

**North Carolina Task Force for Racial Equity in Criminal Justice**

**Working Group #1**

**Meeting #5**

Date: 1 October 2020

Time: 10:00 AM EST

Chairperson: Mayor Mitch Colvin

**Members in Attendance:** Colvin, Mitch; Davis, Cerelyn; Ingram, John; Gailliard, James; Dismukes, Leslie; and Towns, Angela

**Other TREC Members in Attendance:** Earls, Anita; Stein, Josh; Dyer, Karen; Robinson, Michael; McGhee, Jasmine; and Spolar, Ellen

**Special Guest:** Perez, Liana

**I. Welcome and Approval of Minutes**

*Mayor Colvin*: Called the meeting to order. Rep. Gailliard made a motion to accept the September 17, 2020 minutes as presented. Sheriff Ingram seconded the motion, and the minutes were unanimously approved.

**II. Review and Vote on Training Recommendations**

*Dismukes*: Leslie shared the training recommendations (see Pre-Work: *Training Recommendations* ) as discussed with Chief Davis and Rep. Gailliard at the last meeting. Feedback received on behalf of Sheriff Ingram were incorporated into the recommendations. Leslie noted there were no changes made since they were distributed with the pre-work.

*Mayor Colvin:* Opted to present each recommendation for consideration with the intent to move recommendations forward to the full task force.

**Recommendation #1: BLET –** There were no issues or edits to this recommendation.

**Recommendation #2: Mandatory In-Service Training Topics -** The group did not settle on the frequency or whether we wanted them to go to the full Task Force to be worked out later.

Leslie added: *(c) Ensure the BLET includes at least one block of racial equity training for new recruits.*

*Mayor Colvin*: During a meeting with the Co-Chairs, we established that we may submit a recommendation wherein some of the details have not been worked out. We will leave that discussion for the larger group. Recommendation #2 is an example of that. It is acceptable to adopt in theory and defer to the larger group for specifics.

*Chief Davis*: Expressed concerned that a BLET or In-Service Training course offered bi-annually would prohibit a new recruit access to training until their second year. Believes BLET offers racial equity training.

*Dismukes*: Uncertain if there is a course on that, but believes the Justice Academy has worked it into the beginning part of Communication Skills and Problem Solving. We can add it to Recommendation #1 if we want to make suggestions for BLET to ensure certain things, eg, ensuring ethical issues as appropriate; and creating emotional intelligence in officer, including practical application… We could add something about frequency.

*Chief Davis*: That would ensure new recruits would not get lost in that training. This would allow existing officers to undergo racial equity training and new recruits to have it in BLET.

*Dismukes*: **Recommendation #3: LEA should conduct internal training every year to ensure officers understanding the consequences of policy violations -** Conversation last meeting was this could present a strain on agency resources so it was suggested that a survey be conducted to determine what types of policies/procedures LEAs already have in place, work with the accreditation committee to make sure they are embedded in the state accreditation standards, and determine whether it is appropriate to require a certain amount of in-house training.

Leslie addressed Sheriff Ingram’s concerns by revising the first sentence in the Problem Statement to read as follows: *Ensuring that officers have a guardian mindset is crucial to 21st century policing.*

*Sheriff Ingram*: Want to be careful about the words we use when talking about changing the culture of policing and moving from a warrior mindset to a guardian mindset. I support guardian mindset, but believes the warrior mindset is being taken out of context and does not feel “warrior mindset” should be suggested at all. Officers are provided tactics and training that enable them to survive encounters that if they did not have that training, they likely would not survive the encounter.

*Chief Davis*: Agrees with Sheriff Ingram. Understands the original intent of using that language; however, it has been misinterpreted to mean that we do not want officers to be in a mindset of survival which is warranted to get through critical situations. Officers who cannot decipher the intent of warrior mindset will give them the wrong impression of what it actually means. Believes the recommendation will be embraced by omitting warrior mindset.

