

SUPREME COURT OF  
APPEALS OF WEST  
VIRGINIA

ADJUDICATED JUVENILE  
REHABILITATION  
REVIEW  
COMMISSION

DECEMBER 2012

## **Adjudicated Juvenile Rehabilitation Review Commission Mission Statement**

The West Virginia Supreme Court of Appeals is committed to a juvenile justice system that promotes effective interventions that will enhance the likelihood of rehabilitation and behavior reform for those children involved in delinquent behavior. It is the Court's desire that West Virginia serve these youths and their families within a sound framework of public safety while providing guidance, structure and appropriate, evidence-based services. Circuit judges need to be confident that those youths whom they sentence to the Industrial Home for Youth at Salem are given, through rehabilitative programs, every opportunity for success after their confinement.

Therefore, the facilities and the programs they include must, from time to time, be examined by the Court not only to ensure that the sentencing judges are very familiar with the environment into which they are sentencing adjudicated juveniles, but also in order to ensure that these programs are appropriate and as effective as they can possibly be. In that manner, the adjudication system itself can be improved by providing more effective intervention at an early stage of juvenile delinquency. Through collaboration and communication between the Court, the Legislature, and the Executive agencies, West Virginia's investment of energy and resources into children who are in trouble will result in the best possible future for the State.

## **Adjudicated Juvenile Rehabilitation Review Commission Members**

The Honorable Margaret Workman, Justice  
Supreme Court of Appeals of West Virginia

The Honorable Gary Johnson, Judge  
Twenty-Eighth Judicial Circuit

The Honorable J. Lewis Marks, Jr., Judge  
Fifteenth Judicial Circuit

The Honorable Jaymie G. Wilfong, Judge  
Twentieth Judicial Circuit

The Honorable Gail Boober, Magistrate  
Jefferson County

Megan Annitto, Assistant Professor  
Charlotte School of Law, Charlotte, North Carolina

Jane Moran, Attorney  
Jane Moran Law Office, Williamson, West Virginia

The Reverend Rue Thompson  
Diocese of Wheeling-Charleston

Sam Hickman, Executive Director  
National Association of Social Workers, West Virginia Chapter

The Reverend Matthew Watts  
MJ Watts Ministries, Charleston, West Virginia

Dr. James Phares, State Superintendent of Schools  
West Virginia Department of Education

Steve Canterbury, Administrative Director  
Supreme Court of Appeals of West Virginia

Nikki Tennis, Director  
Division of Children's Services, Supreme Court of Appeals of West Virginia

Cindy Largent-Hill, Juvenile Justice Monitor  
Supreme Court of Appeals of West Virginia

### **Administrative Office Staff**

Kirk Brandfass  
General Administrative Counsel

Tom Scott  
Court Compliance Officer

Tina Sevy  
Director of Legislative Analysis

## Adjudicated Juvenile Rehabilitation Review Commission

### **Establishment and Early Activities of the Commission**

The Adjudicated Juvenile Rehabilitation Review Commission was established by Administrative Order of the West Virginia Supreme Court of Appeals in July 2011. The purpose of the Commission was to examine the Division of Juvenile Services' operations plan and programs at the Industrial Home for Youth in Salem and at the Kenneth "Honey" Rubenstein Juvenile Center in Davis. Although the scope of the Commission's mission initially was to focus on these two facilities, the Commission can expand its review to other facilities, and programs operated or contracted by the Division of Juvenile Services and the Department of Health and Human Resources if it deems such review is necessary.

In addition to the Court's commitment to youths in the juvenile justice system, other issues contributed to the formation of this Commission. They included the "undetermined cause of death" of a young man at the West Virginia Industrial Home for Youth, reports of physical assaults on the residents at the hands of staff, and sexual activity between residents and between residents and staff. It must be emphasized that any children ordered into secure facilities are **wards of the courts**. When youth are removed from their families/homes and are outside of their home communities, detained in secure settings as a result of court orders, they remain a proper concern of the court system.

It is the goal of the Court and the Commission to work cooperatively with ALL branches of government.

The Commission worked diligently during the summer and fall of 2011. Multiple visits were made at each of the facilities. The visits included resident interviews, facility tours and staff interactions. The initial findings were concerning.

July 7, 2011

The Court's Compliance Officer, Tom Scott, made an initial visit to the Industrial Home for Youth in Salem, West Virginia. Mr. Scott met with then-Superintendent Joe Merendino to discuss and get an overview of the operation of the facility. They discussed at length the death of resident Benjamin Hill, and Mr. Scott requested several records. Mr. Scott and Superintendent Merendino met with Ms. Janet Haines, who was in charge of the Sexual Offender Unit and was on duty the night Mr. Hill died. (Ms. Haines has since transferred to the Lorrie Yeager Juvenile Facility in Parkersburg.) Mr. Scott was escorted by then-Superintendent Merendino on a tour of all areas of the facility. Upon his departure, Mr. Scott received the complete medical, legal, and investigative files on Mr. Hill, as well as the West Virginia State Police and the Division of Juvenile Services investigation files concerning the young man's death.

July 11, 2011

The first full meeting of the Commission was held in the Supreme Court Courtroom at the State Capitol. During that meeting the Commission

- added two members, Dr. Jorea Marple and the Reverend Matthew Watts;
- requested that numerous materials be obtained from the Division of Juvenile Services; and
- agreed visits would be immediately scheduled at the West Virginia Industrial Home for Youth and Rubenstein Center, initially by a group of Commissioners, followed by the full Commission.

