

Task Force Meeting 7/24/20 Minutes

WELCOME

Anita Earls opened the meeting, saying she was thrilled for this second meeting of the task force. She thanked the members for participating.

She also said she wished she could introduce all of the members, but time does not permit it. Earls did introduce the guests who would be helping throughout the meeting, and the working groups' staff who were not at the last meeting.

Earls first introduced the members of the task force who were not introduced at the last meeting:

District Court Judge Brook Locklear Clark

Superior Court Judge Allen Thornburg

Chief John Letteney

She then introduced other guests at the meeting:

Professor Kami Chavis, Wake Forest University School of Law

Professor Jessica Smith, UNC School of Government

Earls introduced facilitators for the discussion part of the meeting from NCCJ:

Karen Dyer

Ivan Canada

Michael Robinson

Justice Anita Earls also introduced working group staff members:

Leslie Cooley-Dismukes

Emily Meta

Earls said the meeting materials would be posted on the NCDOJ website prior to all task force meetings. Materials sent to the entire task force are public record and would be shared on the site.

She mentioned the first public comment meeting on 7/28 at 10am. She said people can sign up to speak for two minutes and will receive a Zoom link, or you can watch the meeting on YouTube as well. This is a crucial time to participate in order to shape the work of the task force.

The links she mentioned are linked in the description of the YouTube stream of the meeting.

Vote on the Minutes

No members requested changes to the meeting minutes.

Ellen sent out a poll to vote on the approval of the minutes.

There was an error with the poll, so the vote was deferred for later in the meeting

About Working Groups

Attorney General Josh Stein said they conducted two surveys to members to decide on working group topics and the number of working groups.

The members decided to have four working groups with the following categories:

- 1: Law Enforcement Management
 - 1. Recruiting and retaining a diverse and racially equitable workforce
 - 2. Law enforcement training to promote public safety and build community support
 - 3. Law enforcement accountability and culture
 - 4. Enhancement of the law enforcement profession
- 2: Policing Policy & Practices
 - 1. Use of force
 - 2. Investigations
 - 3. Community policing
 - 4. Pre-arrest diversion and other alternatives to arrest
 - 5. Appropriate use of SRO's
 - 6. Reimagining public safety, reinvesting in communities
- Court-Based Interventions to End Discriminatory Criminalization
 - 1. Pre-trial release and bail practices
 - 2. Charging decisions
 - 3. Juvenile Justice system issues/school to prison pipeline
 - 4. Racial equity training for court system personnel including Judges, DA's and Public Defenders
 - 5. Decriminalization or lessening of criminal penalties
- Advancing Racial Equity in Trials and Post-Conviction
 - 1. Criminal trials
 - 2. Use and impact of fines and fees
 - 3. Death penalty/Sentencing disparities
 - 4. Reinstating parole/redress for long-term sentences/Second Look Act
 - 5. Prison discipline
 - 6. Collateral consequences of convictions

Stein then introduced the members of the groups. He said if a member wants to change groups or is unhappy with their assignment they could speak to Earls and himself to solve the issue. These are the members of each working group:

Group 1 Members:

Chairperson: Mitch Colvin

James D. Gailliard

Cerelyn Davis

John W. Ingram, V

Group 2 Members:

Chairperson: Erik A Hooks

Deborah Dicks Maxwell

Kerwin Pittman

Billy Gartin

Angelica R. Wind

John Letteney

James Clemmons

Talley Wells

Group 3 Members:

Chairperson: Marcia Morey

Tarra Callahan

Jim Woodall

Ronnie Smith

Mujtaba A. Mohammed

Group 4 Members:

Chairperson: Henderson Hill

Mike Hawkins

Brooke Clark

Mary Pollard

Alan Thornburg

Attorney General Josh Stein said they have not yet finalized the points of contact to the organizations that the executive order directed the task force to consult.

Associate Justice Anita Earls handed the meeting over to Professor Chavis and Professor Smith to lead the task force through a discussion of the criminal justice system and set the stage for the work the task force will do.

Smith Presentation: Criminal Justice System

Professor Jessica Smith said she came to present an abbreviated systems map of the criminal justice system, highlighting key decision-making points and data, as well as to explore the bigger picture.

- Factors influencing who enters/re-enters
- Factors influencing how actors behave

Smith said her goal for this presentation is to help the task force develop a framework for identifying and prioritizing their work.

Smith went over a map of the steps in the criminal justice process that may be most important to task force work:

- Individuals and businesses, law enforcement
- Magistrate
- District Court
- Superior Court
- Probation/Prison

Smith offered data saying that in 2019, North Carolina had 1.6M misdemeanor charges and 343k felony charges, most of which were nonviolent offenses.

