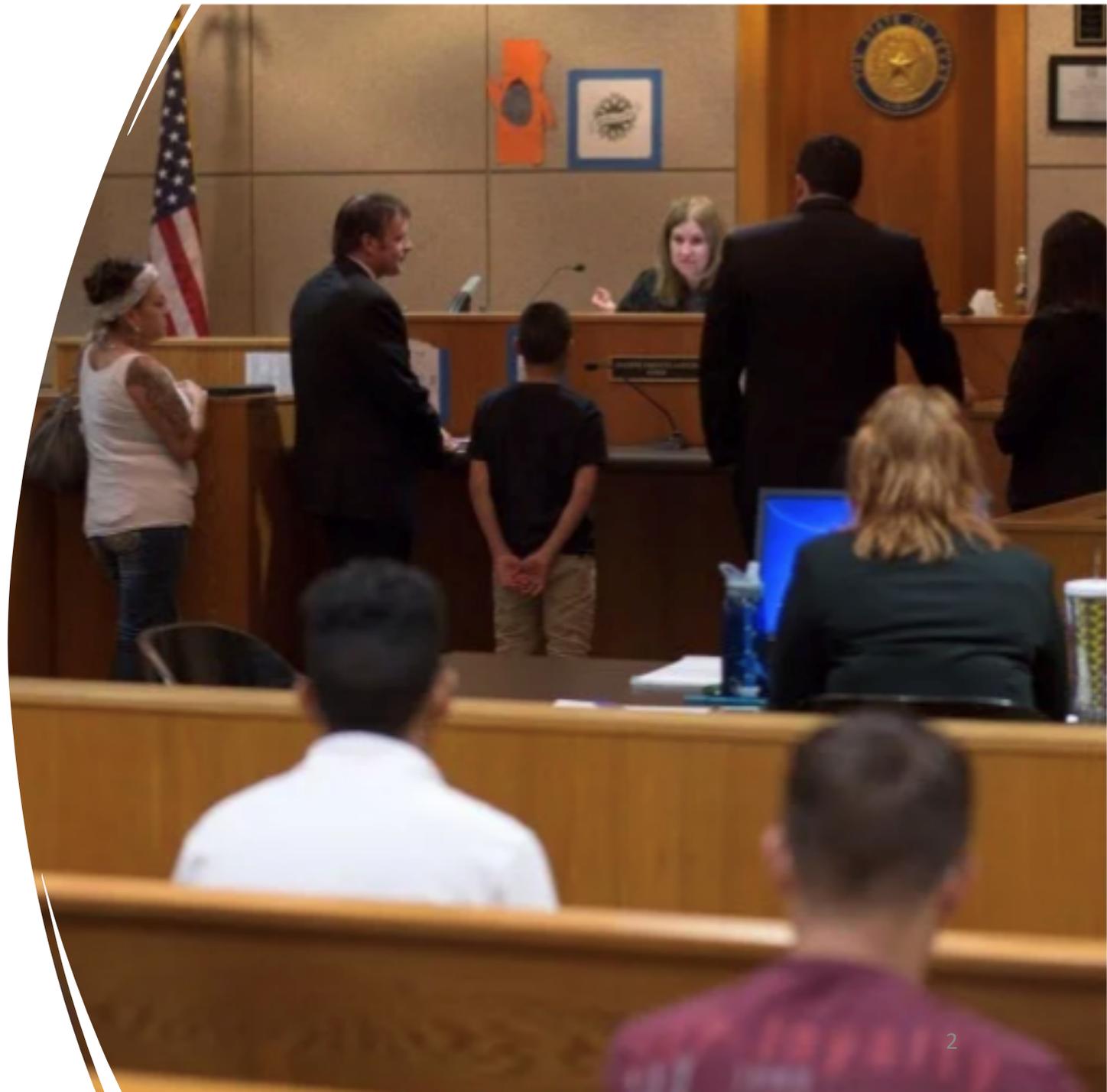
## Allegheny County Office of the Public Defender