July 19, 2011

Tom Scott, the Court's Compliance Officer, visited the West Virginia Office of the Chief Medical Examiner in South Charleston to discuss the death of Benjamin Hill.

August 17, 2011

Commissioners Thompson, Moran, Largent-Hill, and Canterbury, with staff members Tom Scott, Kirk Brandfass and Tina Sevy, toured the Industrial Home for Youth in Salem, West Virginia.

August 24, 2011

Commissioners Annitto, Thompson, Moran, Largent-Hill, and Canterbury, with Mr. Scott and General Administrative Counsel J. Kirk Brandfass, toured the Kenneth "Honey" Rubenstein Juvenile Center in Davis, West Virginia.

September 2011

Commissioner Jeff Reed, Judge of the Fourth Circuit, resigned from the Commission and Ninth Circuit Judge Omar Abouhosn was appointed.

September 12, 2011

The full Commission convened at the Industrial Home for Youth in Salem. Only Superintendent Merendino and Deputy Director Denny Dodson attended from the Division of Juvenile Services. An extensive tour of the housing and educational facilities on the campus was conducted. Afterward, the committee convened as a group onsite and had a broad-ranging discussion of the facility, its operations, and its programs.

October 26, 2011

The full Commission convened at the Kenneth "Honey" Rubenstein Juvenile Center in Davis. Those attending from the Division of Juvenile Services included Joe Merendino, former Superintendent of the Industrial Home for Youth; David Jones, newly appointed Superintendent of the Industrial Home for Youth; Denny Dodson, Deputy Director of the West Virginia Division of Juvenile Services; and Stephanie Bond, Honey Rubenstein Juvenile Center Superintendent. They participated in a discussion with the Commissioners regarding procedures and operations of the Industrial Home for Youth and other juvenile facilities. The Commissioners toured the housing units and vocational school at the Honey Rubenstein Juvenile Center. The Commission

concluded its visit by reconvening in the conference room to discuss the day's events. It also voted unanimously to hire an independent medical examiner to review documents and evidence related to the death of Benjamin Hill.

October 28, 2011

Tom Scott contacted New York-based forensic pathologist Dr. Michael Baden, who agreed to contract with the Supreme Court of Appeals of West Virginia to conduct a review of the Benjamin Hill autopsy materials and to present his findings regarding Mr. Hill's cause of death.

November 17, 2011

The Supreme Court signed a contract with Dr. Michael Baden to conduct an independent review of documents and evidence relevant to the death of Mr. Hill. The Commission obtained the Industrial Home for Youth's complete medical file of Mr. Hill, the medical examiner's report of the death investigation and post mortem examination, the written West Virginia State Police investigation, the West Virginia Juvenile Services investigation, the medical provider report on the care of Mr. Hill, and incident reports from responding officers to Mr. Hill. This information was then sent through Mr. Scott to Dr. Baden for his analysis and review.

December 27, 2011

Then-Chief Justice Workman entered an Administrative Order of the West Virginia Supreme Court of Appeals, and it was served on the Chief Medical Examiner's Office by Mr. Scott. This Order directed the Chief Medical Examiner's Office to provide Dr. Baden with all records and other evidence in its custody regarding the death of Mr. Hill. Mr. Scott also hand-delivered a copy of the Administrative Order to the Assistant Attorney General assigned to represent the interests of the Chief Medical Examiner's Office.

February 15, 2012

Commissioner Jane Moran and Tom Scott visited the Gene Spadaro Juvenile Center in Mt. Hope. Staff was gracious and provided a tour. Findings included chilly rooms/cells, thin (typically issued one) blankets, longer lengths of stay, lack of aftercare or discharge planning, and questionable access to mental health services (specifically a psychiatrist).

### **Summary List of Notes of Initial Findings by the Commission**

(obtained during visits at West Virginia Industrial Home for Youth and Rubenstein Center)

- Psychiatric services provided via video conference; no face-to-face interactions seemed to be division wide practice. Is this considered to be best practice?
- Control of residents was by "lock down" of residents, which seemed to be the "answer" to behavior problems

- Black paper on windows which prohibited residents from seeing out, and decreased light into cell; small peephole for staff to see inside
- Some residents were inappropriately placed (i.e., Asperger's Syndrome, mentally impaired, significant psychiatric/emotional issues)
- Some residents were given "flat sentences" (resident ordered to facility for specific length of time) vs. completing the program
- Very little, if any, contact with an attorney during incarceration
- The residents' internal appeal process is arbitrary and often pre-determined
- Cells are cold; thin blankets; thin mattresses
- Limited shower time (less than ten minutes)
- Questionable quality and quantity of food; no salt/pepper or condiments; no second helpings; residents are hungry
- No talking during meal time
- No counseling (individual or group); limited "hall time;" lots of cell time
- Very limited peer interaction
- Limited access to vocational and academic services (especially when in lock-down)
- Basically no gender-specific programming on female unit
- Services on Behavior Management Unit basically non-existent
- Timeliness of receiving medical care after submitting a "sick call" slips to medical department

### **How Should the Commission Proceed?**

On January 23, 2012, Justice Workman met with Steve Canterbury, Supreme Court Administrative Director, to discuss the Commission's findings and to assess how to proceed. Commission members Judge Omar Aboulhosn and Professor Megan Annitto also were present. Professor Annitto had arranged for a law student to work as an extern for the Commission during the spring 2012 semester. The extern, Alicia Lauderman, also was present for the meeting.

