

Task Force Meeting 8/28/20 Minutes

Date: 28 August 2020

Time: 9:45 AM EST

A video recording of this meeting may be found on the NCAGO YouTube channel.¹

A meeting of the North Carolina Task Force for Racial Equity in Criminal Justice convened at 9:45am on 28 August 2020. The meeting was opened by Co-Chair Josh Stein. Present during the meeting were:

Co-Chairs:

Anita S. Earls
Josh Stein

Task Force Members:

Alan Thornburg
Angelica R. Wind
Billy Gartin
Brooke Locklear Clark
Cerelyn J. Davis
Deborah Dicks-Maxwell
Erik A. Hooks
Henderson Hill
James Clemmons
James D. Gailliard
James Raeford Woodall, Jr.
John W. Letteney
Kerwin Pittman
Marcia H. Morey
Mary Sheehan Pollard
Michael Hawkins
Mitch Colvin
Mujtaba A. Mohammed
Ronnie Smith
Talley Wells
Tarah Callahan

John Ingram

Facilitators:

Karen Dyer
Michael Robinson

Staff Members:

Amalia (Mercedes) Restucha-Klem

¹ Available at https://youtu.be/NwX_rATFYVg.

Commented [JJ1]: Does anyone know whether Sheriff Ingram attended the meeting? He's the only person who didn't show up at some point in the recording on YouTube.

Ellen Spolar
Greg Sabin
Jasmine McGhee
Jean-Paul Jacquet
Leslie Cooley-Dismukes
Natalia Botella

Co-Chair Stein began the meeting by acknowledging that the meeting was taking place on the 65th anniversary of the killing of Emmett Till and on the 55th anniversary of the March on Washington. He noted that these events underscore the enduring importance of the Task Force's work.

Approval of the Minutes

Co-Chair Stein then invited the Task Force to approve the minutes of the Task Force's meeting on 24 July 2020, a draft of which had been circulated to the members in advance of the meeting. Mayor Colvin moved to approve the minutes, which motion was seconded by Mr. Hill. The members unanimously approved the minutes by voice vote.

Co-Chair Comments

Co-Chair Earls then provided a summary of events which had taken place since the Task Force's 24 July 2020 meeting. Earls noted that the Task Force had received substantial public input since its last meeting, conducting a general public comment session and a series of targeted listening sessions with community groups, public officials, and other criminal justice system stakeholders throughout the state. Earls expressed her appreciation for the public's participation and valuable input. Earls reminded Task Force members that a summary of the sessions was available on the members' SharePoint site and encouraged them to review it, in addition to the great number of written submissions that had been received. Earls highlighted comments about the importance of training for criminal justice system actors, civilian review boards, restorative justice, the impact of fines and fees, the impact of money bail, the importance of charging data for district attorneys' offices, the racial implications of the death penalty, and the collateral consequences of drug convictions.

Earls then highlighted the importance of remembering that the Task Force is charged with making recommendations to achieve racial equity in the criminal justice system, and that it is not merely a "criminal justice" task force. She encouraged the Task Force members to continue their strong work in this regard.

Earls then noted that the Task Force remains in effect until December 2022 barring further action from the Governor to the contrary. She encouraged the members to think about whether the Task Force should recommend a more permanent structure geared toward achieving racial equity in the state's criminal justice system.

Co-Chair Stein acknowledged the enduring challenges reflected in the Task Force's mission, acknowledging the recent shooting of Jacob Blake.

Stein then addressed procedural aspects of the Task Force's work, noting (1) that recommendations would utilize a template structure when being presented to the full Task Force; (2) that recommendations should include some work on how the recommendation would be implemented; (3) that working groups should

consider the use of feedback surveys to achieve consensus on recommendations going to the full Task Force, and that the Task Force staff could assist in this, and (4) that Task Force members should reach out to the Co-Chairs or staff members if they would like assistance in accessing resources or contacting experts that would be helpful in their work.

Presentation by Working Group #1: Law Enforcement Management

Stein then advanced the agenda to working group presentations. Ms. Dyer introduced Mayor Colvin, the chair of Working Group #1, and Ms. Cooley-Dismukes, that group's substantive staff lead. The two provided an update on the progress of Working Group #1, which was tasked with identifying recommendations related to law enforcement management. Colvin reported that the group began by identifying important areas in which to work, including recruiting and retaining a diverse workforce, law enforcement training, and law enforcement accountability.