- Rebecca L. Hudock, Esq.,  
Deputy, OPD Juvenile Division
- Laura McWilliams, Esq. ,  
Manager, OPD Juvenile Division
- Christine Porter, Esq., OPD  
Education Law Attorney

**Systemic Criminalization of  
Disabilities in Juvenile Justice**

# How Juvenile Behaviors go from the Classroom to the Courtroom

- Generally, kids end up in Court caught up in one (sometimes both) of two major systems:
  - Dependency (Office of Children Youth and Families) or
  - Delinquency (Juvenile Probation-kids charged with a crime)
- Holistic Educational Supports for Kids in Dependency Court
  - CYF Education Advocates
  - KidsVoice Education Unit
- Delinquency Court = no significant educational supports AND punishment for poor grades/attendance/behavior



# The Intersection of Schools and Juvenile Delinquency

- Racial Disparities
  - Pittsburgh Public Schools Police are the largest referral\* source for black girls in Allegheny County
  - In Allegheny County black boys are 7x more likely to be referred to Juvenile justice and black girls are 10x more likely than their white counterparts to be referred to juvenile justice.
  - PPS refers students to law enforcement more than in 95% of similarly sized cities.
- Disability Disparities in Juvenile Justice
  - Of the 57% of juvenile justice referrals in which data was available 45% of black boys that were referred to juvenile probation had an IEP and 26% of black girls had an IEP.
  - Between January 1, 2021 and March 13, 2021 42% of Public Defender clients had an IEP
    - As a comparison it is estimated that approximately 14% of public school students receive special education services

\*There are typically two ways that a child will become involved in the juvenile justice system: either the school will report an incident to the probation office (school referral) or the child will be arrested.

# Inadequate Behavioral Supports at School

We see students referred for school-based offenses who:

- Have had behavioral challenges for years yet were never evaluated
- Have IEPs but no Positive Behavior Support Plans

Does the student exhibit behaviors that impede his/her learning or that of others?

Yes The IEP team must develop a Positive Behavior Support Plan that is based on a functional assessment of behavior and that utilizes positive behavior techniques. Results of the functional assessment of behavior may be listed in the Present Levels section of the IEP with a clear measurable plan to address the behavior in the Goals and Specially Designed Instruction sections of the IEP or in the Positive Behavior Support Plan if this is a separate document that is attached to the IEP. A Positive Behavior Support Plan and a Functional Behavioral Assessment form are available at [www.pattan.net](http://www.pattan.net)

No

Other  
(specify):



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# School employees without the resources or training to support students with behavioral disabilities are instead referring students to school police.

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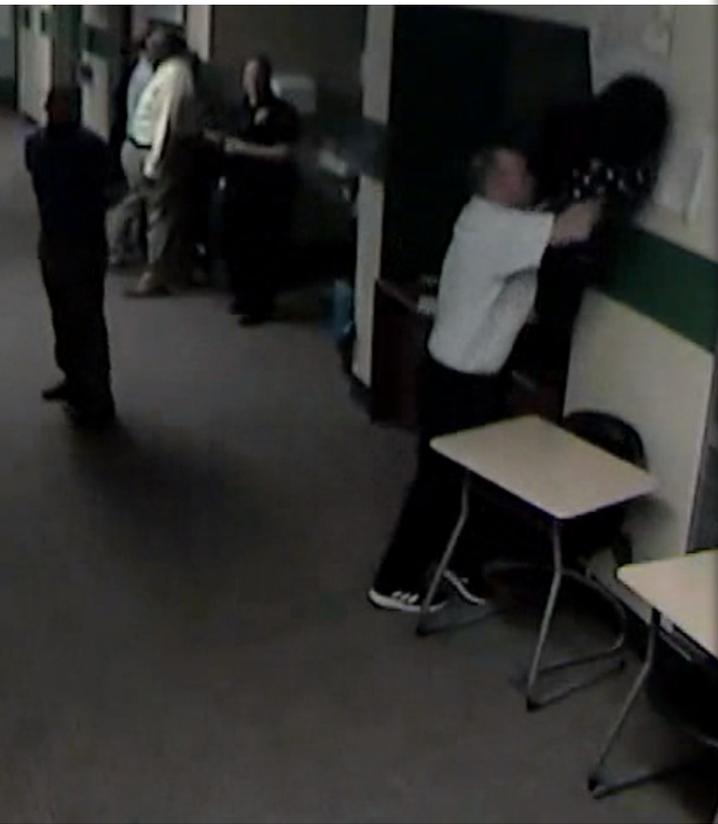
In Montour [School District], elementary students have access to a Brick Makerspace, filled with LEGOs and other building materials and equipment.