- 16.4% of felony charges were for violent offenses; 83.6% were nonviolent
- 6.66% of misdemeanor charges were for violent offenses

She said about 1M of the misdemeanor charges were for non-DWI related traffic offenses. Speeding, expired registration and driving while license revoked, not impaired revocation are the top three most common charges.

Some of the most common non-motor vehicle, nonviolent offenses are: misdemeanor larceny, possession of drug paraphernalia, possession of up to ½ ounce of Marijuana, possession of Marijuana paraphernalia.

About 1/3 of the felony charges are for drug offenses.

Smith said she is mentioning these data points because they may influence what groups in the task force focus on in addressing these issues, such as drug abuse.

Smith also mentioned that officers have a lot of discretion in how they decide to deal with issues, as far as diversion, citation, arrest, etc.

Smith said North Carolina predominantly has a money-based bail system. She said in 2019 over 66% of highest charge misdemeanor cases got a secured bond. She said a consequence of money bonds is that they can lead to wealth-based detentions, meaning that people can remain in jail because they can't afford to get out, not because they are necessarily a risk.

Smith said magistrates do not use summons, as compared to warrants, very often for misdemeanors.

In district court, she said the number of cases resolved by pleas is significantly higher than the number of cases resolved by trial.

Smith said the backend of the system is not always the end of the system. Those on probation can get it revoked, and the implications of a conviction influences the life of the individual long after they are technically out of the system.

She said this map is not all encompassing, it's a simplified version.

Smith then asked if she left out any steps that would be used in the task force's work. None of the members suggested any.

She asked to talk about the factors that influence who enters the system:

- What we choose to criminalize
 - In NC, one of the most common is soliciting alms
- The availability of health services
 - Behavioral health services, drug addictions
 - Trauma
- Probation revocation
- The roles of fines and fees
- Failure to appear
- Criminal Record
- Political/Philosophical atmosphere of your community
 - Is it tough on crime?
- Influence of victims
- Availability of education
- Collateral consequences
 - Exclusions because of a criminal records
- Jobs and economic opportunities

Then she talked about the factors that influence the actors in the system:

- Legal framework
 - Restorative justice
- Accountability
 - Political process
- Data
- Politics
- Crime Rate & Local Policies around it

- Race
- Transparency
- Authority and discretion
- Training
- Legislative mandate
- Resourcing

Chavis Presentation

Professor Chavis said her presentation is focusing on the issue of race, the roots of racial disparities in policing.

- She said we know many police systems began as slave patrols and night watches in the Antebellum period.
- Moved to complicity with the KKK and lynching during Reconstruction.
- Civil rights protest enforcement during Jim Crow.

In the modern era, Chavis said we see police and race through the War on Drugs vs. The Opioid epidemic.

- A public health issue vs. being treated as a health crisis

Agencies:

- Police departments lack the diversity of the communities they serve

Police reform and accountability efforts:

Community Policing

Community Control of Law Enforcement

Agencies

Defund/Re invest

Demilitarization of Police Forces

De escalation Training

Anti bias Training

Using Technology to Enhance Accountability (Police worn body cameras)

Increasing Transparency Through Data Collection (racial profiling)

Use of Force Standards

Duty to Intervene/Whistleblower Protection

Qualified Immunity

Independent Investigation/Prosecution of Police re: Use of Force/Death in Custody

Increased Pay/Vacation Time for Police Officers (Officer Wellness)

Racial disparities in police stops and searches

- Stop and frisk 2012 statistics by race:
 - 54.8% Black
 - 31.8% Latino
 - 9.7% White
 - Only 2% of frisks resulted in a weapon found

In North Carolina:

- Greensboro and Asheboro police departments are twice as likely to search Black drivers
- NC State troopers are three times as likely to search Hispanic drivers
- Officers 250% more likely to use probable cause as justification to search black motorists
- Black drivers are 43% more likely to be arrested than whites in Raleigh

Nationally:

- The Stanford Open Policing Project found that, across all jurisdictions, law enforcement officers stop Black drivers at higher rates than whites.

This remains the case even when the researchers account for age and gender of the driver

- The Stanford Open Policing project found that in nearly every jurisdiction stopped Black and Hispanic drivers are searched more often than whites
- When they applied a statistical model that accounted for any differences in outcome (i.e. what if Black drivers are more likely to have contraband) the discriminatory pattern persisted
- That is, police appeared to require less suspicion to search Black and Hispanic drivers.