Discussing recruitment and retention, Colvin emphasized the importance of diversity in law enforcement, and in particular the importance that law enforcement reflect the diversity of the communities they serve. Colvin highlighted the disparate treatment of Jacob Blake, a Black man who was shot in the back seven times by a White police officer while Blake was leaning into an SUV that contained Blake's children, and Kyle Rittenhouse, a White 17-year-old who reportedly approached police officers with an assault rifle after allegedly shooting three people at protests sparked by Blake's shooting and then left the scene.

Colvin indicated that, after consulting with experts, the working group was sensitive to the resource constraints of smaller law enforcement departments in developing its recommendations. To that end, the working group would consider recommending statewide programs that would assist smaller agencies in recruiting efforts. Colvin reported that the working group, on the basis of expert recommendation, had come to understand that law enforcement agencies should hire on the basis of the character traits that will best assist them in the job after conducting a job task analysis. In the working group's view, agencies should consider the following traits:

- Integrity;
- Human diversity skills;
- Service orientation;
- Team compatibility;
- Oral communication skill;
- Written communication skill;
- Motivation;
- Decision-making skills;
- Human relations skills;
- Self-control;
- Planning and Organization skill; and
- Performance driven.

Colvin reported that emotional intelligence should also be a significant factor in hiring, particularly in the following four domains:

- Self-awareness;
- Self-management;
- Social awareness; and

- Relationship management.

Colvin next discussed the importance of who is conducting recruiting activities for law enforcement agencies, and noted the importance of ensuring that recruiters receive adequate training. He remarked that recruiters are gatekeepers into the law enforcement profession and that, as a result, they have significant influence on the culture of a law enforcement agency. Colvin reported that the working group received information suggesting that cultivating relationships in the community to identify and work with young community members could create a diverse pipeline of candidates and aid recruitment efforts. Colvin discussed specific recommendations that the working group was considering, including the incorporation of recruitment training into accreditation requirements, the designation of specific personnel for hiring tasks, and establishing minimum requirements for hiring practices such as an agency-tailored personal history statement and a psychological examination. Colvin then reported additional recommendations being considered by the working group, including:

- Reducing barriers to entry into the law enforcement profession;
- Establishing “grow your own” programs for recruiting;
- Conducting targeted recruitment programs;
- Adopting the CALEA standard for diversity in recruiting in a potential state accreditation process;
- Implementing an early warning system to identify problems with law enforcement personnel; and
- Prioritizing diversity among command staff.

Chief Davis provided additional information on the CALEA diversity standards.

Colvin then reported that the working group is considering recommending expanding the state’s CJ Fellows program to all 100 counties. Ms. Cooley-Dismukes provided additional background information on the program and noted that this would likely be a recommendation for legislative action.

Colvin reported that the working group is considering recommending the collection of data on diversity in law enforcement so as to be able to monitor diversity efforts in recruiting. Colvin emphasized the importance, raised by Chief Davis in an earlier meeting of the working group, of monitoring demographic data on recruits entering and graduating from basic law enforcement training.

Colvin then reported that the working group is considering recommendations aimed at ensuring consistency in the codes promulgated by the Criminal Justice Education and Training Standards Commission and the Sheriffs’ Standards Commission. Davis provided additional context for the recruitment recommendations, emphasizing the difficulties that some candidates face when trying to join law enforcement and the need to mitigate some of those barriers.

Colvin ended by reporting that the working group anticipates recommending support for the creation of a state accreditation program for law enforcement agencies and noted that additional meetings of the working group will address other areas.

Ms. Dyer then led a discussion of Working Group #1’s presentation. In response to a question, Co-Chair Stein provided additional information about the CJ Fellows program, which funds community college education for high school graduates who commit to employment in law enforcement. A conversation followed regarding methods to increase diversity among law enforcement professionals. Task Force members remarked on the diversity impacts of current entry mechanisms into the law enforcement profession, noting that they often do not result in diversity among law enforcement officers. Comments reflected the need to create opportunities for individuals who do not have friends or family members already

in law enforcement, while acknowledging that legacy candidates also provide value to agencies. Comments also reflected the need to permit individuals with the lived experience of justice-system involvement to have a part in law enforcement. Members remarked on the possibility that law enforcement professionals could be discredited when testifying in court if they have minor justice system involvement prior to joining law enforcement, and that there should be some amount of protection against this possibility. Members also raised the issue of defining what constitutes a minor offense which would not preclude hiring in law enforcement agencies.