It was realized that the Commission had barely scratched the surface in learning about issues and processes within the state's juvenile justice system. The facility visits had produced a number of troublesome findings. Those concerns were outlined as

- Are rehabilitation services being provided to all juveniles?
- Are mental health and substance abuse treatment services available and provided?
- Are the above-named services evidence-based and do they meet current standards of care?
- Are discharge plans being written and implemented for youths leaving the system?

- What are the terms of confinement? Do the lengths of stay coincide with the levels of the offenses?
- How does West Virginia's juvenile justice system rate compare to other similar states?
- What type of care are the residents receiving (i.e., living quarters, meals, medical care, and social interaction)?

While everyone who serves on the Commission is committed to effecting change for the improvement of rehabilitative outcomes for juveniles in the criminal justice system, it appeared that a more structured approach was needed. To delve more deeply into these issues and to have a clearer sense of the entire juvenile justice system, Justice Workman recommended (and the Supreme Court agreed) that the Commission needed to employ a full-time, knowledgeable professional to monitor, research, and present findings.

### **Juvenile Justice Monitor Joins the Court**

Cindy Largent-Hill agreed to assume the position of Juvenile Justice Monitor. Her work experience includes the positions of Deputy Director and, subsequently, Director of the Division of Juvenile Services. In addition, she has worked extensively with adolescents in the behavior health field including community behavioral health and in-patient psychiatric hospitalization. Her career also includes residential treatment, which interfaced with the Department of Health and Human Resources, Bureau of Children and Families. She will continue to serve on the Commission and became its primary staff member beginning in March, 2012. The responsibilities of the juvenile justice monitor are included as Attachment I in this report.

During her first week of employment, Ms. Largent-Hill, along with Judge Gary Johnson and Dewayne Duncan and Shelley DeBerry, both with the West Virginia Department of Education, was to represent West Virginia at a National Leadership Summit on School Justice Partnerships: "Keeping Kids in School and Out of Court" in New York City, New York.

### **Juvenile Justice Monitor at Work**

Facility visits are a continuous part of the Juvenile Justice Monitor's responsibilities. She is joined in this task by Alicia Lauderman, former West Virginia University Law School extern, now a contracted employee with the Supreme Court. Initially, Ms. Largent-Hill and Ms. Lauderman contacted the Facility Superintendent to schedule site visits. However, the Division of Juvenile Services Director took steps which hindered productive visits. These actions included sending Joe Merendino to the Rubenstein Center to "keep an eye" on the monitor and to "follow" her around to see what she was "up to." Soon after, Mr. Jones, Superintendent of the Industrial Home for Youth, was ordered to vacate the facility during Ms. Largent-Hill's visit. Further, Superintendent Jones was told not to return until she departed the premises. The Monitor was also told that this would continue to be the protocol established by Director Humphries.

Because of these actions and decisions, visits to the facility are now unannounced. It should be noted that this was neither the desire nor the intention of the Commission, Court, or Monitor. It should be further noted that facility administration and staff at both the Industrial Home for Youth and Rubenstein Center have been consistently gracious and accommodating. Further activities were reviewed during the August 1, 2012, Commission meeting.

### **Commission Meets for Monitor Update**

The Commission met on August 1, 2012. The agenda for that meeting included updates on monitoring activities, an update on the Ben Hill investigation and coroner findings, and discussion and establishment of next steps.

During this meeting the Commission learned the following:

1. The Juvenile Justice Monitor had visited the Industrial Home for Youth two days a month for three months; the Rubenstein Center one day a month for three months; and three juvenile detention facilities: Chick Buckbee, Augusta; Sam Perdue, Princeton; and Gene Spadaro, Mt. Hope.
2. Ms. Lauderman had visited the Industrial Home for Youth thirteen times from March 10 – July 30, 2012.
3. Findings and/or concerns similar to those discovered during the Fall 2011, site visits continued. Those issues of significant concern are outlined below.
  - a. There is a shortage of correctional officers. This leads to counselor staff working “posts” versus providing treatment services; increases amount of “cell time;” opportunities for phone calls not offered (this is a division-wide issue);
  - b. There are problems with the quality and quantity of food. Most facilities are concerned by the USDA-allowed serving amounts, though some facilities have been creative within the provided guidelines so residents aren’t hungry. Similar accommodations were not offered at the Industrial Home and the quality of food was a consistent complaint at the Industrial Home and most of the detention centers
  - c. Psychiatric services are provided via teleconference, face-to-face interviews/evaluations are rare. Reportedly this procedure changed during the 2012 summer months; a psychiatrist from Morgantown was hired to see residents at Industrial Home for Youth.
  - d. There is little to no contact with attorneys during incarceration. The Commission plans to recommend inserting standard language in attorney assignment judges’ orders.
  - e. There is an issue of disposition of flat sentence versus completing the program. There was a panel discussion conducted during Fall 2012, Judicial Conference encouraging program completion as disposition.
  - f. On the Behavior Management Unit, there are a number of concerns which include youths’ amount of cell time; lack of access to treatment and academic services; only

given a mattress and one blanket; cold or hot ("ice or fire") showers; they are hungry all the time; there is a lack of productive activities (Superintendent Jones is aware and attempting to make program changes).