**Recommendation #4: Consider requirements that all law enforcement officers maintain certain physical fitness standards –**

Leslie made the following changes to this recommendation during group discussion:

* Recommendation #4: Study how the physical and mental wellness of officers affect their ability to perform job duties and make recommendations accordingly.
* Implementation #1: Add … *and which physical fitness requirements are appropriate to assess an officer’s physical fitness.*
* Implementation #2: Require *“certain”* and Add *“and mental wellness standards.”*
* Implementation #3: Add *“including but not limited to:*

(a) Time during the work day to work out

(b) Annual bonus for passing the POPAT

(c) Ensure peer support programming is readily available

*Mayor Colvin*: This recommendation was discussed during a Chairs meeting. Secretary Hooks believes it could be problematic.

*Chief Davis*: Believes it could be very problematic. Agencies could have a philosophy about good health and wellness, but to set up a program that officers may not be able to comply with may be too heavy a lift for officers to comply.

*Sheriff Ingram*: Agrees this could be problematic. There are areas in law enforcement that require officers to be in better physical shape than other areas. May also create a shortage of law enforcement personnel or help them progress through their careers. Does not believe it adds value to what the Task Force is trying to accomplish.

*Chief Davis*: Also believes there may be some ADA issues around protection of employees. Has officers with a lot of physical issues, but they can still fulfill their essential job functions because there so many aspects of our work.

*Mayor Colvin*: We talked about incentivizing employees to work out and do better, but what do you do to help officers cope with mental stressors?

*Sheriff Ingram*: Implemented the early warning system where you have an outstanding officer, very consistent, and then you see a change (eg 2-3 uses of force or other triggers) which requires attention from supervisors or other levels. It allows us to address it early before it becomes an issue.

*Mayor Colvin*: What remedies do you make available to officers to address the mental aspects before it becomes a problem?

*Chief Davis*: Incentivizing plans for officers to work out has been a huge benefit to health and wellness in Durham. Early warning programs and peer support programs might be the better recommendation rather than physical fitness requirements. Most agencies have general operating procedures in place that guide what supervisors should do when they see these signs. And yes, some of them are preventative when we train our supervisors on what signs to look for and what to do when they see these signs. The recommendation is important but needs to be easier for the agency to embrace.

*Dismukes*: Early system recommendations was introduced by Working Group #2 which we have been asked to support. They have already drafted a recommendation, and passed it on to us to take a look at and provide some feedback.

*Rep. Gailliard*: This is a hard sell to the public. How it will be perceived when we do not have this requirement is that the physical ability required to become a law enforcement officer is not necessary to continue to be a law enforcement officer. I do not think we want to present that perception. Another public perception will be that physical and mental health is a non-factor in how law enforcement handle certain situations. Does not feel a person can do a good job when physically and mentally stressed. How an officer handles a situation will be determined by where they are physically and mentally. To take it office the table does not feel like we are protecting the public.

*Chief Davis*: There are physical requirements to be a police officer, and when they can no longer meet those requirements, they can no longer be a police officer. The current standards fall within federal guidelines which state you must comply with the essential job functions to have this job. I cannot deny a person that job under federal law if they can comply with the essential job functions. We have various agility tests to assure an officer can comply with that. If we are talking about enhancing federal standards, we just need to identify what that is (eg. incentives, additional physical training, etc.).

*Rep. Gailliard*: Can we not make a recommendation that a POPAT is required annually?

*Chief Davis*: That is more like a physical awareness test. The laws changed so that physical tests did not prevent someone from being hired at a police department, but can you jump over a fence rather than can you do 35 pushups. Today, the average officer may not be able to 35 pushups but could pull a body bag. That test is more about essential body function than how fast you can run.

*Mayor Colvin*: What if there was a recommendation to standardize what Chief Davis said…”our department incentivizes with additional time dedicated to the enhancement of physical fitness”? The recommendation could be that we create some incentivized program that concentrate on physical and mental fitness without mandating you have to pass a physical or get into the details of it?