Presentation by Working Group #2: Policing Policy & Practices

Ms. Dyer then recognized Secretary Hooks, the chair of Working Group #2, to provide an update on the progress of Working Group #2, tasked with identifying recommendations related to policing policy and practices.

Hooks began his remarks by acknowledging the diligent work of his working group's members and staff team. He then reviewed the issue areas which had been assigned to the working group: (1) use of force, (2) investigations, (3) community policing, (4) pre-arrest diversion and alternatives, (5) the appropriate use of school resource officers (SROs), and (6) reimagining public safety and reinvesting in communities. He noted that the working group discussed reimagining public safety, the use of force, law enforcement's role in addressing issues of mental health and homelessness, and the use of SROs in its first three meetings, hearing from experts on the subjects.

Hooks provided a forecast of the recommendations that the working group might ultimately send to the full task force for consideration, including:

- Use of Force
 - Requiring law enforcement agencies to collect uniform data and submit that data to a state or federal repository;
 - Encouraging or requiring the use of sentinel event reviews in cases of deadly force;
 - Encouraging or requiring officers to warn before using deadly force; and
 - Establishing consistent statewide standards regarding when the use of force is appropriate.
- Reimagining Public Safety
 - Requiring crisis intervention team training for all law enforcement officers; and
 - Supporting communities seeking to develop strategies beyond law enforcement response for addressing mental health, substance abuse, and homelessness calls.
- School Resource Officers
 - Supporting the continued development of and mandating school-justice partnerships;
 - Collecting and publishing uniform information on school discipline and school-based juvenile court referrals by age, race, and school, with information as to whether an SRO was involved, while complying with confidentiality requirements;
 - Providing enhanced training for SROs;
 - Providing enhanced training for school personnel on the proper role of SROs;
 - Addressing behavioral issues in schools by investing in counselors, social workers, and school psychologists;
 - Defining the role of SROs within school;
 - Providing racial equity training for school staff; and

- Addressing the school-to-prison pipeline through means such as utilizing progressive discipline before juvenile court referrals.

Secretary Hooks reported that the working group would continue to explore these topics, and would also explore the remaining issue areas for which the group is responsible. Mr. Wells expounded upon the working group's consideration of data recommendations, noting the importance of linking school data regarding exclusionary discipline and court data regarding juvenile court referrals. Ms. Dicks-Maxwell provided additional comments, highlighting the difficulty of establishing the memoranda of understanding which result in school-justice partnerships, the problem of elementary school suspensions, and the importance of improving school data, particularly so as to track students with disabilities. Mr. Pittman elaborated on the working group's consideration of recommendations pertaining to use of force, emphasizing the importance of transparency and external review, and noting that the working group should consider recommending that officers not be permitted to use deadly force against suicidal persons. Finally, Ms. Wind remarked on the importance of discussing the appropriate use of SROs, particularly in elementary schools, and whether social workers and other resources might be more appropriate for providing services to children. Mr. Hooks ended the presentation by thanking his working group and an exchange followed on the role of SROs and methods to ensure that the best officers for the role are selected to be SROs.

A discussion followed regarding Working Group #2's presentation and the issue areas being addressed by the working group, facilitated by Mr. Robinson. The members discussed the use of civil asset forfeiture as well as the time constraints faced by the group in making its recommendations. Representative Morey, the chair of Working Group #3, noted areas of overlap between the two working groups and offered to work with Secretary Hooks to coordinate the work of the two groups. She then offered that, to address some of the problems identified thus far, the task force might consider recommending that children below a certain age not be referred to juvenile court. The members also discussed standardizing the definition of use of force and requiring de-escalation.

Mr. Robinson then invited the meeting to break for five minutes before the next round of presentations.