Use of Force

- Police are more likely to use every single type of use of force with Black people than with whites in similar situations
 - Such as pushing into a wall, using handcuffs, drawing weapon or using spray or baton.

Disparities in police shootings:

- Unarmed African Americans are nearly 3.5 times more likely to be shot by police than unarmed whites
- Non suicidal unarmed Black men are 13 times more likely to be fatally shot by the police than whites.
- While people of color make up fewer than 38 percent of the U.S. population, they make up almost 63 percent of unarmed people killed by police.

Chavis said from 2013-2019, 204 were killed in North Carolina by police officers. She said the News & Observer has recently been reporting on how agencies in NC use force.

She said police violence is changing over time, decreasing in cities but increasing in rural and suburban areas. Deaths by police are increasing, with more so far this year than this time in past years.

Chavis said that as of July 9, 2016:

- Whites represented 54% of police shooting victims
- Blacks represented 28%
- Hispanics represented 18%

How officers arrive to calls

Chavis said in 911 calls, white officers were more likely to use a gun than Black officers and were more likely to do so in Black neighborhoods.

Arrest Statistics nationally:

- African American juveniles are 2x as likely to be arrested as white juveniles
- African Americans represent 38% of those arrested for drug offenses
- African Americans are arrested at rates nearly 9 times higher than the rate for whites

Disparities in Pretrial Detention:

- In large urban areas, Black felony defendants are over 25% more likely than white defendants to be held pretrial.
- Across the country, Black and brown defendants are at least 10 25% more likely than white defendants to be detained pretrial or to have to pay money bail.
- Young Black men are about 50% more likely to be detained pretrial than white defendants.
- Black and brown defendants receive bail amounts that are twice as high as bail set for white defendants and they are less likely to be able to afford it.
- Even in states that have implemented pretrial reforms, racial disparities persist in pretrial detention

Chavis said that for violent offenses, charges by race are more severe for Black, nonhispanic individuals, and the same is true for drug offenses and driving-related offenses.

Severity of charges:

- Black males receive sentences nearly 20% longer than white males convicted of similar crimes
- 100 to 1 disparity between crack and powder cocaine
- In the federal system, at least 60% of LWOP prisoners are black
- 42% of defendants under sentence of death are black

Chavis said that whites are underrepresented in the incarcerated population, while Blacks are overrepresented.

Collateral Consequences of a Felony Conviction

Right to Vote

Ability to hold state office

Ability to sit on a Jury

Right to Possess Firearms

In NC:

A person “adjudged guilty” of a state or federal felony or a felony in another state that would be a felony in North Carolina forfeits the rights to vote and to hold public office. N.C. Const. art. VI, §§ 2(3), 8

A person convicted of a felony is disqualified from jury service. N.C. Gen. Stat. § 9 3

A professional or occupational license may be denied, suspended, or revoked because of certain convictions

Right to possess firearms N.C. Gen. Stat. 14 415.1(a)

MEETING BREAK

Justice Anita Earls brought the meeting back at 11:40 a.m. and handed it back over to Professor Smith and Professor Chavis.

Smith said this is an opportunity for the members to put policy options up on the board that they think should be for consideration by the task force. She said they didn’t need to be complete but be thought out.

Some issues that came up:

- Private warrants
- Officer diversion
- Restorative justice
- Guardrails on discretion
- Police culture
- Criminalization of traffics and low level offenses
- Examining status offenses (aka “habitual felon”)
- Available data
- Officer training
- Transformative justice
- “Status” offenses that impact sentence
- Raise juvenile jurisdiction
- Recruitment and Hiring

Professor Chavis asked for a more specific explanation on what the members mean by “police culture”

- Kerwin Pittman said he meant the individuals that set the tone of the police department and agencies.

- Chavis said the blue code of silence is something that has come up a lot, even in court documents. She said that group loyalty can be important, but what do we do when it turns perverse.
- Chief Cerelyn Davis mentioned procedures in accountability of officers' actions and holding supervisors accountable as a part of correcting police culture.
 - Chavis said repeat offender police officers who aren't held accountable give others the idea that they can get away with bad behavior. She said it can move from tolerating that conduct to even encouraging it.
 - She also mentioned that it's important to protect officers who do want to speak up when something happens from retaliation

Chavis also asked about "officer training"

- John Letteney said that doing more training with new officers it can indoctrinate them into a particular culture, instead of training them on the outside.
 - He said sometimes they must be unindoctrinated when officers come from other places, and retraining them to have appropriate expectations of the job.
- James Clemmons said that training is not the root of all of this violence. He said you can train them all you want, but if you do not know what's in their hearts, it won't matter how well you train them.
 - He also mentioned that they need to figure out how to get more diversity in hiring, because he finds it difficult to get minorities to apply to be officers.
 - Chavis said this shows that maybe there is an overreliance on training and not enough on the hiring part. She said its much easier to get the right person in the seat than it is to train out issues.
- Henderson Hill said an obstacle of hiring is the over policing of certain communities. The arrest records of those areas prevent those in that community from applying to police agencies.
- James Clemmons said it falls on them to educate kids on the implications of committing a crime, as far as how it prevents them from getting certain jobs.

