



ADVANCING
THE FAIR
DELIVERY OF
JUSTICE IN
PENNSYLVANIA

Pennsylvania Interbranch Commission
for Gender, Racial, and Ethnic Fairness

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16 years ago...

the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System completed its study and issued a voluminous report of its findings and recommendations. Following a thorough review of the report, the **three branches of Pennsylvania government joined together a year later to establish the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness.** The mission was to carry out the report's recommendations and promote fairness in the Commonwealth's justice system. With its customary vigor, the Commission continues to implement innovative programs designed to promote diversity and non-discrimination in our courts. This book describes some of the Commission's recent initiatives.

Although we are **proud of our successes** in laying the groundwork for what must be done to establish equity in our justice system, we are acutely aware that **there is much more to be accomplished.** This includes setting in place monitoring procedures and systems to ensure fairness in our courts, and achieving additional statewide reforms in such areas as indigent defense, pre-trial detention, capital punishment and immigration. The Commission is thankful for and acknowledges the commitment of our Supreme Court and the other two branches of government to equal treatment of all Pennsylvania residents. We believe that it is incumbent upon all of us, however, as individuals, to **treat each other with respect and dignity,** regardless of race, ethnicity, gender, sexual orientation/identity or other status. The entire community benefits from a fair and just society.

Criminal Justice

Improving Fairness in Pennsylvania's Criminal Courts

The task of the Criminal Justice Committee is to reduce racial, ethnic, and socio-economic disparities throughout Pennsylvania's criminal justice system, through research, advocacy, legislation, training, and collaboration with the three branches of government and other statewide and local entities.

Capital Punishment

Implementing one of the key recommendations of the 2003 study by the Supreme Court, the Interbranch Commission contracted with Penn State University's Justice Center for Research to conduct the first statewide study of the administration of the death penalty in Pennsylvania. The Criminal Justice Committee oversaw the work of researchers who identified numerous racial, ethnic, socio-economic, and geographic disparities in the capital justice system.

The Committee also participated in a second, broader study of the capital punishment system by the Pennsylvania Joint State Government Commission. This study found serious constitutional deficiencies in the system, noting its exorbitant cost; lack of statewide funding for indigent capital defense;

\$262,524

the approximate increased cost of housing an inmate in a capital case unit over the average length of stay (17.49 years) in comparison to the cost of housing an inmate in the general population

—Joint State Government Commission, *Capital Punishment in Pennsylvania: The Report of the Task Force and Advisory Committee*

[D]ifferences among counties in death penalty outcomes, and the effects of other variables, were the largest and most prominent differences found in our study. In fact, this finding is consistent with a major theme in the social science literature on sentencing in general, which documents important differences among local courts in sentencing severity and in the effects of difference variables like race and ethnicity."

"We also found notable differences in death penalty outcomes based on the type of legal representation afforded a defendant. Specifically, **defendants with privately-retained attorneys were 4-5% less likely to receive the death penalty**, while defendants represented by public defenders were **5-7% more likely to receive the death penalty.**"

"Cases with White victims were more likely (8%) to receive the death penalty, while **cases with Black victims were less likely (-6%) to receive the death penalty, regardless of the race or ethnicity of the defendant.**"

—*Capital Punishment Decisions in Pennsylvania: 2000-2010, Implications for Racial, Ethnic and Other Disparate Impacts*



wide discrepancies among counties in critical prosecutorial decisions, such as initial charging and plea bargaining; lack of procedural safeguards to protect the mentally ill; and disparate outcomes based on the victim's race and the type of legal representation.

The Committee has proposed legislation and changes in court rules to address the deficiencies in the system found by both studies.

Bail and Legal Financial Obligations

In its effort to reduce mass incarceration, the Committee produced *Ending Debtors' Prisons in Pennsylvania* in 2017. This guide is designed to help ensure that low-income defendants are not incarcerated for financial reasons alone, such as failure to pay fines or other legal financial obligations, or due to the imposition of a financial condition of bail.

Although debtors' prisons repeatedly have been decried as unconstitutional, there is a growing concern nationwide that state courts continue to incarcerate low-income defendants due solely to their inability to pay financial obligations. These defendants are regularly incarcerated in our nation's jails, contributing to the explosion of the country's jail population. Since 1983, the number of annual admissions to jails across the country has almost doubled, from six million to 11.7 million in 2013.