“They have a whole area based on artificial intelligence, and we hope that a computer turns on when we start it up in the morning,” Sto-Rox Principal Dalmas told Secretary of Education Rivera

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Year after year, Clairton faces cuts to teachers and staffing, old structures they can’t afford to fully repair and gaps in facilities and programming. “We’ve had to cut ourselves to the bone to survive,” Clairton board member Roger Tachoir

*-Failing the Future: Public Source*



we are struck. If hands are coming up -- because our procedure is very strict. Students are supposed to transition in a very specific way, with hands at their side, underneath the lights, quietly, not talking, and that was not the case in this situation.

- Q. So just the mere fact that she was raising her hands you're told to read that as a threat?
- A. A potential threat, yes.
- Q. So you're immediately to put that student in a manual hold?
- A. Right.
- Q. And the way you did it with [REDACTED] was you essentially pressed her up against the wall; correct?
- A. Well, using the wall is part of the hold process.

- Q. Her face was against the wall; correct?
- A. No, it would be her chest.
- Q. Her chest was against the wall, her face was right up against the wall?
- A. Right.
- Q. Were her hands behind her back?
- A. Correct.
- Q. Were you holding her arms?
- A. I was holding her arms in place.

# School-based Referrals

# Criminalization of an Identified Disability in School

## Problem Behavior(s)

Skipping Class  Physical Aggression  Out of Area  Property Destruction/Damage  Suspected D&A  
 Harassment (type) \_\_\_\_\_  Contraband &/or drug/alcohol possession  Elopement  
 Theft  Scanning Violation  Safety Violation (describe)  School Threat \_\_\_\_\_  
 Cell Phone Violation

## Perceived Motivation

 Star the primary motivator.

Unknown

Obtain:  Adult Attention  Peer Attention  Object  Activity

Avoid:  Adult Attention  Peer Attention  Object  Activity

## Staff Interventions Used (after initial attempts to interrupt and/or redirect)

Verbal Intervention  Time Out of Milieu  Modify Expectations  Physical Redirection  Remove Audience  
 Physical Restraint  LSI  ISA  Time with preferred staff (therapist/counselor/other)  other: \_\_\_\_\_

## Consequences

Referral to Administration  Communicate with Parents  Conflict Resolution  Loss of Privilege (POINTS)  
 Restriction of Movement  Return to Regular Program

## Administrative Actions

Suspension out of school  days from \_\_\_\_\_ to \_\_\_\_\_  Police Called  Restitution  
 Interagency/District Meeting  Parent Meeting  Magistrate  Level of Care Evaluation  Other: \_\_\_\_\_

## Incident description / Notes

During dismissal, students were talking together. A student mentioned that another student in \_\_\_\_\_'s class thought he would be a school shooter. \_\_\_\_\_ replied that he is not now but "I am on the verge of shooting up the school". Hoffman and myself talked to him on his way out to let him know that his comment was not appropriate and threats are taken seriously. Caparelli was notified immediately.



## Diagnostic Formulation:

1. Autism Spectrum Disorder, Level II
2. Bipolar Affective Disorder, Type 1, present episode provisionally euthymic
3. Attention Deficit Hyperactivity Disorder, combined type, moderate severity
4. Cannabis Use Disorder, mild to moderate

# Disability and Juvenile Probation

- A child is on probation until their judge decides they've complied with the terms of their supervision
- Supervision includes "appropriate" behavior in school
- Some judges have a "zero-tolerance" policy with school grades, behavior, and attendance
- Any school issues may be reported to the judge, often by a school-based probation officer or probation liaison
- Children have been removed from their home and placed in secure detention for missing one day of school!!!

