



# Lessons from Luzerne County: Promoting Fairness, Transparency and Accountability

Recommendations to the  
Interbranch Commission  
on Juvenile Justice

Juvenile  
Law advancing the rights and  
well-being of children in jeopardy  
Center

# Executive Summary

Pennsylvania's juvenile justice system protects the public by providing for the supervision, care, and rehabilitation of children who commit delinquent acts through a system of balanced and restorative justice. The system is designed to meet those goals in the least restrictive way, disrupting the child's life no more than necessary in order to effectively intervene. It is expected to operate in a fair and unbiased manner. In most Pennsylvania counties, these purposes are achieved. In Luzerne County, however, the system worked not for the benefit of the children or community, but for the financial gain of two judges.

State records show that between 2003 and 2008, approximately 50 percent of juveniles appeared in Luzerne County Juvenile Court without benefit of counsel – nearly ten times the state average. Virtually all of these unrepresented juveniles were adjudicated delinquent, many for acts so minor and trivial that in most counties these charges would never have even made it to juvenile court. Of those youth without counsel who were adjudicated delinquent, nearly 60 percent were sent to out-of-home placements. The state data show that former judge Mark Ciavarella presided over more than 6,500 cases, leaving thousands of children and parents feeling bewildered, violated and traumatized. Luzerne County was a toxic combination of for-profit facilities, corrupt judges, and professional indifference.

In October 2009, in an unprecedented opinion, the Pennsylvania Supreme Court vacated Ciavarella's adjudications of delinquency made between 2003 and May 2008. Just three months later, Special Master Arthur Grim ordered that all cases heard by former Judge Ciavarella were to be dismissed. In providing relief, the Supreme Court restored integrity to Pennsylvania's juvenile justice system and gave hope to youth who suffered enormous harm at the hands of corrupt judges. However, it was not just the judges who failed these youth; the system failed at

numerous levels. District attorneys, public defenders, juvenile probation officers, the state Judicial Conduct Board, private attorneys and other court personnel—everyone connected to the juvenile justice system in Luzerne County failed these children. What safeguards, policies and methods of accountability permitted this toxic environment to flourish? How can we prevent another Luzerne tragedy? How can we make sure that Pennsylvania’s juvenile justice system dispenses justice equally and with the same high standards in every county? This report aims to answer these questions.

The Luzerne County juvenile court showed that Pennsylvania’s current mandates alone are insufficient to ensure that youth are treated fairly and that the law is followed. Reforms must begin with the right mandates, but they must also be accompanied by accountability and transparency. The rule of law is meaningful only when it is enforced, obeyed and documented so that it is evident to all citizens.

Juvenile Law Center has worked diligently to help restore justice to the families of Luzerne County and is in a unique position to provide perspective and recommendations to the Interbranch Commission so that we never again find ourselves asking how this could have happened. The recommendations we propose are organized under six topic areas, each representing a chapter:

- Ensuring Access to Counsel
- Instituting Meaningful Appellate Review
- Increasing Transparency and Accountability in the Juvenile Justice System
- Reducing Referrals to the Juvenile Justice System
- Ensuring Respectful and Appropriate Treatment of Youth in Detention or Placement and in Court
- Reducing the Consequences of Juvenile Records

Each chapter addresses a broad reform goal within the juvenile justice system. Within each chapter, Juvenile Law Center has identified key next steps to implement the recommendation. While no single recommendation will prevent future scandals or miscarriages of justice like those that occurred in Luzerne, Juvenile Law Center’s recommendations together will ensure that the Commonwealth’s children will benefit from the rule of law. We hope that leaders in the legislature, judiciary, and Governor’s office will recognize the systemic failures that were brought to light by the Luzerne judicial corruption scandal and enact measures to guarantee the rights of all children in Pennsylvania’s juvenile justice system.

# Recommendations

## Chapter One

### Ensuring Access to Counsel

*Juveniles need the guidance of a lawyer to ensure that they are afforded their constitutional rights during trial and are not unnecessarily incarcerated or improperly transferred to adult criminal court. The following recommendations will ensure that Pennsylvania youth are given effective representation.*

#### **1.1 Establish an unwaivable right to counsel for juveniles.**

*Next step:* The General Assembly should amend the Juvenile Act to prohibit the waiver of counsel.

*Next step:* The Pennsylvania Supreme Court should modify Rule of Juvenile Court Procedure 152 to prohibit juvenile waiver of counsel.

#### **1.2 Establish a state-based funding stream for juvenile indigent defense.**

*Next step:* The General Assembly should establish a dedicated funding stream for indigent juvenile defense that does not depend on counties' willingness to support this constitutionally mandated right to counsel.

