

FINDINGS AND RECOMMENDATIONS

This examination of court records and proceedings finds that the judicial decisions in Zambrano's pending criminal cases were made by each judge in accordance with the law and complied with relevant statutes, common law, and constitutional principles. The judges who presided over these cases are experienced (with approximately a combined fifty years of judicial service) and have strong reputations for fairness.

In addition, Commissioner of Probation Edward Dolan has found that the probation officer supervising Zambrano's pending cases met all probation standards regarding the assessment process, frequency of contacts, verification of probation conditions, and taking corrective action to address issues with compliance. The probation officer diligently monitored Zambrano and took several measures to attempt to bring him into compliance with his conditions of probation.

The exercise of discretion by judges, clerk magistrates, and probation officers is an important and fundamental component in the fair functioning of our court system. Notwithstanding the lawful exercise of discretion in these cases, in the face of these tragic circumstances, a further examination of existing procedures, court rules, and laws is warranted and required. The Trial Court has an on-going responsibility to consider our policies and practices, and to examine how we make decisions, what information is available for consideration, and how we can improve the administration of public justice and ensure public safety. Just decisions that promote public trust and confidence are informed by comprehensive information, current and historical, as well as clear standards and procedures.

Consistent with these responsibilities, this report sets forth six general recommendations for the Trial Court's consideration:

- (1) Evaluate how risk of re-offense and dangerousness are assessed in criminal cases.** The Trial Court should evaluate, consistent with due process and equal protection considerations, whether a validated risk assessment instrument identifying those individuals with the greatest propensity for future dangerous criminal acts should be adopted for use by judges and probation officers. If the Trial Court does adopt such an instrument, a determination should be made as to what stages in the criminal justice proceedings the validated risk assessment instrument would provide the greatest impact on public safety and maximize the ability both to identify dangerousness and to respond appropriately. Further, the Trial Court should examine how information provided by a validated risk assessment instrument would be used in compliance with constitutional strictures and sound legal practices.

- (2) **Review the enforcement model for “high risk”⁷ probationers.** To ensure strict and immediate accountability for “high risk” probationers, the Trial Court should undertake a review of probation standards and policies relating to supervision, the issuance of warrants, and requests for detention of “high risk” probationers. The Trial Court should consider whether presumptive enforcement practices should be adopted for “high risk” probationers.
- (3) **Expand information provided to judges and other court officials.** To ensure that judges, clerk magistrates, bail commissioners, and probation officers are furnished at every stage with complete, timely, and relevant information upon which to base their decisions, the Trial Court should develop and further utilize technology to make additional critical information available to court personnel. Expanding the availability of additional case-related information will enable additional access by judges, clerk magistrates, bail commissioners, and probation officers to police reports and other relevant information, including Registry of Motor Vehicle records, out-of-state criminal records, sealed records, and previous case documents (such as police reports on prior cases) relating to a defendant or probationer’s criminal history.
- (4) **Strengthen judicial and probation education programs on “high risk” offenders.** The Trial Court should develop specific educational curricula relating to “high risk” offenders. Such training should include the use of ORAS, an overview of the considerations relevant to offenders at “high risk” to re-offend, and the setting of conditions of probation. Further, the education programs should consider an examination of various types of risk assessment and the recognition of factors related to risk of recidivism, dangerousness, and failure to appear. National experts on violence prediction and risk assessment for re-offense and dangerousness should be consulted in the development of these education programs.
- (5) **Uniformly apply Rule 4(c) to criminal case dispositions.** Massachusetts Dist./Mun. Cts. R. Crim. P. 4(c) provides in relevant part: “Prior to submission to the court of a tender of plea or admission or a request for other disposition, and if the proposed dispositional terms involve any probationary terms or conditions, the parties shall consult with the probation department, so as to enable the probation department to be heard as may be required by the court at the time the court considers the tendered plea or admission.” It is recommended that procedures be

⁷ For purposes of these recommendations, the Ohio Risk Need System Assessment risk categories of “high risk” and “very high risk” for re-offense will both be referred to as “high risk.”

developed, and adequate resources provided, to ensure uniform adherence to Mass. Dist./Mun. Cts. R. Crim. P. 4(c).

- (6) **Implement Trial Court Guidelines for Pretrial Conditions of Release.** Chief Justice Carey recently approved and promulgated Trial Court Guidelines for Pretrial Conditions of Release. The Guidelines include a provision for the enforcement of such conditions and set forth the authority of the Probation Service to seek an arrest warrant for an alleged violation of a pretrial condition of release pursuant to G.L. c. 279, § 3. The Guidelines further establish that both the Probation Service and the prosecution have the authority to seek revocation of pretrial release. It is recommended that the Guidelines be implemented, and appropriate forms be promulgated, to ensure the adoption of and uniform adherence to these Guidelines. In conjunction with implementation of the Guidelines, the Trial Court should also examine the development and expansion of pretrial services.

The District Court is prepared to assist in further identifying, developing, and implementing these areas of recommendation.