

Agendum – Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM, Tuesday 10 March 2020

Room 312, Hartford Town Hall, White River Junction, VT

Welcome – Introductions. Present: Shela Linton, Chief Don Stevens, Rebecca Turner, Jessica Brown, Karen Gannett, Robin Joy, Garry Scott, David Scherr, Etan Nasreddin-Longo, Xusanna Davis, Ellen Whelan-Wuest (by phone).

Announcements James Pepper and Judge Grearson send regrets due to work obligations. Geoffrey Jones also sends regrets.

Discussions:

S. 338 - A bill concerning Criminal procedure; corrections policy; diversion; pretrial services; probation and parole; furlough.

Ellen Whelan-Weust, Justice Reinvestment Group:

Ellen gives an overview of bill. Talks about the issue of furlough readmittances, people who are sent back to prison after they have been released from prison but are still being supervised by the Department of Corrections. Very high rates of readmittance—the highest in the country. The bill includes major policy shifts to move away from a furlough system and toward presumptive parole system. Parole brings more due process, should slow rates of reincarceration.

The bill also requires automatic review by DOC central staff for reincarceration decisions by field staff that will result in more than 30-days served. The bill allows for review by courts of DOC's furlough decisions.

Ellen discusses racial disparities as they were uncovered by CSG's data investigations. They were very clear. But it wasn't possible in the time they had and with the data they had to fully understand why this was happening.

Chief Stevens: how are the categories established in terms of who goes to furlough and parole?

Answer: A lot of this is laid out in the bill.

But Chief points out that there should be a focus from the anti-bias lens on how these violations are being established.

Shela: agree with Chief that we need to focus on some of the bias issues that may be informing violations. Also, why did we run out of time on the racial disparities issues? We hear this too often—these issues don't get the attention they need.

Ellen says they ran out of time because they started late: the Bureau of Justice Assistance (a division of the federal Department of Justice) was very slow to turn around approval for the project. They had to get a work product and recommendations done by the final bill introduction deadline—late January.

Rebecca: it seems like CSG had a larger pool of data than we normally work with? Ellen, yes, specific agreements with DOC and Judiciary allowed for this. Full data files are not publicly available, however, only analyzed data.

Clarification that judiciary is not collecting race data—that is coming from police filings.

Concern from Shela: I heard language being used that people “agreed” to return to prison. That isn’t a true picture of what’s happening—there are a lot of other pressures here, it’s not a free choice. Ellen: yes, understood and agreed, apologies for the language. This is a big issue the bill is trying to cure: people giving up their freedom without sufficient due process.

Current projects of the Crime Research Group relating to racial disparities.

Karen Gennett and Robin Joy, from Crime Research Group:

Robin and Karen give overview. Talk about serious problems of data access challenges. Both state data collection as well as the problems of federal data collection. Serious obstacles to ease of access and usage of data.

Security of data rules also impose serious restrictions on how this data is used and distributed.

- See attachment 1: summary of crime research group projects.

Shela: can I get a spreadsheet on the flow of challenges with respect to data collection and management? A huge amount of issues with resources, barriers, and relationships that appear to make these things challenging.

General legislative update concerning bills that come under the purview of the Panel.

David Scherr:

- See attachment 2: summary of current bills.

Discussion: Why haven’t more of the recommendations from our report made it into any legislation?

Decision point: we are going to work on a letter to the legislature highlighting high-level issues that we hope will be addressed. We will be sure emphasize the data recommendations, as those keep coming up repeatedly, and did again tonight.

Update on traffic stop data website:

Karen gives overview of the website containing the traffic stop data. There's been a lot of change to the website. More accessible, more explanatory. Karen talks about the challenges of collecting usable data from so many police departments who don't report uniformly. This also goes to the data issue, which our report addressed.

Legal requirements to reporting that should be changed: Date, time, and location of stop, make model of car, state of plate—none of this is in the requirement. We should add it.

Next Meeting – 14 April, location TBA, possibly at Kimball Public Library.

Meeting Adjourns

Attachment 1: Summary of Crime Research Projects.

Crime Research Group Race-Related and Other Projects

1. Traffic Stops & Race: This project proposed the development of a consistent, sustainable approach to traffic stop and race data collection to support research and policy. CRG worked with all law enforcement agencies in Vermont to improve data collection and conducted several different analyses of traffic stop and race data for the purpose of developing an analysis that could be used for all Vermont law enforcement agencies in the future.
2. Offender Characteristics: Facilities: This project aims to deliver a description of offenders sentenced and/or detained in the correctional facilities between January 2016 to December 2017. The report will include general demographics of the population as well as out of state criminal history records from the FBI.
3. Offender Characteristics: Probation & Parole: This project will provide a holistic view of defendants on probation and parole and will highlight: their demographics, the crimes committed, the conditions of probation and parole, the length of time on probation or parole and if this differs by county, the behaviors that resulted in violations, the response when someone violated, and if the violations were filed in court.
4. Equal Access to Alternative Programs: This project will explore whether alternative programs are serving all eligible individuals and if the programs Vermont has implemented are contributing to racial disparities in the corrections facilities.
5. Exploring Racial Differences for Victims in Vermont: This research project will use state NIBRS data, criminal histories, and court data on crimes against people, including arrests, prosecutions and sentencing and seek to understand if victims of different races are treated differently.