From actual court orders:

## FURTHER ORDERS

It is Further Ordered that: Consent Decree extended until its 1 year date. Juvenile remain on EHM until released by this court Juvenile remain committed to the CISP as a condition of consent decree.

Juvneile comply with M/H evaluation and follow recommendations.

Juvenile attend school every day, every class and on time, only a doctors excuse is permitted.

If juvenile misses 1 day of school with a doctors excuse , juvenile be picked up and placed in Shuman.

Restitution remains due and oweing.

Juvenile attend school every day, every class and on time, only a written doctors excuse is permitted.

Juvenile has a cufew of 8pm daily.

If any issues, Probation to pick up juvenile and juvenile to be detained.

## FURTHER ORDERS

It is Further Ordered that: Juvenile remain committed to the CISP Program.

Juvenile remain on EHM.

Juvenile attend school every day and every class and on time, only a written doctors excuse is permitted.

Juvenile have D+A treatment and random urine screens 2 times a month.

Juvenile has a suspended commitment to an appropriate placement.



“The staff member then pulled resident X’s mask up and resident X pulled it down. Resident X kept pulling his mask down. At approximately 0839 hours resident X made threats to assault the staff member and being uncertain of resident X’s intentions, the staff member secured resident X in an upper torso assist. The staff member held resident X in a standing upper torso assist and in less than a minute resident X was transitioned to a seated upper torso assist. At approximately 0840 hours resident X was transitioned to a side assist. At approximately 0843 hours resident X was transitioned to a multiple person supine torso assist. Resident X was able to calm himself at approximately 0939 hours and the physical intervention was ended.”

## How disabilities are punished in juvenile justice facilities

- Children who have behavioral issues in school can lose "points" toward discharge from placement
- Children in placement who express urges to self-harm are given crayons in school instead of pencils
- Seclusion: Denial of in-person instruction and additional emotional supports
- Children who display aggression can be subjected to excessive isolation and violent physical restraints
- Standardized writing assignments to “process the offense”

# Education Issues in Youth Placements

Under the IDEA, students in juvenile justice facilities remain eligible to receive special education and related services and must receive FAPE while there.

34 C.F.R. §300.2(b)(1)(iv).

The LEA where the placement is located is responsible for eligible and potentially eligible students in the placement.

# Common Special Education Issues for Students in Delinquency Placements

- Failure to offer comparable services for an entering IEP
- Minimal transition plans
- Not always the Least Restrictive Environment
- Amending the IEP to reflect what is available rather than what the student needs: often no related services, no autistic support services, no 1:1 aides
- Failure to monitor progress
- Inadequate behavior support resulting in students “losing levels”
- Use of restraint for discipline (an issue for all students)

# Credit and Graduation Concerns



Youth sometimes exit placement with pieces of partial credit that are not enough to stay on track for graduation.



Some placements do not offer credit recovery or summer school options, leaving students who are academically behind with no way to catch up.



When a placement reports that a student needs to stay longer to finish their credits, judges will sometimes order the student to stay for that reason alone.

# Re-enrollment After Juvenile Justice Placement

**\*\*Districts cannot refuse to enroll a child based on a delinquency record.\*\***

**However, students face significant barriers when attempting to re-enroll in their home schools:**

- **Problems obtaining documentation needed for reenrollment**
  - For instance, schools requiring documents beyond the required “four in the door”
- **Student diversion to alternative education programs**
- **Over reliance on probation aftercare supervision to control students during the transitional period.**

**These manufactured barriers impede progress, frustrate kids and their families already experiencing educational disruption.**



