

**JUDICIAL BRANCH COMMITTEE
MEETING 3.18.2021**

Committee #2: JUDICIAL BRANCH

I. Introductions / calendar updates

II. Discussion on Fines & Fees, and Bail Reform Recommendations

III. Working Session

a. Review of Mecklenburg Bench Card

IV. Progress Updates (15 minutes)

a. Meeting with Vera Institute of Justice

b. Recommendation 116

c. Recommendation 118

V. Next Steps (5 minutes)

a. Unassigned Recommendations

b. Deadlines and deliverables

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Recommendation 118: Truth and Reconciliation Commission Mecklenburg County District Court Bench Cards

Imposition Bench Card

Key Provisions

- The court shall not impose a conditional order to show cause.
- The court shall consider a defendant's ability to pay before imposing fines and fees; fines and fees should not "pose an undue hardship."
- The court can reduce and remit fines and fees to tailor the total amount due to the defendant's ability to pay.
- A defendant is presumed unable to pay if they are eligible for a public defender, if their income is at or below 200% of federal poverty guidelines, if they are a full-time student, if they receive public assistance, or if they are incarcerated, homeless, or residing in a treatment program.
- The court should use ability to pay information to set a proportionate payment plan for fines and fees. "Guideline: 10% of net monthly income after basic living expenses."
- If a defendant is unable to pay, the court should consider sentencing the defendant to community service or a program.

Nonpayment Bench Card

Key Provisions

- If an individual fails to pay by the required date, the court cannot issue an order for their arrest for non-payment. Instead, the court may send reminders (at least 3 recommended), remit the fine or fee, convert it to a civil lien, or issue an order to show cause.
- If an individual is ordered to show cause and appears, the court shall conduct an ability to pay hearing. At the hearing, the defendant must be appointed counsel, and based on the ability to pay determination, the court may waive or reduce fines and fees, convert them to a civil lien, allow the defendant additional time to pay, or provide for a community service or program alternative sentence.
- If an individual is ordered to show cause and does not appear, the court may send reminders or an order to show cause, remit the fine or fee, convert it to a civil lien, or issue an order for arrest. (The court cannot issue an order for arrest if the person was not served an order to show cause.)

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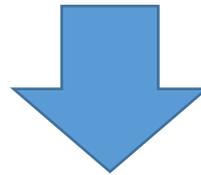
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Prosecutorial Stakeholder Bucket

Racial Equity and Justice Prosecutor Training Series

Partnership with the Vera Institute's Motion for Justice to develop a series of training opportunities that looking directly at the role prosecutors can play in making the justice system fairer and more racial equitable.



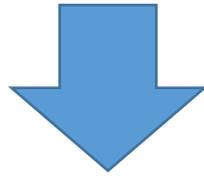
Potential Deliverables:

- Training models addressing topics including, but not limited to:
 - Unconscious bias in the criminal justice process and prosecutorial decision-making
 - Evidence-based reforms for reducing and eventually eliminating racial disparities in charging decisions and prosecutorial outcomes, including diversion
 - Habitual felony charging decisions
- Structure for delivering trainings on ongoing basis, including level (state, regional, office, etc.) and timeline
- Estimate of costs associated with training development

Prosecutorial Stakeholder Bucket

Enhancing Prosecutorial Data Collection and Use

Partnership with the Vera Institute to analyze current data collection in North Carolina and create roadmap to values-oriented data-driven criminal justice practices



Potential Deliverables:

- Identify case and defendant-level data points to include in new AOC E-Courts system and / or prosecutor-specific systems to adopt statewide
- Implement monthly and annual reporting requirements on prosecutorial practices
- Determine costs associated with development of new data environment, including infrastructure costs and positions
- Generate list of evidence-based reforms for eliminating racial disparities in charging decisions and prosecutorial outcomes

Prosecutorial Stakeholder Bucket

Enhancing Prosecutorial Data Collection and Use

Proposed Timeline

	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
TREC and CoDAs collaborate to establish deliverables	████████████████████									
TREC facilitates meetings between CoDAs and Vera to determine scope of partnership				██████						
TREC, CoDAs, and Vera meet monthly to complete deliverables					████████████████████					
TREC works with CoDAs and AOC to incorporate required changes into Ecourts								████████████████████		
Draft legislation for funding data environment on ongoing basis								████████████████████		