#### **1.3 Assume all juveniles are indigent for the purpose of appointing counsel.**

*Next step:* The General Assembly should amend the Juvenile Act to provide that the right to court-appointed counsel shall not depend on parents' income.

*Next step:* The Pennsylvania Supreme Court should amend Rule of Juvenile Court Procedure 151 to instruct courts to presume indigence of juveniles for the purpose of appointment of counsel.

#### **1.4 Implement an appointment system for counsel that avoids the appearance of impropriety.**

*Next step:* The Pennsylvania Supreme Court should work with the Juvenile Defender Association of Pennsylvania to reduce judges' appointments of counsel who appear before them.

## Chapter Two

# Instituting Meaningful Appellate Review

*Juveniles who wish to challenge their juvenile court orders as unlawful or unjust or otherwise inappropriate need opportunities to appeal what happened in juvenile court. In the adult system, this would be done through: 1) motions to the trial court to reconsider a verdict or sentence; 2) direct appeal, that can challenge the verdict or sentence; or 3) post-conviction proceedings, which can be made after the time for direct appeals has lapsed. The following combination of recommendations will provide meaningful opportunities for youth, through counsel, to challenge verdicts (adjudications) or sentences (dispositions) before taking an appeal, on appeal, and after the time for direct appeal has lapsed.*

### **2.1 Require juvenile court judges to state reasons for disposition on the record.**

*Next step:* The General Assembly should amend the Juvenile Act to require juvenile court judges to state on the record how the disposition ordered furthers the goals of the Juvenile Act and the principles of balanced and restorative justice; and if the disposition is an out-of-home placement, why there is a “clear necessity” to remove the child from the home.

*Next step:* The Pennsylvania Supreme Court should promulgate changes to Rules of Appellate Procedure and Rules of Juvenile Court Procedure to require Juvenile Court judges to state on the record how the disposition ordered furthers the goals of the Juvenile Act and the principles of balanced and restorative justice; and if the disposition is an out-of-home placement, why there is a “clear necessity” to separate the child from the home.

### **2.2 Enact robust post-dispositional relief mechanisms to provide relief to juveniles before and after appeal.**

*Next step:* The General Assembly should amend the Juvenile Act to create meaningful avenues of post-dispositional relief for juveniles adjudicated delinquent similar to adult post-conviction remedies.

*Next step:* The Pennsylvania Supreme Court should promulgate changes to Rules of Appellate Procedure and Rules of Juvenile Court Procedure to describe the process for seeking pre-appeal post-dispositional relief for juveniles adjudicated delinquent by adopting proposed Pa.R.J.C.P. 616 Post-Dispositional Procedures (reserved).

### **2.3 Implement mechanisms to ensure juveniles know of and can take advantage of their rights to appeal.**

*Next step:* The Pennsylvania Supreme Court should promulgate Rule of Juvenile Court Procedure 616 to include a form entitled “Notice of Right to Seek Post-Dispositional Relief,” similar to Wisconsin’s Form JD-1757, “Notice of Right to Seek Post-Judgment Relief.”

## **2.4 Provide for a system of trained counsel available to represent juveniles in appeals.**

*Next step:* The General Assembly should provide funding to both create new positions for juvenile public defenders specializing in appellate advocacy, and for the proper initial and ongoing training of these attorneys.

## **2.5 Allow stays of disposition in appropriate cases.**

*Next step:* The General Assembly should amend the Juvenile Act to provide for stays of disposition in appropriate situations.

*Next step:* The Pennsylvania Supreme Court should promulgate changes to Rules of Appellate Procedure and Rule of Juvenile Court Procedure 617 to delineate the standard that courts should use for determining when a stay of disposition is appropriate.

## **2.6 Expedite appeals from delinquency proceedings.**

*Next step:* The General Assembly should amend the Juvenile Act to declare that appeals for juveniles adjudicated delinquent take no longer than 90 days to complete from the time of filing the initial notice of appeal, through briefing, argument and decision.

*Next step:* The Pennsylvania Supreme Court should promulgate changes to Rules of Appellate Procedure and Rules of Juvenile Court Procedure to delineate the timeline for each step of the appeals process (not to exceed 90 days in total).



## Chapter Three

# Increasing Transparency and Accountability in the Juvenile Justice System

*Juvenile courts have traditionally been closed to the public to protect privacy – unfortunately, that provision offers little or no outside monitoring to ensure that youths’ rights were not violated. These recommendations will provide for more transparency and accountability within the walls of the juvenile court.*

### **3.1 Make juvenile courts presumptively open to the public.**

*Next step:* The General Assembly should amend the Juvenile Act to provide that delinquency proceedings shall be open to the public, with a right of the juvenile or any party to petition the court to close the proceedings for good cause.

