**CHARGING AND PROSECUTORIAL-DECISION MAKING**

North Carolina is unique in the process by which criminal charges are generated.  The vast majority of criminal charges are initiated by law enforcement without prior review by a prosecutor.  Additionally, citizens / victims regularly seek misdemeanor criminal charges directly from a magistrate.  Largely, these offenses are not approved by prosecutors prior to their initiation.  Once criminal charges are generated, it is the responsibility of the prosecutor to review the investigation, weigh the evidence, and either decline or proceed with prosecution. Implicit bias surfaces most often in situations where people exercise discretionary decision-making. To ensure that law enforcement, magistrates, and prosecutors make deliberate decisions free from bias, there should be comprehensive and continuing education programs focused on reducing cognitive bias in every part of the criminal justice process including pretrial charging decisions, plea negotiations, trials, and sentencing.

Data collection and technological resources in North Carolina prosecutors’ offices have fallen behind those available in many other state government agencies. Additional funding for training and adequate staffing in North Carolina prosecutors’ offices will be necessary to implement meaningful changes in an attempt to reduce and eventually eliminate racial disparities in the criminal justice system.

There are tools currently available to prosecutors that could help address racial disparities in the criminal justice system; however, those tools are currently being under-utilized in North Carolina.

Several states, the federal government, and other entities have studied, proposed, or adopted various reforms and/or legislation that may help reduce racial disparities in the criminal justice system and bear directly on the role and responsibilities of prosecutors. A comprehensive study should be made of the reforms and legislation that have proven to reduce or seem likely to reduce racial disparities in the criminal justice system and bear directly on the role and responsibilities of prosecutors. Likewise, prosecutors should be encouraged to participate in studies and surveys that examine how prosecutors perform their duties.

The victims of crime, survivors, and their families represent a critical group of stakeholders when any type of reform to the criminal justice system is proposed. The rights of this critical group of stakeholders should be considered by prosecutors and all actors in the criminal justice system when decisions are being made.

**Recommendation:**

**The North Carolina Conference of District Attorneys will develop and provide education on cognitive bias in the criminal justice process for prosecutors, their staff, and officers of justice.  The training will focus on investigation, charging, and prosecutorial decision-making and will include recognizing confirmation and implicit bias and reducing its impact. These programs will follow recommendations of the American Bar Association** **and the National District Attorneys Association National Prosecutions Standards to support the impartial, unbiased pursuit of justice.**

**North Carolina should allocate additional funding to prosecutors’ offices and to The North Carolina Conference of District Attorneys in order to enhance data collection, technology, training opportunities, and staffing in a renewed effort to address racial disparities in the criminal justice system.**

**North Carolina prosecutors should have individual and collective goals of reducing and eventually eliminating racial disparities in the criminal justice system. They should use a variety of available tools, including but not limited to the following, to help achieve those goals:**

1) Deprioritization of low-level misdemeanors that do not pose a public-safety risk. Examples include misdemeanor possession of marijuana, possession of marijuana paraphernalia, and ordinance violations.

2) The creation of pre-charge diversion and deflection programs should be considered in all North Carolina prosecutorial districts.

3) Post-charge diversion programs should be developed in all North Carolina prosecutorial districts.

4) The appropriate use of mass relief measures should be encouraged and supported by appropriate resources in all North Carolina prosecutorial districts.

5) Appropriate resources should be provided to North Carolina prosecutors to ensure that North Carolina’s Second Chance Act is properly utilized in all North Carolina prosecutorial districts.

**North Carolina should study and consider adopting reforms and/or legislation used in other states or used by the federal government that have been proven to reduce or seem likely to reduce racial disparities in the criminal justice system. North Carolina prosecutors should participate in studies and surveys on topics that are relevant to reducing and eventually eliminating racial disparities in the criminal justice system, including but not limited to, prosecutorial decision-making studies and surveys.**

1) Examples include the State of Washington’s RCW 13.40.077, recommendations of the American Bar Association, the National District Attorneys Association National Prosecutions Standards, and the current Harvard University study of “Understanding Prosecutorial-Decision Making”.

**North Carolina should always recognize the rights of, and the potential consequences to crime victims, survivors, and their families when any type of change or reform to the criminal justice system is proposed.**