## Education Advocacy Project Expansion funded through the Heinz Endowment

- Holistic Education Services
- Records review and coordinating 504/IEP review
- Educating parents about their rights
- Attending IEP meetings with children and parents
- Holding schools accountable when they refer kids with disabilities to the juvenile justice system
- Helping children succeed in school by ensuring positive supports are in place
- Transition planning for kids moving from placement back to their communities
- Enrollment assistance

## **School-Based Referrals of Students with Disabilities: Circumventing the Protections of Federal Disability Law**

Jenesis, an African American youth, was placed at an alternative school. While there, Jenesis was targeted multiple times for being “disruptive.” She was restrained for behavior as limited as skipping down the hall instead of walking. After Jenesis’s mother filed a complaint against the school, the treatment got worse. Her mother was also requesting an IEP for Jenesis, something she was eligible for, but the school continued to delay. A Pro Bono attorney was able to get involved. This attorney was able to transfer Jenesis to a regular public school and ensured she received an appropriate IEP. Now, Jenesis is doing well in school with no notable behavioral issues.

### **Background**

Public schools have become sites for the increased criminalization and surveillance of students, particularly for historically marginalized groups of students, including students with disabilities.<sup>i</sup> Federal laws exist to limit schools’ ability to exclude students from school for behaviors directly related to their disabilities. However, schools are using referrals to the juvenile justice system to accomplish what they otherwise could not do: facilitate removal of students from school for behaviors that in many cases is a manifestation of those students’ disabilities.

Arrests at school are often the first step these students take into the “school-to-prison pipeline,” a path which increases rates of recidivism and lowers graduation rates for those students. Pittsburgh Public Schools arrests students at eight times the rate of Philadelphia Public Schools.<sup>ii</sup> Overwhelmed school employees without the resources or training to properly support students with disabilities instead are referring these students to police, who are already working in the schools.

### **The Problem**

#### **#1 – Disproportionate numbers of Black Students and Students with Disabilities Referred to the Juvenile Justice System**

- Pittsburgh Public Schools referred to law enforcement at higher rates than students in 95% of similar U.S. cities (89 cities); for Black girls it is 95%, for Black boys it is 98%.<sup>iii</sup>

- Of the students for which data is available, 45% of Black boys referred to the juvenile justice system by Pittsburgh Public School police had an IEP and 24% of Black girls.
- In Allegheny County, school-based arrests are the main factor sending Black girls into the juvenile justice system, with Pittsburgh Public Schools as the single largest referral source for Black girls.

The high number of students with IEPs suggests that many students are not receiving appropriate educational services at school, especially when their behaviors are manifestations of their disabilities. When police officers are in schools, the temptation to refer students for behavior that could be better managed by trained educational professionals is great. Schools with police officers report significantly more arrests than schools without police.<sup>iv</sup>

## **#2 – Insufficient Behavior and Mental Health Supports for Students with Disabilities**

- We often see IEPs for students with significant behavioral needs at school that include no Positive Behavior Support Plans (“PBSPs”) or any individualized behavior support.
- For students returning from juvenile justice placements, many re-enter their community schools without PBSPs in place.
- Under Pennsylvania law, behavior support needs to be POSITIVE. We see many behavior goals and plans relying on outdated systems of negative reinforcement.
- We rarely see any related services in an IEP, even for students with significant mental health and behavioral needs. The IDEA requires schools to provide related services such as counseling, psychological services, and social work services when students on IEPs need those services to make progress at school.

## **#3 – Under Identification of Students with Disabilities**

Our project is seeing:

- Failure to identify students with disabilities despite obvious signs of disability. We see students who were never evaluated despite failing grades, multiple referrals for school-based behavior, parent expressions of concern,

- Students not being evaluated in all areas of suspected need, but instead identified under “Emotional Disturbance” with cursory assessments.
- **Overidentification** of students of color within the category of “emotional disturbance,” even when those students have diagnoses that might better explain their school-based behaviors, such as Autism.
- Students with Autism diagnoses not being appropriately identified by districts and not receiving Autistic Support Services.
- No speech and language evaluations for students who are struggling with communication at school and may have communication disorders.
- Lack of 504 plans for students with disabilities who need accommodations at school but do not need special education.