Presentation by Working Group #3: Court-Based Interventions

Following the break, Ms. Dyer then recognized Representative Morey, the chair of Working Group #3, to provide an update on the progress of Working Group #3, tasked with identifying recommendations related to court-based interventions.

Morey began by acknowledging the members of her working group and thanking them for their diligent work. She then reviewed the issue areas which had been assigned to the working group: (1) pre-trial release and bail, (2) charging decisions, (3) racial equity training for court personnel, (4) decriminalization and the lessening of criminal penalties, and (5) the juvenile justice system and the school-to-prison pipeline. Morey reported that the working group had developed nine recommendations which had unanimous support in the working group, two of which would be voted on at the Task Force meeting.

Morey continued by summarizing the working group's three prior meetings. Morey reported that the group heard from Professor John Rubin of the University of North Carolina School of Government, regarding racial equity training for court-involved personnel and the School of Government's Racial Equity Network. She reported that the working group recommends that all court personnel have robust, continuous racial equity training. Morey reported that the working group's second meeting focused on charging decisions and

overcriminalization. She noted that most charging decisions are made by law enforcement, magistrates, or citizen warrants rather than district attorneys. She emphasized the importance of robust diversion programs and discussed methods that district attorneys might utilize to achieve racial equity in charging decisions. She spoke about how some district attorneys look back at their own charging decisions to promote racial equity and also discussed the use of mandatory minimums and racial disparities in drug charging. Morey discussed the importance of racial information in court and charging data, and relayed the working group's conclusion that the Tally Report, produced by the Administrative Office of the Courts, should include racial data.

Following the summaries of prior meetings, Morey relayed the nine recommendations that the working group unanimously approved:

- That the Conference of District Attorneys follow all ABA standards in the prosecution of criminal offenses, and develop mandatory training using principles contained in the State of Washington's Comprehensive Rule RCW-13.40.077;
- That all people held in jail on misdemeanor charges after the initial appearance have a first appearance before a district court judge within 48 hours or at the next scheduled session of district court. The appearance would be scheduled at a time allowing counsel to meet with clients and receive and review the client's criminal history record prior to the proceeding;
- That all who remain in custody shall be represented by counsel at the first appearance; and the representation should be provided at the State's expense unless the individual opts out to retain private counsel or decides to forgo representation. Counsel must have time to meet with the client prior to the first appearance to give adequate representation and have the client's criminal history record in advance of the appearance;
- That the General Assembly pass legislation providing a sunset provision for all local ordinance crimes and establishing strict guidelines limiting the ability of local governments to create new ordinance crimes, particularly those crimes that criminalize poverty and homelessness;
- That the Administrative Office of the Courts be directed to update the 2019 Tally Report with racial data and to include that information in future reports;
- That law enforcement agencies be directed to issue citations in lieu of arrest whenever possible for the highest charged misdemeanor incidents;
- That law enforcement and prosecutors be encouraged to use diversion programs in lieu of criminal charges whenever possible, and that these diversion programs be of no cost to indigent persons;
- To study and make recommendations regarding reclassification of Class 3 misdemeanors and misdemeanor traffic offenses that do not adversely impact safety as non-criminal infractions; and
- To support the Attorney General's over-criminalization project headed by Ameshia Cooper.

Senator Mohammed expounded further upon the working group's first recommendation and the importance of clear ethical standards for prosecutors. Commissioner Smith expounded upon the recommendation pertaining to local ordinance crimes, noting that, in his experience with local government, many of these ordinances are very old and sometimes applied in racially disparate ways. Mr. Woodall emphasized the importance of ensuring timely first appearances in misdemeanor cases. Finally, Ms. Callahan expressed that including racial data in the Tally Report would provide necessary context for charging data to researchers at the School of Government and other institutions.

Ms. Dyer then led a vote on the following recommendations from Working Group #3:

- Direct the Administrative Office of the Courts to update the 2019 Tally Report with racial data and to provide that information in subsequent Tally reports.

- Recommend that all court personnel be required to undergo continuing, robust racial equity training as a matter of state employment. Training topics should include structural racism, implicit bias, and cultural awareness. Training programs should allow for periodic updates or refreshers.