Other Projects:

Victimization of & Criminal Justice Response to Vulnerable and Elderly Adults: This project will explore the question "What are the victimization patterns for the vulnerable and elderly populations?"

Rural and Urban Domestic Violence in Vermont: This project will explore if intimate partner assaults result in more serious injuries in rural areas of Vermont vs urban areas looking at police coverage, seriousness of injuries, victim compensation, and emergency room visits.

VT Crime Analysis Using NIBRS Data: this project will reconstruct the crime rates for law enforcement jurisdictions using NIBRS submissions, develop a data improvement plan, and create a set of crime reports using NIBRS data.

Opiates and Property Crime: A project to answer the question: "Are opiates driving an increase in property crimes in Vermont?"

Retrospective Study on the Arnold Public Safety Assessment: This project will inform the work of the NCJRP team in Vermont. The SAC has been part of the NCJRP Advisory Team and is requesting funding following the recommendation of the NCJRP Advisory Team to conduct a retrospective study using the Arnold PSA to determine its potential value within Vermont's criminal justice system.

Attachment 2: Summary of current relevant bills:

H. 808 - An act relating to the use of deadly force by law enforcement: This bill is being discussed in order to bring the issues before the legislature but is highly unlikely to get a vote this year. The following bill, on related issues, more likely will.

H. 464 - An act relating to law enforcement training on appropriate use of force, de-escalation tactics, and cross-cultural awareness: This is being supported in concept by a number of entities. Among other things, it will mandate the creation of statewide model policies on use of force that all departments will have to follow. It will also require more use of force data collection. There may be some changes, but at the very least a directive for a use of force model policy is likely to pass.

S. 338 - An act relating to justice reinvestment (WE'RE ALREADY ON THIS. ELLEN WILL BE AT OUR MEETING.). Additional note: this bill addresses a few of the issues that were contained in bills that are not being considered this session.

S. 294 - An act relating to expanding access to expungement and sealing of criminal history records: This bill is being actively considered by the Senate Judiciary Committee. It will be taken up again next week. In its current form it dramatically expands the number of crimes eligible for expungement and/or sealing, which could reduce the disparate effects of conviction and incarceration.

S. 261 - An act relating to eliminating life without parole: This bill has passed the Senate Judiciary committee and will be considered by the full Senate next week. After amendments, it ultimately retained life without parole for Aggravated Murder convictions, but eliminated it for First and Second Degree Murder.

S. 217 - An act relating to human trafficking and prostitution: this will be considered by the Senate Judiciary Committee in the coming weeks. It is similar to H.568, which has already passed the full House this session. It works to build protections for people who might be victims of human trafficking, and directs a study committee to report on how to update Vermont's prostitution laws—which are antiquated. With both chambers considering similar bills it is likely some version will become law.

H. 587 - An act relating to presumptive diversion to treatment court: This may be considered by the House Judiciary Committee next week. It may not make it out of committee this year but it is likely to get a hearing.

S. 232 - An act relating to implementing the expansion of juvenile jurisdiction: This is being considered by Senate Judiciary and will likely pass. It is largely comprised of technical corrections to laws that have been passed in the last few years that raise the age at which young people in Vermont can be tried as juveniles. The underlying policy is a progressive one, but this bill is more about the implementation rather than the creation of that policy. Nevertheless, it's a bill that deals with major policy shifts in how we deal with young people involved in the criminal justice system.

S. 234 - An act relating to miscellaneous judiciary procedures: this is being considered by Senate Judiciary and will likely pass. It is largely technical, the few substantive changes are unlikely to be major policy shifts.

PR. 7 - Amendment to the State Constitution regarding the ability of the State to hold a person accused of a violent misdemeanor or violent felony without bail: this was discussed in Senate Judiciary but likely will not be taken up again. The underlying purpose of this amendment was to make it possible to move toward a primarily risk-based system of pretrial detention instead of a primarily crime-based system. While that could be a fairer system it also opened the possibility that more people could be held pretrial. Until there is a clear way to address that concern it appears this will not be moving.

H. 594 - An act relating to eliminating felony-murder for juveniles: This will be discussed next week by the House Judiciary Committee. I'm not sure if it will move. In other states this could be a big shift. But in Vermont the felony murder rule very limited. Vermont law already precludes someone who had no intention of committing murder from being charged with murder.