### **Recommendations**

- Require schools to perform Functional Behavior Assessments for all students with disabilities referred for school-based offenses, regardless of whether that student had an IEP or a Positive Behavior Support Plan (PBSP) in the past. Require FBAs to meet minimum standards.
- Provide screening for disability upon referral to the juvenile justice system or upon entry to detention. The results of the screening should be provided to parents/guardians and include a method for them to easily consent to a full evaluation under IDEA and Section 504 of the Rehabilitation Act.
- Districts should be required to track and make data publicly available about their referrals to law enforcement disaggregated by disability (including students covered only by Section 504/Chapter 15), race, and gender.
- School budgets should fund counselors, social workers, and school psychologists rather than school police and resource officers. Schools should be incentivized to become police-free schools. Remove probation officers from school sites to decrease harmful surveillance.
- Require the use of restorative justice principle and trauma-informed practices in schools. Eliminate zero tolerance discipline policies which result in school discipline and referrals to law enforcement at a higher rate.
- Recognize that students who need mental health services do not need to be referred to the juvenile justice system to obtain those services. Create and fund mental health coordinators to assist with locating community-based services for students not already involved in other state or county systems.

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<sup>i</sup> ACLU, “Bullies in Blue,” (2017), Megan French-Marcelin and Sarah Hinger.

<sup>ii</sup> Black Girls Equity Alliance, “Understanding and Addressing Institutionalized Inequity: Disrupting Pathways to Juvenile Justice for Black Youth in Allegheny County,” Philadelphia School District reported 187 arrests in 2019 and had an enrollment of 132,520, or 1.4 arrests per 1000 students. Pittsburgh School District reported 266 arrests with an enrollment of 22,934, or 11.6 arrests per 1000 students.

<sup>iii</sup> Ibid.

<sup>iv</sup> ACLU, “Cops and No Counselors, How the Lack of Mental Health is Harming Students,” (2020).

## **Education in Juvenile Justice Placements and Re-Enrollment Challenges**

### **Background**

Terrell, an African American youth, was a young student who entered a juvenile justice placement in May. By November, Terrell was nearly ready for discharge. He had made great strides in improving his behavior and only needed one more successful home pass before returning to his community and family. At his November review hearing, it was brought to the judge's attention that it was possible that Terrell's school credits might only transfer back to his home school if he finished the full grading period, which ended near the end of January. His home school could not or would not verify to the family that the credits would transfer. In the end, the judge ordered Terrell to stay in placement until January because that was the only way to ensure he'd get the credits. Despite displaying growth and progress towards rehabilitation and successfully completing everything that was asked of him, Terrell was forced to stay in placement, separated from his family, over Thanksgiving, Christmas, and the New Year. When Terrell was eventually released, it was to a school that could not provide the optimum outcomes for him.

Many youth in juvenile justice placements are students with disabilities. While they remain entitled to FAPE while in placement, many do not receive the services they need to succeed. Additionally, behavior that is a manifestation of disability sometimes keeps students in placements longer, with those students not receiving appropriate supports.

When these youth return to their home districts from juvenile justice placements, they often encounter significant barriers trying to re-enter their community schools. In addition to enrollment hurdles, they frequently find that they are off-track for graduation in their home districts. They may not have earned enough credits, only partial credits, or credits in the wrong courses. Too often, they also discover that they are behind in academic skills due to inadequate instruction during placement.

### **The Problem**

#### **#1 - Inadequate Education while in Placement**

The U.S. Department of Education has expressed concern that students with disabilities are not receiving the special education services or disability accommodations to which they are entitled in juvenile justice placements.<sup>i</sup>

- By some estimates, as many as 77.5% of youth in juvenile justice facilities are students who need special education services, yet many of those students are not identified.
- Although all youth must be assessed for educational needs when they enter a juvenile justice facility, in practice this does not always happen.<sup>ii</sup> When students

are assessed for educational needs upon entry, the assessments tend to be cursory and do not identify what the student needs for an appropriate education.