Prosecutorial Stakeholder Bucket

Upcoming Partnership Opportunities

Potential Opportunity for NC DA's Office:

- Vera has partnered with numerous prosecutor offices through Reshaping Prosecution program to implement concrete, data-informed policy and practice reforms
- Over the next few months, Vera may expand partnership opportunities to more offices through streamlined application process
- Judicial Committee should consider whether any offices in North Carolina would be well-suited for this opportunity, should it arise, and encourage them to apply

Recommendation 116: Sentence Review

Examples from other jurisdictions

Act	Eligibility	Notes
Second Look Amendment Act (D.C.)	Any individual convicted of serious offenses before age 25, after serving 15 years	<ul style="list-style-type: none"> Extended eligibility from 18 to 25 based on emerging brain-science research
Florida SB 1308 / HB 1131	Offenses committed under age 18 after defendant has served 25 years	<ul style="list-style-type: none"> Excludes murder and conspiracy to commit murder. Defendants must apply for consideration Bill would apply retroactively
New York A8588 / S7681	Sentenced to 10+ years and more than two years from conditional release	<ul style="list-style-type: none"> Excludes terrorism, rape, and offenses involving infliction of serious physical injury, but DA has discretion to waive limitations Defendant must petition court Not allowed to waive eligibility as part of plea agreement
West Virginia HB 4913	Served 10+ years and court makes certain findings regarding risks	<ul style="list-style-type: none"> Defendant may remain under supervised release for up to five years May re-apply if denied after five years; shorter waiting time if 50+
Delaware Code tit. 11, § 4214 (f)	Habitual offenders who have served the minimum sentence for the committed offense	<ul style="list-style-type: none"> Priority for defendants whose qualifying felony was non-violent Requires DOJ to consult with victims and submit response to defendant's petition
Oregon SB 1008	All juveniles who have served 15 years in prison	<ul style="list-style-type: none"> Expanded prior Second Look Act to make all defendants sentenced as juveniles eligible, regardless of offense or sentence Received bipartisan support from EJI and Koch affiliates
Second Look Act of 2019 (U.S. Congress)	Served 10+ years	<ul style="list-style-type: none"> Defendant may remain under supervised release for up to five years Mandates factors to consider May reapply 5 years after first denial, 2 after second denial, once post 50

Recommendation 118: Truth and Reconciliation Commission

U.S. TRC's and related initiatives

Greensboro Truth and Reconciliation Commission

- Establish public record of Greensboro Massacre and provide recommendations to prevent reoccurrence
- Seven-member commission produced [report](#) which formed basis of year-long community dialogue process

Maryland Lynching Truth and Reconciliation Commission

- Established by [state law](#) to research racially motivated lynchings and hold public meetings where they occurred
- Eighteen commissioners and five permanent staff members
- Produced [interim report](#) in 2020 documenting progress, previewing specific focus on role of legal system and media

Grassroots Law Project Truth, Justice, and Reconciliation Commission

- Partnership with District Attorneys of San Francisco, Philadelphia, and Boston to “process and address the injustices of the past that simply were not given the time, attention, and dignity that they deserved.”
- Restorative justice focus which will engage individuals and communities who feel they were victimized by racially unjust prosecutorial and police practices

Boston Busing / Desegregation Project

- Organized by Union of Minority Neighborhoods, a Boston-based non-profit,
- Established a “community-driven process of telling, sharing, and learning from stories across differences to co-create the history of busing and Boston school desegregation and invite more communities into current attempts to improve the school system.”
- Produced [interim report](#) and [film](#) to engage communities across Boston

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Unassigned Recommendations

Recommendation 104

Recommendation 104: Develop a process to eliminate criminal justice debt

Goal: Widespread adoption of processes for judicial officials to waive existing debt and not impose debt; adoption of mass relief by district attorneys

Ongoing work: TREC staff identifying out-of-state models

Next steps: Identify existing processes and examine ways to improve existing forms utilized by AOC, with the aim of organizing a slate of recommendations for addressing criminal justice debt across the state