—Ending Debtors' Prisons In Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform

In addition to publishing its guide, the Committee drafted new statewide court rules regulating the collection of legal financial obligations from indigent defendants, and new local rules to reduce the use of cash bail by state court judges. The Committee has also proposed legislation to address these problems, and has educated judges and lawyers about the availability of alternative sanctions for low-income Pennsylvanians.

Indigent Defense

Overhauling Pennsylvania's poorly functioning and underfunded indigent defense system is a top priority for the Criminal Justice Committee in the coming year. Pennsylvania is the only state in the country that provides no statewide financial support for its indigent defense system, in clear violation of the U.S. Supreme Court decision in *Gideon v. Wainwright*. The Committee is collecting data and leading an advocacy campaign to reform the system.

Pennsylvania is generally **not fulfilling its obligation to provide adequate, independent defense counsel to indigent persons.**

Contributing factors include the Commonwealth's failure to provide sufficient funding and other resources, along with a lack of statewide professional standards and oversight. In addition, efforts to improve the indigent defense system have been impeded by a lack of reliable, uniform statewide data collection.

*—Joint State Government Commission
A Constitutional Default: Services to Indigent Criminal Defendants in Pennsylvania*

Equal Opportunity and Diversity

Diversifying the Legal Profession and Eradicating Bias in the Pennsylvania Courts

The guiding principle of the Equal Opportunity and Diversity Committee is to increase diversity in the legal profession and the courts, create policies and procedures to address discriminatory behavior in the courts, and eliminate bias throughout the justice system. From the time of its establishment, the Committee has prioritized the development of a framework within which victims of discrimination in the courts could seek justice.

UJS Policy and Codes of Conduct

In 2007, the Committee drafted and submitted to the Supreme Court the first Policy on Equal Employment Opportunity and Non-Discrimination for Pennsylvania's Unified Judicial System, along with grievance procedures for victims of court-related discrimination. The Court enacted the policy and grievance procedures in 2008.

The UJS Policy prohibits "actions...that cause an individual or a group of individuals to be denigrated or treated less favorably than another person or group because of one's **race, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, or religion.**"

The Committee then drafted proposed amendments to the Judicial Code of Conduct and the Rules of Professional Conduct to specifically prohibit discrimination and harassment in the court system by judges and lawyers. In 2013, the

Court approved the Committee's proposed amendments to the Judicial Code of Conduct, but the corresponding proposed amendments to the Rules of Professional Conduct remain under consideration by the Disciplinary Board and the Court. Bias against women of color has been the subject of several programs the Committee has conducted on intersectionality and the special challenges that women of color face in the legal profession.

Diversity in the Court System

The Committee is also working to improve diversity in the court system. The Committee successfully advocated for the inclusion of a voluntary demographic check-off box on law license applications and renewals for all Pennsylvania attorneys. The Disciplinary Board began collecting this data in 2018, which will be used to establish a baseline from which to monitor the progress of diversity efforts in the profession.

Additionally, between 2008 and 2014, the Committee produced three guides

The court system can reap the same benefits corporations across the country have discovered with diversity initiatives - namely **fresh ideas from people with different backgrounds, increased productivity among workers, increased credibility** among its diverse constituents, and an enhanced ability to hire qualified, diverse workers.

*—Creating a Diverse Workforce
in the Pennsylvania Courts:
A Manual for Success*



Honorable Kim Berkeley Clark (right) of the Common Pleas of Allegheny County appointed LaTammie D. Bivins, Esq., to the Juvenile Division of Allegheny County Office of Conflict Council

for diversifying the legal profession, the judiciary, and the court workforce. The *Diversity Recruitment Resource Manual* was designed to remedy demographic imbalances in judicial staffing and court appointments. *Creating a Diverse Workforce in the Pennsylvania Courts: A Manual for Success* instructs judges and court administrators on how to develop an effective diversity program, addressing recruitment, retention, and training. Finally, *Creating a Diverse Bench in Pennsylvania* is a comprehensive guide for attorneys interested in seeking judicial office in Pennsylvania.

"[Potential judicial candidates] must consider whether [they] are **qualified by virtue of [their] intellectual ability, experience, temperament, work ethic, and reputation for fairness and integrity.** It is an honor to serve as a judge. In order for our justice system to work as it should, the citizens of Pennsylvania must have confidence that the judges they elect are well-qualified and of the highest integrity."