- g. There are concerns about access to a medical doctor and/or services and about triage procedures, accuracy of log books, amount of time between residents' request to when they actually see a physician or receive treatment.
- h. Resident SM (who presented with significant mental health issues) was sentenced to Industrial Home for Youth. An MDT was scheduled by Wellness Unit staff, conversations were held by monitor with sentencing judge resulting in resident SM being transferred to a group home.
- i. On the female unit there is a lack of programming and a lot of "cell time." During Spring 2012, gender specific programming was put into place with an increased focus on treatment versus punishment and there are more interactive opportunities on/off unit.

David Jones assumed the position of Superintendent at the West Virginia Industrial Home for Youth during the fall of 2011. He organized his management team in March 2012. He implemented a number of staff and programmatic changes during the Spring and Summer of 2012. These include

- ✓ The establishment of a management team to include an Assistant Superintendent of Programs and Treatment, Assistant Director of Security, and Assistant Director of Operations;
- ✓ The promotion of a tenured female correctional officer to a management position on the female unit;
- ✓ A change to gender specific programming on the female unit, which demonstrates a strong treatment component;
- ✓ The initiation of pizza and movie night for write-up free residents (both genders), which began monthly and is now offered weekly;
- ✓ Talent shows organized allowing residents to demonstrate their interests in poetry and music
- ✓ Moving the counseling staff shifts from Monday--Friday 7 a.m. -- 3 p.m. to afternoon and evenings.
- ✓ Increase in the amount of hall time (out of cell) and recreational opportunities;
- ✓ Church services offered on regular basis
- ✓ Intramural sports (basketball games between staff and residents)
- ✓ Allowing movie trips to a local theater for those write-up free and over-all positive residents that were quarterly and are now monthly; and
- ✓ Offering a Resident Enrichment and Achievement Program (on site job opportunities) program to males and females.

Two situations of significant concern were shared with Commission members. Both incidents occurred at the Industrial Home for Youth on separate occasions. The Commission participated in an extensive review with troubling outcomes. Two male residents were involved in physical altercations which resulted in the need for medical treatment. It was agreed that better

procedures for staff accountability and investigation processes are needed by the Division of Juvenile Services.

The last item presented was the Davis Center project. During the October 2011, visit to the Rubenstein Center, the Commission was briefly told about construction for a girls' facility at the former Davis Center property. In July, Ms. Largent-Hill and Ms. Lauderman had the opportunity to visit the construction site with Stephanie Bond, Rubenstein Center Superintendent, and Joe Merendino. A summary, bulleted points included, was shared with the Commissioners.

- Maximum Security Setting (with possible opportunities for medium-to-minimum security programming): Females are currently housed in a maximum-security setting at West Virginia Industrial Home for Youth with access to academic and vocational programming; healthcare and gender-specific programming (Please note, this programming has improved since the establishment of the Commission.) Girls ordered to West Virginia Industrial Home for Youth have for the most part non-violent, status offense charges.
- Staff concerns: Rubenstein Center (and DJS) continues to struggle with filling correctional officer and treatment staff vacancies. There would be a need for female staff, which is even more difficult to find.
- Medical Services: Teenage girls tend to have more medical issues. Also, unfortunately, the number of teenage pregnancies is on the rise in West Virginia. Local health care providers are some distance away from the area.
- Meals: All meals will be prepared at the Rubenstein Center and transported to the girls' facility. It is unclear how the food temperature can be maintained during the travel time and the weather in that part of the state is extremely unpredictable.
- Academic and Vocational Programs: Information to be provided by the West Virginia Department of Education. Budget issues indicate that academic and vocational programs will be quite difficult to offer.
- Housing: The current construction is designed for the residents to live in a dorm-like setting. While the female population is a social one, there are also increased emotions and boundary issues that aren't typical with male teens. This will present difficult management issues.
- Treatment: Most girls in the juvenile justice system have been exposed to some type of victimization and abuse. Anger and depression are the most common emotional issues. In addition, due to their strong sense of belonging/social interactions, a solid, strong treatment program is critical. Finding skilled gender-specific trained staff will be a challenge in that part of West Virginia.

The Commission unanimously shared considerable concern about this project and proposed facility, so much so that Commission members requested that Justice Workman, Steve Canterbury, Dr. Jorea Marple, and Cindy Largent-Hill meet with Governor Tomblin and Division of Juvenile Services administration to discuss the plan.

### ***Resident Ben Hill***

Tom Scott has continued his work reviewing information related to the death of Ben Hill. Mr. Scott has been conversing with Dr. Baden, the contracted forensic pathologist. A written report was offered by Dr. Baden; and, unfortunately, with the documented information available, a definite cause of death was not confirmed. However, Mr. Scott shared his concern about the monitoring mechanisms and security practices. For example, the shift log times do not seem realistic. Also, the times on the video were not accurate, and the quality of the tape was poor.

Another area of interest is related to Resident Hill's medical health. There seems to be unanswered questions about his having some medical complaints in the weeks preceding his death. The Commission requested Mr. Scott complete a time line and further investigate into whether or not reasonable and appropriate medical services were provided. Justice Workman offered to contact Resident Hill's grandmother to assure her that the Commission is continuing its work and involved in ongoing research. Dr. Baden also offered to contact Resident Hill's grandmother to share his findings personally.