*Sheriff Ingram*: Familiar with an agency who offers a one-time monetary incentive separate from their pay check to officers who pass the POPAT annually. We are working to increase our fitness standards and considering such a program. Also looking at incorporating physical standards where they have to demonstrate a level of physical agility in the combat course. Agrees officers need to be in good physical shape, but uncertain how to accomplished overall. This is not a once size fits all. It may be a culmination of things and not just one thing to help us get that end product. We need to have studies done to determine how best to implement requirements.

*Chief Davis*: Thinking of a 360 approach to health and wellness—the physical and the mental. It may be to identify what can be done by each agency to ensure we have officers who are physically and mentally fit before something happens. Important for the group to determine what can be presented without unnecessary pushback.

*Mayor Colvin*: Heard consistency that we want to have some process to have agencies put some concentration on physical and mental wellness. More discussion is needed to iron out the details, but do we have a consensus that we want to make this a recommendation or do away with it now and address it at a later time?

*Sheriff Ingram*: Inquired if recommendation would be made in edited form…recommending a study?

*Mayor Colvin*: Two things: I think I heard you all say: (1) to track it to see if physical and mental wellness makes a better officer; and (2) to allow departments to handle how they implement it in their operations on a local level, across the board, standardized process. If we do not have the answers to those two questions in its entirety, to move it to the Task Force for a broader discussion with the group.

The consensus was to move the recommendation forward with the edits.

*Dismukes*: **Recommendation #5: Training programs must be studied and measured to ensure desired outcomes and guard against unintended consequences –**

Experts suggest there are not a lot of trainings that have not been studied, and that there should be a study of trainings to ensure the desired outcomes are achieved.

Leslie made the following revisions:

* Solution: *…*hire “*additional staff”*
* Implementation #1 as follows:

(a) Seek legislative funding to hire *additional staff at…to focus on…*

*(b) Fund consultants who are training to* measure…

*Sheriff Ingram*: Problem statement contradicts the Solution. If this is an identified need, why would we not increase staffing at the Justice Academy and ensure there is a process to study the effectiveness of the training it developed? JA programs are very effective. Uncertain why we need to hire consultants where we do not have research showing what we have is effective or not.

*Dismukes*: Trevor attended the meeting and participated in discussions on training. “To hire consultants to develop these trainings…” is a drafting error. The intent is to hire staff for the Justice Academy who know how to develop these types of things. What the Justice Academy is unable to do is research. They are not researchers so we would need an outside agency to do the research.

*Mayor Colvin*: Opened the floor to a vote to move Recommendations 1 through 5 forward to the Task Force. Chief Davis made a motion and seconded by Sheriff Ingram to move all 5 recommendations forward. The motion carried by unanimous vote.

**III. Review Information from Working Group #2**

*Dismukes*:Working Group #2 has some topics that overlap with our topics. In an effort to streamline the discussion of those topics, we will send recommendations for them to review when we are done and vice versa to before being finalized to become a joint recommendation between the two groups. WG#2 has sent us 4 recommendations that deal with training (see Pre-Work: *Information from Work Group #2*).

The first two recommendations will be sent to the full Task Force in a Straw Poll that will be sent out today. The other two recommendations are working drafts. We have the option to join with them in these four recommendations or simply vote on them as members of the Task Force.

*Sheriff Ingram*: Comments to Recommendation #1(a)(i): What is the definition of proper use? The definition should be stated and not open ended for others to come up with a definition.

*McGhee*: The working group did not define proper use in the recommendation, but in conversations with Secretary Hooks, there was concern in making sure that it lined up with what the Justice Academy is teaching about the proper use of SROs and what this Task Force is saying. In essence, SROs are not intended to be used for school discipline, but that school discipline be handled through the school process and not the criminal justice process.

*Chief Davis*: Is there a standard or job description for SROs in North Carolina? A standardized job description for an SRO might be something to think about at some point so that parents, teachers, students and school administrators are aware of the role of an SRO in schools.

*Dismukes*: Training is our area of responsibility. Do we want to suggest edits to them, join with them, or let them have at it in terms of if they have additional recommendations to ours. You will then vote on the recommendations as part of the Straw Poll sent to the Task Force with the ability to add your comments if you have further feedback. Staff will then work the comments into the recommendations before they are sent to the Task Force for a vote.