Ms. Dyer sought feedback from the Task Force members. Following a question regarding the wording, the first recommendation was amended to read as follows:

- Request the Administrative Office of the Courts to update the 2019 Tally Report with racial data and to provide that information in subsequent Tally reports.

Following the amendment, Ms. Dyer confirmed that there was consensus as to the recommendations.

Co-Chair Stein then called for a vote on the first recommendation. Representative Morey moved in favor of the first recommendation, and the motion was seconded by Commissioner Smith. The recommendation was approved unanimously by voice vote of the Task Force members present.

Stein called for a vote on the second recommendation. Mr. Woodall moved in favor of the recommendation and Senator Mohammed seconded the motion. The recommendation was approved unanimously by voice vote of the Task Force members present.

Ms. Dyer then led a discussion of the remaining recommendations from Working Group #3. The Task Force discussed ordinances passed by local governments. Mr. Woodall clarified that, under the recommendations, local governments would retain their ability to pass ordinances subject to guidelines, and that the purpose of the recommendation is primarily to sweep out old and obsolete ordinances and to modernize new ordinances. Secretary Hooks encouraged that the Working Group consider the Emergency Management Act in conjunction with the local ordinance recommendation to consider whether emergency situations might require enforcement power on the part of local governments.

Presentation by Working Group #4: Racial Equity in Trials and Post-Conviction

Ms. Dyer then recognized Mr. Hill, the chair of Working Group #4, to provide an update on the progress of Working Group #4, tasked with identifying recommendations related to trials and post-conviction.

Hill began by acknowledging the members and staff of his working group and thanking them for their diligent work and for bringing their particular expertise to bear on the Task Force's work. He relayed that the working group had met four times. He then reviewed the issue areas which had been assigned to the working group: (1) criminal trials, (2) the use and impact of fines and fees, (3) the death penalty and sentencing disparities, (4) redress for long-term sentences and implementation of second-look processes, (5) prison discipline, and (6) collateral consequences of convictions. Hill reported that, as to criminal trials, the working group has been focused on racial disparities in jury selection, looking to the model of Washington State's procedures for ensuring that racial bias does not taint jury selection. As to sentencing, Hill reported that the working group had seen data indicating dramatic disparities with regard to race for persons serving life sentences and virtual life sentences.

Ms. Restucha-Klem then provided a presentation on the recommendations being considered by the working group. She reported that the working group had recently been discussing solutions aimed at achieving racial equity on North Carolina's juries and increasing funding for the Governor's Clemency Office.

Racial Equity in Juries

Ms. Restucha-Klem discussed the historical and current exclusion of Black persons, and communities of color more generally, from juries, as evidenced by a number of studies and documented in a number of judicial opinions. To address this exclusion and promote trust in the criminal justice system, she reported that the working group was considering the following recommendations:

- To guarantee that juries are drawn from a fair cross section of the community:
 - Expand jury pool resources by:
 - Amending N.C.G.S. § 9-2 to require use of sources other than licensed drivers and/or registered voters for jury pools, including those holding state identification cards, receiving public assistance, applying for unemployment, newly naturalized citizens, and/or income tax filers.
 - Encouraging county jury commissions to use sources other than licensed drivers and/or registered voters for jury pools, including those holding state identification cards, receiving public assistance, applying for unemployment, telephone directories, utility customer lists, newly naturalized citizens, and income tax filers.
 - Update jury pool lists more frequently and correct addresses to reduce undeliverable summonses by:
 - Amending N.C.G.S. § 9-2(b) to require master jury pool lists be prepared at least annually, rather than every two years.
 - Encouraging county jury commissions to prepare master jury pool lists at least annually, rather than every two years.
 - Encouraging senior regular resident superior court judges to request master jury pool lists be prepared annually, rather than every two years, pursuant to their grant of authority under N.C.G.S. § 9-2(a).
 - Include race data on jury lists to monitor compliance with the Fair Cross Section Guarantee by:
 - Amending N.C.G.S. § 20-43.4(b) to require that the list provided to county jury commissions by the DMV Commissioner include race data.
 - Ensure transparency at every stage of the jury formation process – including those in which a private software company is involved by:
 - Amending N.C.G.S. § 9-2(k) to explicitly require that counties utilizing software to maintain jury lists have immediate access to raw data regarding list maintenance for analysis by clerks of court, jury commissions, and the public.
 - Amending N.C.G.S. § 20-43.4(c) to require that, with the exception of personally identifying information, jury lists be a public record.
- To revive the promise of the U.S. Supreme Court's decision in *Batson v. Kentucky* that the jury selection process be free from the taint of discrimination:
 - Expand *Batson's* protection by focusing on outcomes over intent, similar to WA General Rule 37, by adopting an objective observer standard, abolishing the prima facie case requirement, disallowing strikes where race could be a factor, reconsidering commonly-accepted "race-neutral" justifications for juror strikes, and disallowing demeanor-based strikes.
 - Enable more effective appellate review of *Batson* challenges by requiring consistent self-identification of race and gender and complete recordation of jury selection in criminal cases.
 - Mandate racial equity and implicit bias training and the use of implicit bias desk cards for prosecutors and defense attorneys through a State Bar rule, which would require a