Tom Scott organized a time line of activities in his research which is Attachment II of this report.

Unfortunately, with the information available a positive cause of death could neither be determined nor confirmed. It can be safely concluded that procedures were not followed. Regular and timely resident checks were not conducted as specified by policy.

### ***Other Business Items***

1. Judge Aboulhosen resigned from the Commission when he was appointed as the sitting judge on the Division of Juvenile Services lawsuit. By consensus, the Commission approved Judge Jaymie Wilfong to join the Commission. Steve Canterbury will contact her and Cindy Largent-Hill will brief her as to the Commission's work and mission.
2. Megan Anitto left West Virginia University Law School to relocate to the North Carolina area. She is willing and the Commission supports her continuing as a member.
3. Dr. Jorea Marple shared recent changes within the Department of Education, Office of Institutional Education. Dewayne Duncan is now the Executive Director of Juvenile Facilities and Non-Traditional Pathways. The Department of Education wants to expand programs via evidence-based practices which could include virtual classes, credit recovery, and increased use of technology. In addition, there is a specific interest in enrichment programs, which would include the fine arts.
4. It was suggested that the Commission continue its work within the juvenile justice system by using the Rights of Juveniles as outlined in State Code 49-5-16a. A copy of the rights is included as Attachment III in this report.

5. Senator William R. Laird IV (D-Fayette), Co-Chairman of the Regional Jail and Correctional Facilities Legislative Oversight Committee, has asked if Ms. Largent-Hill would address his committee. The Commission approved her addressing the committee to briefly outline the establishment of the Commission and the responsibilities of the Juvenile Justice Monitor.

### **Commission Takes a Stand on Davis Center Project**

As requested during the August 1, 2012, meeting, Commission representatives requested a meeting with Governor Tomblin and Division of Juvenile Services Administration concerning the proposed and partially constructed Davis Center facility (for girls). On August 21, 2012, the Commission met Governor Tomblin and other Executive Branch staff. Justice Workman thanked the Governor for his time and said that the emphasis of the Commission and the Juvenile Justice Monitor is to look at ALL the issues within the juvenile justice system. Further, the Commission desires to work cooperatively with all branches of Government. A list of concerns specific to the Davis Center project was then outlined with supplemental information presented by Steve Canterbury and Cindy Largent-Hill. Dr. Marple offered the following points: her budgetary issues, the need for an \$800,000 supplemental request, census concerns for the West Virginia Industrial Home, Rubenstein Center, and various detention centers. She strongly encouraged the Governor to consider recommending that a team be organized to develop a juvenile justice master plan. She suggested that this team be established with knowledgeable staff from all agencies involved (i.e., Department of Health and Human Resources, Department of Education, Division of Juvenile Services, the courts, etc.). This would lend to a holistic approach to evaluating the current reality of the juvenile justice system and then establishing goals for future treatment, services, and residential components.

Governor Tomblin took the information presented under advisement. Some weeks later, construction activity was temporarily halted.

On September 10, 2012, the Commission, during a teleconference meeting, received an update of the meeting with Governor Tomblin.

### **West Virginia Division of Juvenile Services Involved in a Lawsuit**

STATE OF WEST VIRGINIA

ex rel. D.L. and K.P.

PETITIONERS,

v

DALE HUMPHREYS, Director, Division of Juvenile Services

And DAVID JONES, Superintendent

of the West Virginia Industrial Home for Youth

RESPONDENTS.

On April 24, 2012, a petition was filed alleging that the Division of Juvenile Services had been allowing practices, policies and procedures at the West Virginia Industrial Home for Youth

which were not rehabilitative in nature and could be considered detrimental to the health and welfare of the juveniles ordered to that facility. Some of the items of concern include extended periods of isolation, residents locked in their rooms as part of the daily routine, inadequate grievance procedure, strip searches as part of the security routine, infrequent opportunities for physical exercise/recreation, inappropriate clothing, and irregular opportunities to use the toilet and to shower.

The petition was filed as a Writ of Habeas Corpus and Writ of Mandamus with the West Virginia Supreme Court. The Court subsequently assigned the case to Judge Omar Aboulhosn. It was at this juncture that Judge Aboulhosn left the Commission.

According to the order, a number of the issues were agreed to and/or resolved by both parties prior to court hearings held on September 17 and November 27, 2012. Paul Demuro was established as the expert witness for the Petitioners. Judge Aboulhosn issued an order on November 29, 2012, which outlined the following:

1. Cindy Largent-Hill, the Juvenile Justice Monitor for the Adjudicated Juvenile Rehabilitation Review Commission, was ordered to be the monitor for this lawsuit. A report is due to the Court and Parties within thirty days of the order (December 29, 2012). This report is to describe progress of changes as outlined in the Agreed Orders.
2. Residents housed in Building A (the main building at West Virginia Industrial Home for Youth) under the age of 15 were to be immediately transferred to a facility operated by the West Virginia Division of Juvenile Services.

