



THE SUPREME COURT OF PENNSYLVANIA
1818 MARKET STREET
37TH FLOOR
PHILADELPHIA, PA 19103

RONALD D. CASTILLE
CHIEF JUSTICE

(215) 560-5663
FAX: (215) 560-5807

A Progress Report on Implementation of the Recommendations of the Interbranch Commission on Juvenile Justice

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In August 2009, the Pennsylvania Supreme Court joined with the Executive and Legislative branches to create the Interbranch Commission on Juvenile Justice (ICJJ). Its mandate was to investigate the juvenile justice scandal in Luzerne County and to develop appropriate recommendations for reform. The ICJJ was staffed, supported and financed by the Administrative Office of Pennsylvania Courts (AOPC).

After 11 days of testimony from 68 witnesses and numerous deliberative sessions, the ICJJ developed a comprehensive account of what occurred in the courtrooms of Luzerne County and developed recommendations to prevent it from happening there or in any other county.

In May 2010, the ICJJ delivered its report with recommendations that it believed would further strengthen and preserve the juvenile justice system.

This Court has taken these recommendations seriously. Over the past nine months, the Supreme Court, its various committees and the AOPC have implemented, or are in the process of implementing, important reforms recommended by the Commission.

Prior to the work of the Interbranch Commission, in February 2009, the Supreme Court appointed Senior Judge Arthur Grim of Berks County, an acknowledged expert in juvenile justice, as the Court's Special Master. Judge Grim was assigned to review each juvenile case handled by former Luzerne County Common Pleas Judge Mark Ciavarella and then report to the Supreme Court whether those cases were properly adjudicated. Judge Grim reviewed every case handled by Ciavarella and decided that he had little to no confidence that juveniles who appeared before Judge Ciavarella received a fair adjudication. As a result of this review, this Court took the unprecedented step of ordering the expungement of every juvenile charge in approximately 4,000 juvenile cases handled by Ciavarella. We have also recently appointed Judge Grim to preside over the legislatively-created \$500,000 victim reimbursement fund designed to compensate the victims of juvenile crime in Luzerne County. That process is ongoing.

Some of the reforms suggested by the ICJJ resulted in judicial rule change proposals for consideration by the Supreme Court and its various advisory rules

committees. Our rules committees serve the court system, attorneys and the public by evaluating, in an orderly and deliberative process, proposed rules or changes to existing rules. Proposals are reviewed by the various committees and typically posted in the Pennsylvania Bulletin and on the Judiciary's website for public comment. After committee review of the comments and possible further deliberations, the committees report rule proposals to the Supreme Court, which considers them for adoption.

Several rules have already been through the public comment period and are now back before the Juvenile Court Procedural Rules Committee for final review by the Committee and referral to this Court. They are:

- Modification of Rules 242, 394, 406, 512 and 800 which address the role of the district attorney in prosecuting juvenile cases.
- New Rule 139 which addresses the use of restraints on a juvenile during a court proceeding.
- Modification of Rule 151, which addresses the presumption of indigence for juveniles.
- Modification of Rules 241, 242, 311, 312, 500, 600, 610 and 632, which address the rights of victims in juvenile cases.
- Modification of Rules 120, 800, 1120, 1800 and new Rule 195, addressing the authority, duties and training of juvenile probation officers.
- Modification of Rule 512 which would require the juvenile court judge to state on the record his or her findings and conclusions of law when placing a juvenile out-of-home and requiring the "least restrictive placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation and welfare."

A proposed rule change to Rule 152, presently in the public comment phase, generated a great deal of debate before publication. The rule addresses the ability of a juvenile to waive counsel, similar in some ways to the right of an adult to waive counsel at an adult trial. It explains a proposed procedure that may be required before counsel can be waived. The comment period for this proposed change ends April 27, 2011.

Another proposal that has made its way through the committee process and is presently before the Supreme Court is the critical issue of whether, and in what manner, a juvenile may admit to the commission of the charges leveled against him or her. Proposed Rule 407 sets forth specific questions that the juvenile must answer, in detail, before a court can accept what is, in effect, a guilty plea.

The Supreme Court Appellate Court Procedural Rules Committee has published and received comment to proposed amendments to Appellate Rules 102 and 311. These rules would "fast track" or expedite appeals of trial court decisions that transfer or deny transfer of a juvenile matter to adult court or, from adult court to juvenile court. Generally, these cases involve the most serious crimes in the Crimes Code or criminal conduct alleged against a juvenile who is beyond the reach of rehabilitation in the juvenile court system.