Data collection is in its final form as a recommendation. We can join it or edit it and send it back to them for their approval, or write our own recommendation to compliment it to be brought before the full Task Force.

One of the four topics we will discuss today is data collection. It could be that we agree with what they have drafted, but that we also have recommendations for further data collection within our scope of consideration in terms of accountability and culture. Theirs is just use of force…that we might have our recommendation and allow staff to incorporate it into the use of force data collection in the end.

*Mayor Colvin*: Is there a license that can be taken from a NC law enforcement officer?

*Chief Davis*: Yes. They could lose their certification.

*Mayor Colvin*: A customer can go online to see any complaints/comments about a licensed company. Yet, complaints against a law enforcement officer are handled as a personnel matter. Why is there a distinction for the public to see just generic information?

*Chief Davis*: Some agencies are already reporting use of data collection to the SBI. Would it be a duplication of work to submit to the SBI for the SBI to submit to the FBI on behalf of the agency? Most agencies are part of the FBIs national use of force data collection and have a process in place where submissions are made directly to the FBI.

*McGhee*: WG#2 attempted to develop a statewide use of force definition. What they are suggesting is broader than what the FBI collects. This would essentially be a new structure using that definition. Secretary Hooks discussed the reduction of the use of force with the SBI and their ability to collect and house this new data which was also created by the Executive Order that created this Task Force would work together.

Mayor Colvin: Who has access to the data?

McGhee: One of the key points was that it would be made publicly available and searchable.

*Dismukes*: Suggests that we support their recommendation knowing we will probably make additional data recommendations that will be combined with this one for an overall data collection recommendation. The report to the Governor will include all data recommendations.

Leslie highlighted Sentinel Event Review and Early Intervention System to be referred to in this matter and 10-15-2020 meeting.

**IV. Overview of Public Records Laws Affecting Accountability and Culture**

*Dismukes*: Leslie presented a PowerPoint (see Pre-Work *Legal Overview)* on the legal landscape designed to give the group an understanding of where we currently are for consideration during discussion on Sentinel Event Review, body cam footage, to help the group decide whether we want to make any recommendations for change.

**V. Discussion of Topics – Civilian Oversight Board, Sentinel Event Review, Data Collection, and Psychological and Physical Evaluations**

*Dismukes*: Leslie presented a PowerPoint (see Pre-Work *Discussion Points…Accountability and Culture).*  A review of the discussion was shared with the group.

*Mayor Colvin*: Want to ensure we do not overpower the group. Does the policy or implementation of recommendations come out of this group? We have a short number of meetings remaining.

*Dismukes*: The full Task Force will hold meetings on October 9, 2020 and November 6, 2020. Each working group will propose recommendations to the full Task Force for a vote. We are expected to come up with recommendations that are concrete and do have policy, eg., we need a legislative change or recommend something to the Commission. We do not have to write the policy for an agency on, say, physical and psychological evaluations, but we do need to make the recommendation for X frequency and why.

Are there things that deal with accountability and culture that are not captured by the topics you feel we should look at so Leslie can add them to the schedule. Our first set of recommendations will be reviewed by the Task Force on October 9, 2020. When we get feedback on our recommendations from the full Task Force, staff will send me the redlined changes. I will email them to you probably Monday, and need your comments approving the changes with a tight turnaround.

Need to discuss Civilian Oversight Boards. Leslie introduced Liana Perez with NACOLE.

*Mayor Colvin*: Do we think we need a civilian oversight board? Feels until there is a legislative change that allows this board to do anything, the decision to create it would depend upon what its capabilities will be. It only frustrates people if we create and they cannot do anything. Thoughts?

*Chief Davis*: Thinks there needs to be serious thought on the functionality of a civilian review board. Durham has a Citizens Police Academy of 10 people (attorneys, ministers, etc.) appointed by the City Manager. Completion of the academy is a requirement to sit on the civilian review board because they have spent a lot of time trying to ensure that those individuals making the decisions understand the dynamics of police work which gives them a different perspective. Their recommendations are normally aligned with the recommendations of the department. They do not have certain powers to refer cases to the DA or whether an officer should be criminally charged. From an external standpoint, we should always strive for transparency.