### **Resident Tracking Information**

In response to items of concern and discussion generated by Commission members, the following is being tracked monthly:

1. Female Residents and subsequent charges – Attachment IV
2. West Virginia Industrial Home for Youth Residents and subsequent charges – Attachment V
3. West Virginia Industrial Home for Youth and Rubenstein Center Residents with various demographic information - Attachment not provided due to confidential resident information included in this report

**In closing . . .**

When judges, with the recommendation and support of the multidisciplinary team, send youths to West Virginia Industrial Home for Youth, the Rubenstein Center, or another out-of-home placement, they place faith in those facilities' programs and operations. The opportunity to learn academically, receive counseling, talk about their problems – all so they can turn their lives around and leave that placement with the best possible tools and hope for successful, productive, crime-free lives. Effective programs, treatment, and rehabilitation are a good idea for each youth and fiscally. Every youth who is independent of the system, welfare or criminal justice, saves West Virginia tax money in lowered or eliminated costs for police actions, jailing, prosecution, court time, and ultimate confinement or some other manner of expensive supervision.

## **Initiatives Supported by Commission Participation**

- ❖ West Virginia Commission to Study Residential Placement of Children
- ❖ Education of Children In Out-Of-Home Care
- ❖ West Virginia Comprehensive Behavioral Health Commission
- ❖ West Virginia Court Improvement Program Board
- ❖ West Virginia Court Improvement Program Committees:
  - Youth Services
  - Behavior Health
  - Multidisciplinary Team

## **Presentations Given By Monitor**

- ❖ West Virginia Chapter National Association of Social Workers Fall Management Conference
- ❖ Regional Jail and Correctional Facilities Legislative Oversight Committee
- ❖ Select Committee on Children, Juveniles and Other Issues (Legislative Interim Committee)
- ❖ Supreme Court of Appeals of West Virginia Fall Judicial Education Conference

## **Attachment I**

### **Responsibilities of the Juvenile Justice Monitor**

(Outlined by the Commission)

- identify systems issues for juveniles in the court system;
- review and evaluate treatment and rehabilitative services;
- compare specific treatment and rehabilitative services with the national standards of care;
- ensure that treatment programs are evidence-based and offer outcomes measures;
- review and evaluate policies and standard operating procedures for the facilities operated by and/or contracted by the Division of Juvenile Services and the Department of Health and Human Resources;
- ensure compliance and implementation of appropriate policies and procedures;
- conduct regular site visits to designated facilities at a minimum of twice per month, interviewing staff members, reviewing write-ups of residents, and interacting with residents;
- advocate for the rights of juveniles in the justice system;
- review agency investigations to ensure a fair and impartial process;
- investigate complaints and/or issues of concern;
- ensure a coordinated and comprehensive planning process for successful reentry and transition into the juvenile's home community;
- act as a liaison for the circuit judges to the facilities so that judges can be made aware of issues regarding the juveniles' care, supervision, and treatment;
- work with the Department of Education's Office of Institutional Education to ensure that appropriate, meaningful, academic services are being provided that meet national standards;
- represent the Commission as directed by the Commission and/or the Court at various forums or with various initiatives as they materialize;
- and report all of these activities – and any others as they come up – to the Commission at each meeting.

## **Attachment II**

### **Time Line for Ben Hill Prepared by Tom Scott**

**September 30, 2011**

I went to the WVIHY to review records not included in the original records I had received on my initial visit. I inquired about the surveillance video of the dayroom in the section Benjamin Hill was housed and any evidence which might be in their possession from his room. After checking no copy of the video or any evidence was in their possession.

**December 9, 2011**

Spoke to Dr. Baden concerning questions he had on the materials he had received. Researched and obtained the answers and materials he requested and faxed them to him.

**January 27, 2012**

I hand delivered a request for records to Virginia Lanham, Counsel for the West Virginia State Police. We requested photographs, toxicology reports and a copy of surveillance video relating the Benjamin Hill investigation.

**February 14, 2012**

After speaking with Virginia Lanham of the WV State Police, I realized there were materials in the WV State Police investigation other than those we requested that would be beneficial to our inquiry. I went to the State Police headquarters and reviewed their complete investigation. I requested copies of all materials we did not have and received the materials we had requested. The surveillance video and photos were not copied but I was notified when their technicians completed them.

**February 15, 2012**

Committee member Jane Moran and I visited Nancy Szilvasi, Grandmother of Benjamin Hill. Questions and concerns about Benjamin's death were raised by Ms. Szilvasi. We told Ms. Szilvasi we would be in touch after the inquiry was complete and hopefully some of those questions could be answered.

**February 17, 2012**

I mailed Dr. Baden photos of Ben Hill and his cell taken by the WV State Police and records I requested from their complete investigation. Also sent were all records received from the Salem Fire Department concerning the EMS response the night of Ben Hill's death.

**March 1, 2012**

I was notified by the Virginia Lanham that the DVD was ready and I picked it up at the State Police headquarters. The video was not of good quality, due to no fault of the State

Police. The original from which it was copied was very fuzzy and the tape froze for about 4 minutes at one point. The time on the tape was off 1 hour and 20 minutes. This was determined by reviewing incident reports and security logs.

I began to create a time line as I watched the video several times over the next week. Ben Hill entered his room at 17:38 hours, no one entered again until 19:27 hours. During this time period staff members passed by his door at 18:05 and 18:14 hours; both times they move by quickly and glance through the glass window in the door. This was a matter of a few seconds and neither time is the door opened. No security checks are documented for this time period and the last entry is at 18:30 hours which are "rec on unit".

Another resident is seen at his door at 18:30 hours, and reports to staff that Ben did not come out for rec time and he can't get him to answer. He is told he is probably asleep: still no check is done. Juvenile services documents in their reports that this occurred. At 19:26 a staff member enters Ben's cell and emergency procedures begin.