The Supreme Court has ordered an amendment to the Rules of Judicial Administration that would require any judge who receives any notice that he or she is the target of an investigation by law enforcement to notify the Supreme Court of such investigation within five days. Such a rule would allow the Supreme Court to take immediate action if a judge is facing an investigation and potential charges in order to assure fair and impartial justice in the courtroom.

The Supreme Court has taken other action in addition to the ongoing review of our procedural rules. Following revelation of the federal charges against former Luzerne County Judge Michael Conahan and Judge Ciavarella and our suspension of the two judges from all judicial duties, this Court ordered the Luzerne County court system to cooperate fully with Judge Grim. We also required monthly reports from then President Judge Chester Muroski concerning measures taken on a local level to address this situation. The Supreme Court now receives bi-monthly reports from current President Judge Thomas Burke.

As an aside, both Luzerne President Judges Muroski and Burke should be commended for their local efforts in addressing this tragedy and its consequences. Additional excellent efforts to address the situation in Luzerne are catalogued in the Oct. 14, 2010, [report of the Luzerne County Juvenile Justice Task Force](#). This report, in my estimation, stands as a county model addressing almost every aspect of the treatment of juvenile offenders by each agency that has responsibility in this area.

Another action taken by the Supreme Court was the October 2010 promulgation of the Code of Conduct for Judicial Employees. This Court specifically mandated the addition of a paragraph addressing Pennsylvania's Whistleblower Law (43 P.S. §1421) which protects employees from retaliation for good faith reporting of wrongdoing in the court system and participation in any ensuing investigation. Pennsylvania's judicial employees (approximately 15,000) now have an explicit duty to report any violation of the Code of Conduct or any policy of the court system without fear of retaliation.

As suggested in the ICJJ report, the Supreme Court also created a study committee chaired by Superior Court Judge Anne Lazarus – to review the existing canons of judicial conduct and the 2007 Model Code of Judicial Conduct promulgated by the American Bar Association. While the conduct of Conahan and Ciavarella may have violated ethical rules, in this case what is more egregious is that their conduct was criminal in nature. It doesn't really take much ethics training to know not to commit a crime, especially one of this magnitude.

While this Court has no direct authority over the Judicial Conduct Board, an independent agency established by the Pennsylvania Constitution, it should be noted that the Board has overhauled its rules, a process it began during the ICJJ hearings. The Board has now contracted with the American Bar Association for an independent review of its procedures. The AOPC provided start-up funding for this review. Copies of the report will be issued to both the Conduct Board and the Supreme Court and this Court will publicly release it.

Many of the ICJJ recommendations referenced suggested actions by the Juvenile Court Judges Commission (JCJC). This statutorily created commission consists of 12 juvenile court judges from Pennsylvania who have an enormous font of knowledge and experience in juvenile justice. The chair of the ICJJ, Senior Common Pleas Court Judge John M. Cleland of McKean County, was a JCJC member and Judge Grim sits as chair of the JCJC. Our administrative staff and I met with members of the JCJC in October 2010 to discuss areas where we could cooperate in addressing applicable recommendations of the ICJJ.

One of the most important areas of preliminary agreement is to exchange data regarding juvenile adjudications. Through data collection and analysis, it may be possible to discover at an earlier date aberrational judicial conduct or procedural anomalies before they manifest themselves in a tragedy such as occurred in Luzerne County.

All of these efforts demonstrate that Pennsylvania's Unified Judicial System and the Supreme Court have not let this report "gather dust on a shelf." Some of the ICJJ recommendations may, however, be unattainable in the present system because of fiscal or practical reasons. For example, a constitutional amendment addressing the Court of Judicial Discipline is difficult to enact, and mandatory training for judges may be an expensive solution of limited necessity.

Despite this tragedy, Pennsylvania's juvenile justice system has long been considered one of the best in the nation. There are many individuals who work in the system who are dedicated to the welfare of juveniles who become involved in the juvenile justice system. These individuals have worked diligently to make the system a success. Unfortunately, two judges in Luzerne County, by their criminal conduct, have caused an unimaginable taint to the laudable efforts of those good people and to Pennsylvania's juvenile justice system as a whole. Recognizing that, my colleagues on the Supreme Court and I, as well as all others who are part of the Judiciary, will continue to improve the juvenile justice system in every feasible way and provide further reports as we progress.

Our work will continue.

On behalf of the Pennsylvania Supreme Court,
Ronald D. Castille
Chief Justice of Pennsylvania