mandatory 1.0 CLE every three years for practicing attorneys on the subject of implicit bias.

- To address juror bias:
 - Provide juror education and instruction on implicit bias by encouraging clerks of court to show a jury video regarding implicit bias, publishing pattern jury instructions regarding implicit bias, and encouraging the use of a juror pledge.
 - Require legal education on exploring bias during voir dire through a State Bar rule, which would require a mandatory 1.0 CLE every three years for practicing attorneys on the subject.
 - Require legal and judicial education on proper and improper references to race at trial through a State Bar rule, which would require a mandatory 1.0 CLE or CJE every three years for practicing attorneys and judges on the subject.
- To provide better jury data:
 - Develop a mandatory and transparent jury data collection effort regarding people receiving summonses, reporting for jury duty, excused or deferred, challenged for cause, peremptorily struck, and seated on a jury by enacting a statute mandating the collection of jury data, to be available as a public record with the exception of personally identifying information.
 - Establish a state commission on the jury system, with an eye toward comprehensive reform, which would examine data collection; jury list formation and removals; race, bias, and equity; peremptory strikes; and the accessibility of jury pool software.

Increasing Funding for the Governor's Clemency Office

Ms. Restucha-Klem next reported that the working group had received data regarding significant racial disparities in long prison sentences. She highlighted that, of persons serving life with parole sentences who were charged as children, seventy-nine percent are people of color. To ensure that incarcerated persons have a meaningful opportunity for review of their sentences, she reported that the working group was considering the following recommendations:

- Immediately add personnel to revamp the operations of the Governor's Clemency Office to work with DPS and the Parole Commission in order to give emergency attention to applications for clemency and commutation in two areas:
 - incarcerated persons at high risk of COVID-19 complications, including pregnant women; and
 - parole-eligible incarcerated persons who would have been released years ago if they had been sentenced under the Structured Sentencing Act.
- Implement a rebuttable presumption of immediate release for parole-eligible incarcerated persons who would have been released had they been prosecuted under Structured Sentencing.

Ms. Pollard provided additional context for the recommendations, noting that a significant proportion of the state's parole-eligible prison population was sentenced prior to 1994, when the Structured Sentencing Act was passed. She noted that the operations of the Parole Commission are seriously under-funded, and that earlier litigation revealed that the Commission was required to make decisions on an average of approximately ninety cases per day. Similarly, Pollard reported that the Governor's Clemency Office could, with more staff and funding, have the capacity to evaluate emergency applications for COVID-19 relief from vulnerable persons. Mr. Hill ended the presentation by reporting that the working group would continue to work on these recommendations and explore additional areas in advance of the Task Force's next meeting.

A discussion followed regarding the utility of additional funds for the Clemency Office, the fiscal consequences of an aging prison population, and the importance of providing adequate resources to corrections professionals and to the Parole Commission.

Following the discussion, Mr. Pittman inquired as to whether Task Force members can attend the meetings of other working groups. Co-Chair Stein encouraged this, and Ms. McGhee provided information on how to identify upcoming meetings.

Concluding Remarks

Mr. Robinson then recognized Co-Chair Stein and Co-Chair Earls to provide concluding remarks. Earls thanked the Task Force members and reminded them of the upcoming public comment session. Stein expressed his appreciation for the members' and the staff's hard work. He then adjourned the meeting.