April 16, 2012

I had a scheduled conference call with Dr. Baden concerning his findings thus far and to discuss the timeline from the DVD. He said he had not been able to determine the exact cause of death, but had not received the 13 microscopic slide recuts from the WV Medical Examiners office. I told Dr. Baden a check was sent to them on the 14<sup>th</sup> day of April. They would not do the slides until payment was received. The slides were mailed on April 25<sup>th</sup> directly to Dr. Baden.

May 25, 2012

A final conference call between Dr. Baden and me was held to discuss his findings. The microscopic slides he received from the medical examiner revealed nothing that would give an exact cause of death. We discussed his findings and any further questions concerning reports and timelines that I had prepared. He said he would begin preparing the final report and should have it to us by the middle of June.

June 18, 2012

The completed report from Dr. Baden concerning the death of Benjamin Hill is received.

August 14, 2012

Some discussion was held during the commission meeting on August 1, concerning Benjamin Hill's medical treatment, especially the months prior to his death. I reviewed his complete medical file from time of admission in 2007 until his death and completed a timeline of his medical treatment. He was seen by medical 5 times from the middle of December 2011 to February 16<sup>th</sup> 2012, 7 days before his death. All complaints were neck pain, headaches, sore throat, cough and runny nose. He was given acetaminophen, Chlor-Trimeton, Guaifenesin and throat spray.

September 12, 2012

Tom Scott, Kirk Bradfass, and Cindy Largent-Hill visited with Ms. Szilvasi to review findings from autopsy and other research completed by Mr. Scott.

October 2, 2012

Tom Scott, Kirk Bradfass, and Cindy Largent-Hill met with a former employee at the WVIHY who worked closely with Ben. She was able to provide insight on Ben, his daily living habits, personality, and treatment goals. She also talked about the days prior to his death. She was not present at the facility when he passed.

Please note that Justice Workman contacted Ms. Szilvasi via phone calls to share the progress of the research being conducted by Mr. Scott and the Commission. Also, Dr. Baden called Ms. Szilvasi to share his findings from the autopsy report.

## **Attachment III**

### **Rights of Juveniles in Custody or Detention – State Code 49-5-16a**

Under the West Virginia Code, juveniles in custody or detention have, at minimum, the following rights:

1. A juvenile may not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or forced solitary confinement.
2. A juvenile must be given the opportunity to participate in daily physical exercise.
3. A juvenile in a state facility may not be locked alone in a room, except for sleeping hours, unless unresponsive to reasonable direction and control.
4. A juvenile must be given access to daily showers.
5. A juvenile must be provided with his or her own clothing or individualized, clean clothing supplied by the facility.
6. A juvenile must be given constant access to writing materials and must be allowed to send mail without limitation, censorship or prior reading. The juvenile must also be able to receive mail without prior reading, although mail may be opened in the juvenile's presence to inspect it for contraband.
7. A juvenile may make and receive regular phone calls without being charged. He or she can also make and receive long distance phone calls to his or her family without charge at least once a week.
8. A juvenile has the right to receive visitors daily and on a regular basis.
9. A juvenile shall be given immediate access to medical care as necessary.
10. If a juvenile is in a juvenile detention facility or juvenile corrections facility, he or she must be provided access to education, including teaching, educational materials and books.
11. If a juvenile requests access to an attorney, he or she must be afforded reasonable access.
12. A juvenile has a right to a grievance procedure, including some mechanism in place for appeal.

All juveniles must be given a copy of these and any other rights afforded to them upon admission to their respective facilities.

## Attachment IV

### Female Residents & Subsequent Charges

Out of 94 residents at IHY, 16 are girls, with 22 charges:  
9/4/2012

Conspiracy to commit armed robbery	1
Prostitution	1
Possession of controlled substance	1
Petit Larceny	1
Brandishing	1
Breaking and Entering	1
Assault/Domestic Assault	2
Battery/Domestic Battery	10
Destruction of Property	1
Obstruction	1
Escape from Custody	1
Fleeing	1

Out of 89 residents at IHY, 11 are girls, with 17 charges:  
10/1/2012

Conspiracy to commit armed robbery	1
Possession of controlled substance	1
Petit Larceny	1
Brandishing	1
Assault/Domestic Assault	1
Battery/Domestic Battery	9
Obstruction	1
Escape from Custody	1
Fleeing	1

Out of 79 residents at IHY, 10 are girls, with 16 charges:  
11/2/2012

Possession of controlled substance	1
Petit Larceny	1
Brandishing	1
Assault/Domestic Assault	1
Battery/Domestic Battery	9
Obstruction	1
Escape from Custody	1
Fleeing	1

