

## MINUTES

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM. Tuesday 16 July 2019

Yates Common Room, Debevoise Hall, Vermont Law School, S. Royalton VT

Present: Etan Nasreddin-Longo, Ken Schatz, Rebecca Turner, James Pepper, David Scherr, Geoffrey Jones, Rick Gauthier, Jennifer, Don Stevens, Brian Grearson, Monica Weeber, Garry Scott, Jessica Brown

**Welcome** – Introductions

### **Announcements**

Shela is unable to attend due to scheduling.

**Minutes** – Changes, addenda, and approval for the 9 April Meeting.

Grearson: moves adoption as written, Jones seconds, minutes are approved.

### **Presentation regarding race and traffic stop data:**

Garry Scott: A lot of work has been done to make sure data is being captured accurately. Making sure troopers are doing the correct data inputs. Black operators are still 3 times more likely to be searched. About 25 searches out of around 58,000 car stops. The trend line is moving toward greater proportionality but it's not there yet. Black operators still more likely to be issued tickets. No internal affairs complaints with respect to disparate treatment.

It is difficult for smaller agencies to put together the type of data analysis that the VSP does.

There was a proposal in front of the legislature that did not advance that would have simplified presentation of data and made it more digestible on the Crime Research Group (CRG) website.

Crash data provides a way of measuring the racial makeup of the driving population.

**Discussion** – Draft for the Panel's report:

**Ken:** recommends add headings to each bullets so it's easier to read. E.g.: "Data Collection" heading. White supremacy is a phrase that is challenging as it may connote a more overtly violent form of hatred, as opposed to bias (implicit or explicit), or institutionalized racism.

With respect to training: ensure that we are talking both about training and supervision.

Diversion: we need consistent approach to diversion across the state and among types of cases.

Discretion: this is an important issue—need to talk about the many various individuals who hold discretion.

**Rebecca:** agreed with adding headings—and once we do that it can allow us to rethink what we want to emphasize. What deserves its own heading? Also we can then use these as a way to decide on how to formulate subcommittees. These subcommittees can bring specific expertise to expand on these recommendations-no need to reinvent wheel.

**Pepper:** the phrase white supremacy jumped out, and it may cause others to have trouble accepting the report. Having participated on the Panel for two years, Pepper himself understands its use and meaning in the draft report, but it may be challenging for the people we hope to persuade and cause people not to read or pay attention to the report as a whole without substantially more context.

Data collection: it seems like we should have some sort of independent body. Reporting on oneself could lead to bias.

Diversion: SAs do have concerns about judge-made diversion referrals. Inclusion of this recommendation is not something the Department can support.

Bail/electronic monitoring: should have discussion of full elimination of cash bail. May need constitutional amendment to fully move toward a solely risk-based pretrial detention regime, but something that we should discuss and put forward.

Staffing: should include specific mention of defense counsel.

Discretion: defense counsel should be included in this as well.

**David:** Expand and specify which aspects of data collection we need to increase. For example, data about prosecutorial conduct and decision-making. Also better data from the courts. The courts may actually have a lot of this already (the prosecutors probably don't) but it's important to make it accessible.

We need clarify the usage of terms with respect to pretrial monitors and risk assessments.

Diversion needs to collect race data as well.

If we expand electronic monitoring we don't also want to catch people up who would not otherwise have been monitored. We don't want to over-supervise.

We should put in a bit about further amending bail as well—ideal goal would be the federal system.

**Geoffrey:** also concerned about white supremacy phrasing. We should be including discussion of people who are poor. There is also disparate treatment of people who are poor, and we should note that.

And: proponent of lower bail. Cheaper to buy electronic monitors than to feed people in prisons.

**Rick:** also question about white supremacy: you could craft a working definition specific to the paper so we don't risk alienating people who might not understand the meaning of the term.

Important to note for policing: agency culture eats everything. It can negate good training. Some of what may need to change is the culture of departments—this can take several years though.

Also: supervisory training is important. We really should devote more resources to that.

**Jennifer:** who do we need data collection from? Data collection on school punishment—ending school to prison pipeline. We also need data on victim's services. Electronic monitoring can be an economic justice issue if not done correctly: we don't want to force people to pay for their own monitoring or languish in jail.

**Chief Stevens:** perhaps simplify some of the language in some areas. Lack of resources is a matter of prioritization. Phrasing it as a prioritization as opposed to simple lack.

Let's include the part about Human Rights Commission being the clearinghouse for complaints. Legislature wants us to give them solutions. We have to have concrete recommendations.

Data collection point: do we capture why they came into the system? How do we capture that? We know opiates are a problem, but maybe only because it is overwhelming. What are the reasons for entering the system?

**Judge Grearson:** Also want to be sure that phrasing (E.g., white supremacy) will not push away readers and funders.

Legislature has already made financial commitments on this issue—so the resources challenge is not hopeless but it's an important point to emphasize.

What do we mean by data collection standardization? Need clarity. Perhaps making sure that the same people are categorized similarly across different agencies?

We would benefit from something more like the federal system for bail. Though we are a long way from that in terms of resources.

Electronic monitoring—we simply don't get many requests for this. We wouldn't want to create a system that would end up supervising more people than we already do. Electronic monitoring has not worked in its present form. The way it is currently designed is not really making a difference.

Discretion issue: this is a key point, and one where some statutory changes could be helpful. We could further discuss the judge over ride on diversion referrals. Understood that State's Attorneys have a concern on this.

Issue about plea agreement phrase—Grearson meant that defense and prosecution have a lot more knowledge of the case than judge, so judge tends to defer even though they have final authority.

**Monica:** also concern about white supremacy phrasing—but confident we will come to a reasonable conclusion on that.

Also need clarity on data collection standardization. What do we mean by this?

Outside group/entity may be helpful, but we will still need the agencies themselves to have resources to do the work as they are in possession of the numbers.

We need a lot of work, including a group of experts, to design what a data collection system would actually look like—and what would people be comfortable with.

A lot of work has been done on this, and making a note of what has happened and what is happening may be helpful.

**Garry:**

Training: there are already groups that we could involve on this. ACLU, HRC, others. VBA as well. Other places to report to if you think the complaint will be covered up if you report directly to the agency.

We do want to make sure that data collections are apples to apples—we need to make sure there is consistency.

**Jessica:** we do need to include Shela Linton in the discussion about white supremacy. If we're already backing off the root of the issue then we're failing to address the issue. We do need to name the overall big picture problem, and white supremacy is it.

Further discussion:

Headings. At some point Rebecca put together a list of the moments of discretion. Maybe we could include this. Will be important educational piece for legislature.

Also important to address disparity in juvenile system.

**Public Commentary** – Meeting is opened to the public. Those wishing to speak will be limited to five-minute periods.

None present.

**New Business**

Geoffrey: I'm on ACLU board, feel free to reach out to me on that.

Etan: met the new racial equity director. She seems like she will be an impressive person to occupy the role.

Should the new racial equity ED be a part of this panel? This will be something we should discuss in the future.

Also spoke with Prof. Seguino: traffic stop data collection should be updated. She will speak with us in September.

Act 54 specifically mentions VT ACLU giving input into what's going on. Etan will send invite to ACLU ED.

David and Etan will compile list of subcommittees after getting emails from folks.

### **Next Meeting**

To be determined.

### **Adjournment**