

Racial Disparities in the Juvenile and Criminal Justice System Advisory Panel Minutes from November 14 2017 Meeting

James Pepper, Karen Vastine, Karen Richards, Ken Schatz, Chloe White, Bruce Wilson, Lisa Menard, Judge Waples, Judge Grearson, Rick Gauthier, Trooper Scott, Jaada Longmore, Christine Longmore

Fox Complex Waterbury VT 6pm-8pm

Welcome and Introductions

Housekeeping (15 minutes)

- Standing date and location – revisited at the request of Shela Linton

Shela: hard for her to make it at this time every month, but hoping to make it work in the future. We will do a doodle poll to see whether the first or second Tuesday will work better. (Hanukkah conflict).

- Review Agenda – additions, modifications

None.

- Late January 2018 deadline for submitting report and recommendations to General Assembly

(considering 2018 legislative session) Letter needs to be sent to Speaker of the House.

Christine will check with David afterwards.

Christine runs through the following housekeeping items:

- Pizza/Soda (cost – rotate agency sponsorship)
- Name tags, can we use name tags and get to a first name basis? ***Dismantle the formalities***
- Sign in sheet for everyone including community members that includes contact info (accountability/public outreach)
- Start and end on time (we will use parking lot for agenda items that need to be carried over)

- **Public Comment** (we welcome at any time but specific times in the middle and at the end will be reserved for this purpose)
- Public Access – meeting notes, notifications, access to documents, video and other info related to the panel will be available on a page in the AG website as well as our respective websites/facebook pages; Justice for All, Ccaleovt, Root (South and North)—

Shela: we should implement Facebook livestreaming and increase the number of ways the community can interact with what the panel is doing. Preferably during meetings as well.

- Review Guiding Principals

Christine: Community involvement, transparency and accountability, commitment (top level involvement), Common understanding around systemic racism. Also reviews constitutional section, and AG advice.

- **Bias Test** <https://implicit.harvard.edu/implicit/takeatest.html> – please take this quick test (15minutes)
- Distribute/Collect reimbursement forms submit them to David

Agenda

1. **Agency Report back** on current complaint processes including identified high impact/discretions points

Law Enforcement

Ex. Rule 3, **DOC** Decisions made about inmate status both in facilities and under community supervision,

DCF – TPR decisions Prosecutors – **sentencing decisions, factors**

involved

Ken Schatz: DCF. We have an overall complaint process across each office, and the commissioner's office. These are tracked. Ken recognizes it would be helpful to have a more formal process for IDing systems related specifically to discrimination. Regarding TPRs, there is an extensive court process in which everyone has lawyers. If there are issues of discrimination in the process it can be brought up within the court system, but people can also utilize the commissioner's complaint process. In addition, a new discrimination complaint process is in the works.

Karen: Could this new process include referrals to HRC?

Ken: It could involve that. We would want to have some sort of notice provision to DCF but that is certainly a possible way to operate.

Bruce: what is complaint process for youth at Woodside?

Ken: Every youth has a lawyer and guardian ad litem to work with in the court system, but also could file a complaint with DCF.

Shela: have heard about many complaints about DCF and none have been handled properly. What about Indigenous peoples being taken out of the home at disproportionate

rate. In addition, who is helping to develop the new DCF system? Are the people most impacted being included?

Ken: That is a good point, and we will include people with broad perspectives in creating the draft.

Judge Grearson: with regard to the judiciary complaint process: one avenue for complaints is the judicial conduct board. Complaints are confidential to begin with, unless they become contested, in which case they may be open to the public. These complaints typically come from many people. In addition, requests for recusal are a type of complaint. These are generally handled by me.

Christine: do these recusal requests happen?

Judge Grearson: Yes, these have happened recently.

Shela: Explain more about the confidentiality of proceedings.

Judge: The board decides about confidentiality for each case. The Supreme Court decides who is on the board. The board is comprised of: 3 judges, 3____, 3 non0judges, non bar members

Karen: HRC investigates [add in short summary of what HRC does]. Public accommodations is the jurisdiction. Any place that accommodates the public—this includes most of state government. Also court has stated that public accommodations include roads so HRC is investigating racial profiling cases as well.

We deal with 60-80 complaints per year. In order to continue an investigation we have to establish prima facie case: this requires a finding that the person is in a legally protected category and there has been an adverse action on that basis. The hard part to prove: whether the adverse action occurred because of the protected category status.

After a reasonable grounds finding by the commission there is 6-month conciliatory process, after which HRC must file if there hasn't been a resolution. The tough part of the court process: establishing a preponderance of the evidence. This can be hard to establish, especially in implicit bias cases.

Bruce: do you do outreach to community groups so youth of color understand their rights and the process for complaining.