- A large percentage of children in placement have mental health conditions impacting their education. These students are rarely provided with related services or special education supports that would address those mental health needs, such as school-based mental health counseling or individualized behavior support from a behavior specialist.
- Many placements overuse restraint, using it in non-emergency situations and relying on it as a disciplinary device.
- Transition plans are inadequate in juvenile justice placements. Sometimes vocational training is removed as a consequence for behavior that might be a manifestation of a child's disability.
- Students who enter with IEPs are frequently not provided with comparable services while a new IEP is developed. IEPs are routinely amended within 30 days to **match what the placements have available rather than what the student needs**. Juvenile delinquency placements rarely provide 1:1 aides or Autistic Support Services. Many times, the student is not being educated in the Least Restrictive Environment.
- Ability for parent participation in IEP meetings is often minimal. For example, a parent or guardian may be invited to call in but not provided with a draft to look at during the call.

## **#2 - Credit and Graduation Concerns for Students in Juvenile Justice Placement**

- Some juvenile justice placements do not provide students with as many core class credits as their home schools might require for graduation.
- Youth in placement are sometimes required to stay until the end of a marking period so they can earn their credits despite having already completed the BARJ programming.
- Not all credits earned at juvenile justice facilities are accepted by a child's home school.<sup>iii</sup>
- Graduation requirements are different in each home district, and students are not often counseled about their options upon return.

### #3 - Re-enrollment Barriers after Juvenile Justice Placements

Students attempting to re-enter their neighborhood schools or other schools of choice after a delinquency placement often face significant challenges re-enrolling in school. In particular:

- Contrary to Pennsylvania Department of Education guidance, schools will sometimes insist on very specific documents for school enrollment. For example, schools have insisted that only a birth certificate can provide proof of age. These barriers have increased during the pandemic, when parents are unable to access many school offices in person.
- Districts will sometimes try to automatically enroll students in AEDY programs when they are returning from delinquency placements.

### Recommendations

Increase community-based services and supports to limit the need for residential placement of juveniles. Recognize that children who are placed in juvenile justice placements are more likely to reoffend than those who are provided services in their communities.<sup>iv</sup>

- Require a written educational exit plan as part of the initial entry to placement. This plan should allow for school entry within two days of release from placement.
- Eliminate the use of all non-emergency restraint and all forms of isolation in placement, both for students with and without disabilities. **Require transparency and public reporting of all instances of restraint.**
- Mandate receiving districts to hold a re-entry meeting while the student is still in placement but prior to that student's return and identify a point person to help with re-entry.
- Require schools associated with placements to award fractional credits to students who depart in the middle of a marking period.
- Fund educational and vocational counseling for students in placement, particularly with respect to their options for graduation, vocational training, and post-secondary opportunities.
- Simplify and standardize enrollment requirements for students returning from placement, especially when those students are returning to the same district.

- Enact legislation to mandate flexible graduation options for students experiencing educational disruption, including students returning from juvenile justice placements.

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<sup>i</sup> U.S. Department of Education, OSERS, Dear Colleague Letter, Dec. 5, 2014; U.S. Department of Education, OCR, Dear Colleague Letter, Dec. 8, 2014.

<sup>ii</sup> Title I Part D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk, 20 U.S.C. § 6436 (requiring state education agencies to establish procedures to ensure that youth are assessed to identify educational needs when they enter a juvenile justice facility, when practicable.)

<sup>iii</sup> While under 22 Pa. Code § 4.74 all credits earned in a public school **must** be accepted by another public school, some on-site schools at juvenile justice facilities are private schools. Returning students may run into issues getting public schools to accept private school credits.

<sup>iv</sup> Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings, citing Brenda, B. B. & Tollet, C. L. (1999). A study of recidivism of serious and persistent offenders among adolescents. *Journal of Criminal Justice*, 27(2), pp. 111–126.