—*Creating a Diverse Bench in Pennsylvania*

The guides have been distributed widely across the state and form the basis for the training programs the Committee conducts for the judiciary and the bar.

Implicit Bias Training

Most recently, the Committee has focused on implicit bias training for judges and lawyers throughout the state. The Committee is collaborating with the Allegheny County Bar Association on a pilot program to incorporate implicit bias training into all Continuing Legal and Judicial Education Courses offered through the bar. A new section on implicit bias also has been added to the Committee's recently updated guide: *Demonstrating Respect, Neutrality, and Fairness: Guidelines for the Pennsylvania Courts.*

"Empirical research has... determined that automatic brain processing is **just as common among key decision-makers in the justice system as it is among lay people.** Judges, prosecutors, defense attorneys, police, witnesses, jury members, probation officers, and court personnel all hold implicit biases that may might lead them to make decisions based on their biases, rather than on the facts of the case, without even intending it."

—*Demonstrating Respect, Neutrality, and Fairness: Guidelines for the Pennsylvania Courts, referencing Jeffrey J. Rachlinski, et. al, Does Unconscious Racial Bias Affect Trial Judges?, 84 Notre Dame L. Rev. 1196, 1197 (2008-2009).*

Domestic Violence and Sexual Assault Victims

Addressing the Needs of Victims and Improving
the Legal Response to Their Unique Challenges

1,214
rape kits awaiting testing in Pennsylvania,
per a 2017 Auditor General Report

Promoting fairness in the justice system includes recognizing the unique and complex needs of victims of domestic abuse, sexual assault, and sexual exploitation. The Domestic Violence and Sexual Assault Victims Committee works to address these issues through advocacy, training, and by improving the legal response to the victims' needs for complex services and security.

Domestic Violence

In 2007, the Committee published two guides designed to improve the safety of victims of domestic violence and sexual assault. *Safety Tips for You and Your Family* provides advice on how victims can protect themselves and their children at home and at work. *And Safety for All: A Guide for Making the Courts Safe for Victims of Domestic Violence and Sexual Assault* contains recommendations and a checklist for improving safety procedures in courthouses and court-related facilities. Both guides were widely distributed across the state: 100,000 copies of the safety tips pamphlet, in both English and Spanish, were sent to police departments and other agencies working with victims.

Human Trafficking

The Committee initiated its efforts to address human trafficking by sponsoring training for law enforcement, prosecutors, child services counselors, medical and hospital workers, and school personnel in October 2011. The program's trainers included two members of a special human trafficking unit from the Dallas, Texas Police Department. They agreed to share their expertise in identifying potential victims,

Guiding Principles to Address the Needs of Human Trafficking Victims in Pennsylvania:

- (1) A victim-centered, trauma-focused approach
- (2) non-criminalization
- (3) individualized response
- (4) collaboration among stakeholders



While the Commission recognizes that the term "survivors" is preferred by those who assist individuals who suffer from domestic violence and sexual trauma, we use the term "victims" here because this was the original term used in the 2003 Supreme Court Committee study.

conducting delicate interviews with them, assisting them with their mental health, shelter and security needs, and successfully bringing their traffickers to justice.

Since then, the Committee has been working with prominent human trafficking victim advocates to create protocols for emergency assessment of suspected juvenile victims and a statewide database of resources for victims and service providers.

The Committee also collaborated with legislators to craft laws to address human trafficking, such as the Safe Harbor Act recently signed into law by Governor Wolf. Additionally, the Committee supported legislation to eliminate the backlog of rape kits, providing prosecutors with evidence to hold rapists accountable for their crimes.

Currently, the Committee is seeking the amendment of an interstate compact which requires local authorities to return juvenile victims of trafficking to their home states — a well-intentioned provision that has left victims of trafficking back within reach of the very abusers they sought to escape.

The Safe Harbor Act (signed into law on October 24, 2018) prohibits the state from prosecuting sexually-exploited children for the offenses of obstruction of highways and prostitution, and requires that sexually-exploited children who are charged with other offenses, such as trespass, false identification, and others, during the course of their abuse, be referred for **treatment and social services** to a county agency through dependency proceedings. Additionally, the law requires that the Department of Human Services work in conjunction with county agencies to **develop training programs and protocols for providers** who offer services to address the needs of sexually exploited children.