Karen: We do some outreach but with small staff it's hard to do everything we should. We could do more. We are presently trying to do an outreach push.

Bruce: I work on the community aspect, so I can be a conduit and help get the right answers to the folks who need them.

Shela: HRC has been very helpful, in fact one of the most helpful of all the institutions we have worked with over the years. But the challenges around the due process gates are very real and tough, and sometimes keep out complaints that are valid. How can we get those valid complaints in? It's a good system that doesn't meet everyone's needs.

Karen: we can't really change the legal standard. That is set by the courts. But one thing we have been looking at is implementing restorative practices in those cases where jurisdiction may not be able to be established. But of course that can be tough to get people to participate without the hook of HRC jurisdiction being established.

Bruce: I like the idea of but how to implement as a practical matter?

Karen: mediators could be trained as RJ practitioners also.

Christine: this is exactly the work we need to be doing. Perhaps one of the recommendations is to increase the capacity of the HRC. Or formally recommending including RJ practices

Mark: Could you talk about the roadside issues? What is the discretion that HRC has to themselves dismiss a complaint?

Karen: unless VT SC says otherwise we have jurisdiction to cover roadway issues. There are a circumstances in which we dismiss cases, for example, we may decide we don't actually have jurisdiction.

Christine: there are times when there is clearly serious race-based harassment and discrimination but that the HRC doesn't seem to be able to anything. We should do what we can to make it easier as an institutional matter to allow these issues to be heard.

Mark: can we access decisions of the commission? Also, what about the statutory avenue where there is no "emergency," are things falling by the wayside and HRC not really following up on because of that?

Karen: Settled cases are public and posted on website. Most cases don't present as needing injunctions so we don't usually enter court first as a result, we go through conciliation and afterwards, if needed, go to court.

Lisa: talking about high-impact high-discretion: release decisions, returns to incarceration, violations, case staffing decisions, residence approvals, visiting (who we allow in to visit).

Due process for furlough violation is with the DOC (probation is with the court, parole with parole board). Many decision points that could be considered. (danger to community, severity of violation, etc.).

Bruce: What's the difference between the prior program that handled folks on release from DOC and a 3-month window, and provided housing and support and the present program. Job and a place to work program.

Lisa: we now have a 6 month reintegration furlough that is similar to that prior program. There are provisions that push DOC to release more people who are eligible.

Bruce: how can we make the reentry program work better? The job and a place to work program worked well and we should try to make it work again.

Lisa: the reentry eligible number tends to stick right around where it is even though there's a constant flow in and out.

Shela: great concern about who gets sent out of state versus who isn't. The level of health feeding into decisions about who stays and who goes is deeply concerning. We don't want to be sending people out of state at all but the way it's happening is especially problematic.

Christine: these are all good ideas that we need to think about using as recommendations that we can use to report to legislature

2. Progress on recommendations from AG Sorrells report from Working Group on Law Enforcement Community

Interactions. Update from Rick Gauthier on progress the Training Council has made on recognizing and addressing implicit bias

We have been working on the implementation plan. There are specific items we are working on. Everybody should look at the plan and come back with recommendations on where we should focus for the next meeting.

We have serious capacity issues at the academy. We have been saturated for several years. After this year we may reach oversaturation point and have an inability to offer even what we offer now. So that is hanging over this discussion as well.

Karen: the level funded budgets have meant we are losing ground for a number of years.

Shela: we should also look at this as an opportunity to make an argument around a moral budget that addresses actual needs.

3. Recommendations to Legislature

- a. Public Complaint Process (all state government systems)
- b. Whether and how to implement racial profiling laws
- c. Expansion of data collection by Law Enforcement (outside of traffic stops to include UoF, etc)

4. Updates on Act 54 work, Karen Richards, David Scherr

5. Public Comment (forms available as well as time for comments, questions, etc)

Public input and participation committee Town Hall Planners to include work groups ½ day event, Saturday

Karen: we had one public forum in [fill this in with your knowledge after]. Talks about schedule.

Also talks about RBA measures—what are 3 metrics we could use to measure? We are hoping to use this turn the curve process at meetings.

6. Proposed Working Group Sessions Discuss disparities in the Juvenile and Criminal Justice System and determine 3 most high impact/high level of discretion decision points. Public participation in each group (***depending on turnout***)

- Juvenile Justice System
- Law Enforcement
- Defender General
- States Attorneys
- Judges
- Corrections
- Community
- Horizontal across all organizations – data collection and review, training, policy, oversight -(note community involvement or not)

Shela: we shouldn't have meetings behind locked doors, so would encourage us to meet in a more accessible. Also think about when you're making a decision on where to meet about other cultures.