*Next step:* The Pennsylvania Supreme Court should amend Rule of Juvenile Court Procedure 129 governing open proceedings to provide that delinquency proceedings shall be open to the public and to set forth the procedures whereby the juvenile or any other party to the proceeding may petition the court to close the proceedings.

### **3.2 Ensure accountability through an ombudsman to monitor the court system and provide for adequate data collection and reporting.**

*Next step:* The Judicial or Executive Branch should establish an ombudsman office at the state level to monitor and investigate juvenile court practices.

*Next step:* The newly-established ombudsman office should develop a data analysis protocol that detects and flags unusual trends in county juvenile court data.

*Next step:* Local courts and community groups should be encouraged to develop their own ‘court watch’ programs or designate local ombudsman.

### **3.3 Amend the Pennsylvania Constitution to enhance investigatory procedures and public reporting requirements for the Judicial Conduct Board.**

## Chapter Four

# Reducing Referrals to the Juvenile Justice System

*Schools are routinely using the juvenile justice system to discipline their students by referring youth to law enforcement. This results in more youth entering the juvenile justice system and fewer youth benefiting from diversion programs. The following recommendations will propose strategies to reduce the number of youth referred to juvenile court from schools.*

**4.1 The Pennsylvania House of Representatives should adopt the proposed resolution requiring the Legislative Budget and Finance Committee to study the use of school-wide positive behavioral supports in public schools.**

**4.2 The Governor should provide funding for the Juvenile Court Judges' Commission to establish standards tied to a grant-in-aid program to enable juvenile courts to establish collaborative programs to limit school-based referrals.**

*Next step:* The Juvenile Court Judges' Commission should develop standards and create a grant-in-aid program that will encourage juvenile court judges to create collaborative committees to support at-risk students, end unnecessary and inappropriate school referrals and expand the available range of diversion programs.

**4.3 The General Assembly should enact legislation to minimize the effects of school-based zero tolerance policies and oppose legislation that would unnecessarily increase school referrals to juvenile court.**

*Next step:* The General Assembly should enact legislation to minimize the net-widening effects of zero tolerance policies.

*Next step:* The General Assembly should oppose legislation that promotes zero tolerance policies by requiring police notification of school-based incidents.



## Chapter Five

# Ensuring Respectful and Appropriate Treatment of Youth in Detention or Placement and in Court

*In some counties, juveniles are routinely shackled and handcuffed while in the courtroom; and if they are found guilty they can be placed in for-profit facilities where the emphasis is on profitability. These recommendations seek to ensure youth are treated respectfully and appropriately during court and do not become commodities for trade.*

### **5.1 Prohibit the handcuffing and shackling of youth in juvenile court.**

*Next step:* The General Assembly should amend the Juvenile Act to prohibit the use of mechanical restraints on juveniles in court absent a clear public safety concern.

*Next step:* The Pennsylvania Supreme Court should amend the Rules of Juvenile Court Procedure to prohibit the use of mechanical restraints on children during juvenile court proceedings, set forth criteria to guide judges in determining whether such restraints are necessary in the interests of public safety, and guarantee the juvenile's opportunity to contest the use of restraints at a hearing.

### **5.2 Prohibit the use of for-profit facilities for juvenile detention and placement.**

*Next step:* The General Assembly should amend the Juvenile Act to expressly prohibit the use of for-profit detention centers, and the Department of Public Welfare should issue regulations to enforce the ban.

## Chapter Six

# Reducing the Consequences of Juvenile Records

*Juvenile court records have long-lasting effects on youth and their future educational and employment goals. These recommendations seek to reduce those collateral effects of juvenile records and simplify the record expungement process.*

### **6.1 Limit the public availability and collateral consequences of juvenile records.**

*Next step:* The General Assembly should amend the Juvenile Act to limit the public availability of juvenile records including a provision limiting the use of juvenile records to restrict youth employment and educational opportunities.

*Next step:* The General Assembly should introduce legislation to limit the ability of private databases to gain access to juvenile arrest and disposition information.

### **6.2 Implement procedures to facilitate expungement of juvenile records.**

*Next step:* The Pennsylvania Supreme Court should amend the Rules of Juvenile Court Procedure to ensure that expungements occur automatically in most cases, without requiring that a petition be filed by the juvenile; the Rules should also provide sample petitions or forms for filing in those cases where automatic expungement is not available.

*Next step:* The General Assembly should amend the Pennsylvania Crimes Code to provide that juvenile summary offenses be automatically expunged six months after the juvenile has been discharged from court supervision.