Jury Service

Increasing Diversity and Public Participation on Juries throughout the Commonwealth



“Because our judicial system **depends on the public's confidence**, increased minority representation on Commonwealth juries ensures our judicial system is fair and impartial in the eyes of the people we serve.”

—*Judge Stephanie A. Domitrovich, Court of Common Pleas, Erie County; and Jury Service Committee Member*

Diverse juries bring a wide variety of perspectives and experiences to the jury deliberation process that benefits the entire community. Research shows that diverse juries are more likely to consider the facts and evidentiary issues raised at trial and less likely to presume guilt or innocence. As a result, such juries are more likely to make accurate decisions. These contributions increase public confidence in the justice system and advance the cause of equal justice.

Statewide Juror List

The Jury Service Committee works to increase jury diversity and public participation in a number of critical ways. For example, in 2007, the Committee helped draft and pass legislation establishing a statewide juror list drawn from four different executive agencies. The resulting list is far more diverse than the lists typically used by local jurisdictions.

The Committee has followed up with this initiative by working with the four agencies to find a unique identifier to reduce the presence of duplicate names on the list. This will enable more judicial districts to use the statewide list, thereby increasing the likelihood of establishing diversity in their jury pools.

Juror Demographics Pilot Program

The Committee initiated a juror demographics pilot program to further advance the diversification of juries in Pennsylvania. Court administrators from four judicial districts agreed to amend their jury questionnaires by adding a voluntary check-off box for jurors to indicate their race and ethnicity. This project enabled the administrators to monitor the demographic composition of their juries as a means of advancing their efforts to diversify them.

Best Practices Guide

The Committee also continues to educate court administrators and judges on the recommendations from its guide, *Best Practices for Jury Selection and Service in Pennsylvania*. The guide offers state-of-the-art guidance on best practices to remove barriers to a potential juror's ability to serve

Act 37 of 2007 established the Statewide Juror List, which provides judicial districts with potential jurors from lists maintained by four different state agencies (Departments of Human Services, Transportation, Revenue, and State) to **create a more diverse juror pool that reflects Pennsylvania's changing demographics**. The Commission continues to work with the AOPC and these Departments to ensure the list is accurate and user-friendly.

on a jury. Topics include juror utilization, juror qualifications, terms of jury service, the use of peremptory challenges, juror education, and juror exemptions and excusals, among others.

[E]xcusal/postponement policies that minimize the potential hardship that individuals experience as a result of jury service can ultimately significantly reduce excusal rates, increase jury yield, and expand the pool of prospective jurors. Similarly, such policies **reduce the potential for disproportionate impact on lower-income and minority populations**, which improves the demographic representation of the jury pool.

—*Best Practices for Jury Selection and Service in Pennsylvania*

The Committee continues to collaborate with legislators on bills to address inadequate juror compensation, juror exemption/excusal policies, and amendments to disqualification criteria, such as prior criminal records and language fluency.



Interpreter Services

Expanding Access to Interpreter and Translation Services

Ensuring access to the Pennsylvania courts for individuals with limited English proficiency (LEP), regardless of their immigration status, is the pivotal concern of the Interpreter Services Committee. The Committee works to expand access to interpreter and translation services, promotes policy changes, and educates judges and court personnel on how to work with interpreters in the courtroom.

Improving Interpretation Services

In 2006, the Committee helped secure passage of Act 172 that established a certification system for interpreters and required the court system to provide certified, or otherwise qualified, interpreters to limited English speakers in certain court proceedings and most administrative agency hearings. The same year, the Committee conducted the first statewide survey of state administrative agencies to determine whether the agencies were providing interpretation services to individuals who need them in administrative hearings. Based upon its survey results and additional research, the Committee began collaborating with the First Judicial District to draft protocols for working with interpreters, translating key legal documents into five languages and, along with Widener University, conducting many training programs for judges, attorneys, and interpreters.



Access to Courts for Immigrants

More recently, the Committee has been focused on bringing to the attention of the courts reports of state court magistrates and judges exceeding their jurisdictional limitations by questioning defendants and other parties, such as witnesses and victims, about their immigration status. In some instances, the Committee was informed that judges had even facilitated the detention and ultimate deportation of court users and defendants by agents of the federal Immigration and Customs Enforcement Agency (ICE).