Professor Smith asked the group where they think there should be better data gathering in order to solve issues.

John Letteney mentioned that data of police agencies is often compared to census data, which he said doesn't generally lead to accurate conclusions because they don't follow the same jurisdictional lines.

- He said the traffic stop reporting form doesn't give the data needed, it needs improvements such as whether or not the person is a part of their jurisdictions and why the officer stopped the car in the first place.

Letteney also mentioned a national decertification database, which we do not currently have. He said North Carolina has a good system where there has to be paperwork filled out as to why an officer was let go or resigned, and making sure it goes to a system where other agencies will know what happened.

- He said it's difficult for a background investigator to find out what happened in all other states when there isn't a database that is nationally available.

Chavis mentioned the importance of choosing who is in charge of studying and interpreting the data that is collected.

She brought up crisis intervention as well:

- Talley Wells said it is important to think through the context of situations that are happening. He said crisis intervention has a lot to do with mental health and also disabilities. Wells also said its important because it helps determine whether the individual is actually committing a crime or if they are in distress and in need of help.
- Kerwin Pittman said every officer in NC should be crisis intervention trained, as well as social workers.
- John Letteney said a hurdle to getting all officers CIT trained is that a private institution trains these officers, and they've decided they don't train officers until they have been on the job for 2 years.
 - He said law enforcement shouldn't be the first responders to mental health crises, but they often are and need systems in place in order to work better
 - He mentioned the One Mind campaign, which encourages police agencies to train their officers in CIT, have a policy in how they treat individuals with mental health issues, train non-police civilian employees in at least mental health first aid, and establish a relationship with a behavioral health services organization in your community.

Justice Anita Earls thanked the professors for their presentations and leading the discussion.

Vote on meeting minutes from last meeting

The members of the task force verbally voted via Zoom on the 7/10/20 meeting minutes.

The minutes passed unanimously.

Discussion on initial policy recommendations

NCCJ facilitators Karen Dyer and Ivan Canada led this discussion.

Dyer said one of the things they've talked about is how the group will go about making decisions. She said it's important to reach consensus:

- Each participant agrees that they have had a sufficient opportunity to influence the decision.
- All group members agree to support the decision though it may not be everyone's first choice.
- Everyone is committed to the decision as if it were the first choice of all group members and will support that decision with their constituents.

Dyer said if a member doesn't agree or can't support a decision, it's important that they explain why and provide an alternative solution.

The three recommendations that have been offered are:

- Duty to intervene
- Prohibition of neck holds
- NC Supreme Court rule of assessing the ability to pay prior to laying fines and fees

Dyer asked if there was anything that would prevent members from supporting these recommendations, and why. She also asked if there are things they really support.

Henderson Hill said he doesn't see any obstacle to consensus, but he asked about the third option and whether it covers the entire space of addressing user fees more generally in the courthouse, in court proceedings. He asked whether they ought to give consideration to the fact that user fees are a public good and that the fees came up as a budgetary concern.

Josh Stein said the plan for these proposals are not meant to be the final word on the topics, they are things that have gotten a lot of public attention and thought, and they wanted to show that the state could take action quickly. He said they should continue to work on them and improve them.

Anita Earls said it seemed like a no-brainer that they could recommend those first two, and that the third is a proposal that's been vetted by stakeholders already, and the request was what is the task force's views on that. She said the implementation may be beyond the Supreme Court. She said the proposal is not meant to cut off future changes.

Mary Pollard said the addition of language involving the prevention of retaliation or whistleblower protection could improve the duty to intervene recommendation.

John Letteney said the duty to intervene fits very well into a police agency's job. He also said banning neck holds is a great thing. He said his concern is that use of force situations generally are reactive, to whatever the officer is facing. So, it doesn't always fit a nice, clean parameter of a textbook situation sometimes. He said this can make it difficult. He said there is a technique to hold someone down when handcuffing them with their knee on their back, not their neck. He said it can sometimes be difficult to read circumstances, and to make sure they aren't jumping to conclusions on the use of force.