**Attachment V  
WVIHY Residents & Charges**

**\*\*Census of 94 residents and 132 different charges 9/4/2012**

<b>VIOLENT CRIMES AGAINST PEOPLE</b>	
2 <sup>nd</sup> Degree Murder	1
1 <sup>st</sup> Degree Sexual Assault	3
2 <sup>nd</sup> Degree Sexual Assault	2
Kidnapping	0
Malicious Wounding	1
<b>TOTAL</b>	<b>7</b>
<b>PUBLIC SAFETY VIOLATIONS</b>	
Concealing/Possession of a Deadly Weapon	2
Arson	2
Assault While Committing a Felony	1
1 <sup>st</sup> Degree Robbery	7
2 <sup>nd</sup> Degree Robbery	0
Accessory Before the Fact to 1 <sup>st</sup> Degree Robbery	1
Attempted Robbery/Conspiracy to Commit Armed Robbery	3
Assault/Domestic Assault	10
Battery/Battery of School Official, Gov't Rep, or Staff	24
Brandishing	3
Grand Larceny/Grand Larceny Auto	4
Breaking & Entering/ B&E Auto	7
Conspiracy to Commit B&E	3
Prostitution	1
<b>TOTAL</b>	<b>70</b>
<b>DRUG VIOLATIONS</b>	
Operation of a Clandestine Lab (meth lab)	1
Possession of Controlled Substance/with Intent to Deliver	6
<b>TOTAL</b>	<b>7</b>
<b>LESSER OFFENSES</b>	
Petit Larceny	8
Destruction of Property	14
Fleeing an Officer	6
Escape from Custody	2
Bomb Threats/Making Terrorist Threats	2
Joyriding	4
Possession of Marijuana/Simple Possession	2
Shoplifting	1
Fraudulent Use of a Credit Card	1
Disorderly Conduct/Disrupting School Process	2
Obstruction	4
Truancy	0
Unlawful wnd (tinted car windows)	1
No OP (driver's license)	1
<b>TOTAL</b>	<b>48</b>

**Attachment V  
WVIHY Residents & Charges**

**\*\*Census of 89 residents and 133 different charges  
10/1/2012**

<b>VIOLENT CRIMES AGAINST PEOPLE</b>	
1 <sup>st</sup> Degree Murder Attempted	1
2 <sup>nd</sup> Degree Murder	1
1 <sup>st</sup> Degree Sexual Assault	2
2 <sup>nd</sup> Degree Sexual Assault	2
Malicious Wounding	2
<b>TOTAL</b>	<b>8</b>
<b>PUBLIC SAFETY VIOLATIONS</b>	
Concealing/Possession of a Deadly Weapon	3
Arson	3
1 <sup>st</sup> Degree Robbery	7
Accessory Before the Fact to 1 <sup>st</sup> Degree Robbery	1
Attempt to Commit a Felony	1
Attempted Robbery/Conspiracy to Commit Armed Robbery	3
Malicious Assault/Assault/Domestic Assault	8
Battery/Battery of School Official, Gov't Rep, or Staff	26
Brandishing	3
Grand Larceny/Grand Larceny Auto	3
Breaking & Entering/ B&E Auto/Burglary	11
Conspiracy to Commit B&E	2
<b>TOTAL</b>	<b>71</b>
<b>DRUG VIOLATIONS</b>	
Operation of a Clandestine Lab (meth lab)	1
Possession of Controlled Substance/with Intent to Deliver	5
<b>TOTAL</b>	<b>6</b>
<b>LESSER OFFENSES</b>	
Petit Larceny	9
Destruction of Property	15
Fleeing an Officer	6
Escape from Custody	2
Bomb Threats/Making Terrorist Threats	2
Joyriding	3
Possession of Marijuana/Simple Possession	2
Shoplifting	1
Fraudulent Use of a Credit Card	1
Disorderly Conduct/Disrupting School Process	1
Obstruction	4
Unlawful wnd (tinted car windows)	1
No OP (driver's license)	1
<b>TOTAL</b>	<b>48</b>

**Attachment V  
WVIHY Residents & Charges**

**\*\*Census of 79 residents and 124 different charges 11/2/2012**

<b>VIOLENT CRIMES AGAINST PEOPLE</b>	
1 <sup>st</sup> Degree Murder Attempted	1
2 <sup>nd</sup> Degree Murder	1
1 <sup>st</sup> Degree Sexual Assault	2
2 <sup>nd</sup> Degree Sexual Assault	2
Malicious Wounding	1
<b>TOTAL</b>	<b>7</b>
<b>PUBLIC SAFETY VIOLATIONS</b>	
Concealing/Possession of a Deadly Weapon	3
Arson	2
1 <sup>st</sup> Degree Robbery	7
Accessory Before the Fact to 1 <sup>st</sup> Degree Robbery	1
Attempt to Commit a Felony	1
Attempted Robbery/Conspiracy to Commit Armed Robbery	2
Malicious Assault/Assault/Domestic Assault	8
Battery/Battery of School Official, Gov't Rep, or Staff	26
Brandishing	3
Grand Larceny/Grand Larceny Auto	3
Breaking & Entering/ B&E Auto/Burglary	13
Conspiracy to Commit B&E	3
<b>TOTAL</b>	<b>72</b>
<b>DRUG VIOLATIONS</b>	
Operation of a Clandestine Lab (meth lab)	1
Possession of Controlled Substance/with Intent to Deliver	4
<b>TOTAL</b>	<b>5</b>
<b>LESSER OFFENSES</b>	
Petit Larceny	10
Destruction of Property	14
Fleeing an Officer	5
Escape from Custody	1
Bomb Threats/Making Terrorist Threats	2
Joyriding	2
Possession of Marijuana/Simple Possession	0
Shoplifting	0
Fraudulent Use of a Credit Card	0
Disorderly Conduct/Disrupting School Process	0
Obstruction	4
Unlawful wnd (tinted car windows)	1
No OP (driver's license)	1
<b>TOTAL</b>	<b>40</b>

RED print with zero totals are to show that the residents charged with these offenses have been released or transferred to another facility in the last month.