“When state court jurists insert themselves into federal immigration enforcement actions, the impact is felt not only by undocumented criminal defendants, but by the wider community of court users as well, such as undocumented victims or witnesses to crimes. These individuals are unwilling to appear in state courts due to their well-founded fear of ICE agents' presence there. Their reluctance to come forward has seriously hindered or prevented the prosecution of the criminal cases that rely upon their testimony.”

—Interbranch Commission Letter to Supreme Court

The Committee submitted a lengthy letter to the Pennsylvania Supreme Court detailing these reports. In response the AOPC issued an advisory to the state judiciary that such actions could constitute a violation of the individuals' rights under Title VI of the Civil Rights Act.



Paul Uyehara, Esq., reviews Act 172 of 2006, which established a certification system for court interpreters and mandated that interpreters be provided in certain court proceedings and most state administrative hearings.

The Committee continues to collaborate with Community Legal Services in Philadelphia and Temple University Law School to document instances of these actions by magistrates and judges, and to draft policy recommendations to address these problems in a comprehensive manner.

“An inquiry by a judicial officer or employee into the federal immigration status of an individual based on language ability or otherwise on the basis of an individual's perceived national origin may be regarded as discrimination and possibly a violation of Title VI [of the federal Civil Rights Act of 1964]. Discrimination is a particular concern in those matters in which an individual's immigration status is not relevant to the matter before the court or judicial agency.”

—**Administrative Office of the Pennsylvania Courts**, *Advisory Re: Title VI of the Civil Rights Act*

77% of respondents who worked on court-related matters with immigrants either noted that clients "expressed fear of going to court or chose not to pursue a case because they may be arrested or detained by ICE."

—*Sheller Center for Social Justice, Temple University School of Law, Obstructing Justice: the Chilling Effect of ICE's Arrests of Immigrants at Pennsylvania's Courthouses*

Gay, Lesbian, Bisexual and Transgender (GLBT) Rights

Working to End Discrimination Against GLBT Pennsylvanians in Our Courts and Throughout the Commonwealth



Second Parent Adoption

As its first initiative, the GLBT Rights Committee drafted and submitted to the Pennsylvania Supreme Court Orphans' Court Rules Committee a set of amendments to the Pennsylvania Adoption Act. The amendments would establish procedures governing second-parent adoptions. No decision has been made on the proposed amendments, but the Committee continues to press for their adoption. The Pennsylvania Supreme Court's recognition of same-sex marriage in *Whitewood v. Wolf* spurred the need for amendments to numerous domestic

“Even if a juror does not voice prejudices overtly, research suggests that proxy questions can help to uncover anti-LGBT bias. These question may be more effective than asking jurors directly whether they are biased, or whether they can be fair.”

—*Lambda Legal, Jury Selection and Anti-LGBT Bias*

relations regulations and statutes. As one example, the Committee partnered with the ACLU in securing a change in terminology on the Pennsylvania Department of Health and Social Services (DHS) birth certificate forms, which had a significant impact on the parental rights of same-sex couples. The form was modified to substitute the term "parent" instead of "father" in the case of same-sex parents.

Anti-LGBT Bias Guide

The Committee also has been collaborating with Lambda Legal to provide training for judges, lawyers, court employees and court administrators on the use of its guide, *Jury Selection and Anti-LGBT Bias*. The Committee urged bar associations around the state to contact Lambda Legal to secure its staff trainers for programs on this issue, at no cost. As a result, a number of such training programs have taken place at several of the county bar associations.

GLBT Youth

Additionally, Lambda Legal's Fair Courts Project is working with the Committee to conduct training for Pennsylvania juvenile

court judges and juvenile detention facility managers on special protocols for the care of LGBTQ youth in the child welfare and the juvenile justice systems. Allegheny County is among the judicial districts that received the training.

Another initiative on which the Committee is collaborating with Lambda Legal is an effort led by its Youth in Out-of-Home-Care Project to amend the DHS regulatory definition of gender to include gender identity and expression. This amendment would enable transgender youth who are trafficking victims or homeless to obtain appropriate housing placement and other assistance.

Amending the Pennsylvania Human Relations Act

The Committee also has begun working with the new Governor's Commission on LGBTQ Affairs to initiate a campaign for new legislation to amend the Pennsylvania Human Relations Act. The legislation would include sexual orientation and gender identity within the Act's protected classes.



Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness

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** Denotes Committee Chair*