Mitch Colvin asked what exceptions are for when use of force is considered necessary.

Letteney said that when deadly use of force is authorized, other use of force is authorized as well, such as when their life is at risk.

Billy Gartin said that when you get to a situation where deadly force is applied, it's very difficult to narrowly defined how that force happens or what kind of force is used. He said the one and only exception to a chokehold ban.

Josh Stein said the official recommended policy prohibits neck holds, with the exception of when its necessary to protect the life of the officer.

Voting on Recommendations

Dyer said she wasn't asking if everyone is in favor of the three recommendations, she asked if anyone has an objection. She said she was going to ask for objection three times in order to make sure there is consensus.

Josh Stein asked for follow up on if people have questions about the recommendations, particularly fines and fees. He said we say fines and fees often without really defining them. Fines, he said, are a punishment, and fees are a fiscal solution to pay for the justice system.

He said an issue is what the alternative to fines would be, and how do we ensure those alternatives are available to everyone.

Alan Thornburg asked what they were voting on, and Stein and Earls clarified that they were voting on the recommendations, which were subject to change over time.

Dyer asked if there were objections.

Michael Hawkins said he didn't understand what they were doing. He said there were complications on the items they were voting on, but he said if they do something today, and then need to make changes, is that the best course for the task force. He asked if they should vet the recommendations through the working groups first before making recommendations.

He also said the Governor's executive order noted evidence-based recommendations, and that they don't seem to have evidence for these enough to make recommendations yet.

Dyer said that these recommendations are to adopt ideas to move forward with throughout the task force's process

Justice Earls said these are policy recommendations that other stakeholders have been working on for a long time and there is data evidence for each of the proposals. She said the group doesn't have time and don't need to completely reinvent what good steps are, when there is so much research out there already.

AG Stein said there is a lot of material on these recommendations. He said he acknowledges that they are moving quickly, but that these recommendations would be added to down the road, and that if they can get these proposals universally accepted now it could save lives.

James Woodall said all three recommendations should be made, and that they can evolve down the road. He said it's difficult to see how any of them are objectionable.

Alan Thornburg said he wants to make it clear that the presiding judge doesn't have to check any of these boxes on the third recommendation, but that it can be deployed at their discretion.

Justice Earls agreed.

Dyer asked again for objections.

No one objected, the group had consensus on the three recommendations. She said the group does need to call for a vote as well. She said it's important to come to consensus as well as voting.

Justice Earls called a verbal vote on Zoom on the three recommendations.

The recommendations passed unanimously.

Mission of Executive Order

Michael Robinson said that it's important to consider who we are in our hearts, not just in our heads when working to solve racial disparity issues. He quoted Ta-Nehisi Coates to make the point that everyone matters and that the task force needs to think about the people impacted by these issues they're trying to solve.

Mission:

The mission of the Task Force is to **develop** and **help implement** solutions that will **eliminate disparate outcomes** in the criminal justice system for communities of color.

This Task Force's mandate is to **develop evidence-informed strategies** and **equitable policy solutions** that **address the structural impact of intentional and implicit racial bias** while maintaining public safety.

Takeaways:

What did you take away from the presentation this morning that informs your understanding of the problem of racial inequities in the criminal justice system?

Based on what you know and what you've learned here today, what would a **racially equitable criminal justice system** in North Carolina look like?

What do we need as a Task Force, and in our state and local communities to make that "ideal future state" possible?

Discussion Prompts

How might your personal and professional perspectives inform the task force's mission to **develop and help implement solutions** that will **eliminate disparate outcomes** in the criminal justice system for **communities of color**?

What do **you need** to ensure that you feel comfortable sharing and offering your perspective and recommendations as we move into work groups and future task force meetings?

Robinson opened the floor up to the task force members asking for comment on what they've learned during this meeting.

Henderson Hill said he feels good that he was able to sit at the table with leaders from many areas of North Carolina, and was able to healthily share perspectives. Hill said he's excited in sharing experiences with his colleagues.

James Clemmons said he agrees and said that this group and his agency can be helped by hearing from the community, and those outside the community. He said this great work can only help them become better.

Talley Wells said they need to get the word out about the public comment session.

Closing Comments

Justice Earls thanked everyone who participated in the meeting.

Attorney General Stein thanked everyone as well. He said they took action on three very important reforms today, but that these are just first steps. He said the working groups will do some hard work on

recommendations. He said the chairs will follow-up with everyone about when the working group meetings will be.

Stein said they'd continue to get the word out about the public comment session.

Justice Earls ended the meeting by saying they welcome further questions and that she is grateful for the group's talent and expertise.