*Mayor Colvin*: Agrees if citizens are unfamiliar with the law or the process, how effective can they be. Sees the value in the Citizens Police Academy.

*Chief Davis*: How much of the processes are put in place by city ordinance as opposed to what the state might recommend?

*Sheriff Ingram*: We do not have a definition of what a Civilian Oversight Board is supposed to look like. Sounds like we are talking about transparency with regard to addressing public concerns and issues. Assured group there is no better law enforcement official to act in a transparent manner than a sheriff. Transparency can be accomplished in a number of ways and not just through a Civilian Oversight Board where you may share information about specific things but very little beyond that. We started a Citizens Academy where we have run hundreds of people through with the intent of creating a volunteer force. We now have over 300 active volunteers in our agency involved in day-to-day functions of the agency to understand what is going on. Would need clarification as to what a Civilian Oversight Board would look like in the end and what we are trying to accomplish before he could agree to a Civilian Oversight Board. Inquired of Chief Davis how she is able to get around that protected information under NC law in order to share their complete situation with the citizens on that Review Board?

*Chief Davis*: The Board was in place when she arrived, so she has to do her own background work. Unaware of any state laws that permit such oversight. Not familiar with it, but they do have the opportunity to review files. Certain information is redacted. Chief Davis will report back to Sheriff Ingram with more insight on how they get around personnel laws.

*Mayor Colvin*: The public does not have trust in the process when there is a bad actor. The purpose of a Civilian Oversight Board is to build more trust and faith in the process of checks and balances. When there is a complaint against a law enforcement officer, it runs through an internal process (supervisor and up the ranks). They make a decision internally if the officer acted outside of his bounds or not. There is not a lot of confidence in that process. The SBI may be called in, but how many cases were reported that an officer acted in a bad manner? Law enforcement investigating law enforcement. So how to bring citizens and non-law enforcement into that process to increase confidence is the ultimate goal.

*Dismukes*: Question is whether we want to recommend Civilian Oversight Board to local entities, and if so, do we recommend them using particular resources? The only thing we could recommend is whether we want legislative change to personnel laws and to afford Civilian Review Boards broadened powers.

*Mayor Colvin*: Feels it should be an independent state appointed board function which removes the local influence and takes the local politics out of the equation. The board would be comprised of subject matter experts (or citizens such as on regulatory boards) appointed to conduct reviews and make referrals to a prosecutor for action.

*Dismukes*: Presented handout (see Pre-Work *Sentinel Event Reviews).* Passed by WG#2. Different from a Civilian Review Board in that it is a statewide entity whose purpose is to fix systemic problems rather than one particular shooting or issue.

*Rep. Gailliard****:*** Is there another model to arrive at what we are trying to accomplish? Is there existing data that shows Civilian Review Boards are effective? Likes the thought of statewide governance, but then it is stripped of community engagement. Communities should have the ability to address their own issues. Uncertain if he likes either option.

*McGhee*: Civilian Review Boards and Sentinel Event Review is totally different. The purpose of Sentinel Review is to be non-punitive…not who should be charged or fired, but more so what went wrong and how can we present it from happening in the future. Civilian Review Boards on a state level does not make sense because they are fundamentally community-based concepts.

*Mayor Colvin*: Understanding is that the Sentinel Event is more of a systems review than a person review? The point is that you have to take the accountability process when an officer’s conduct is in question out of the local area and politics. A local DA is less likely to charge a local officer 99% of the time without some arm twisting. It may or may not go to the SBI, so you are dependent on your local DA who gets elected every four years to indict a police officer. We are watching that play out in Kentucky right now.

*McGhee*: Believes Mayor Colvin’s comments are more about criminal investigations and how office involved shootings are investigated. It is a related conversation but need not require a board.

*Chief Davis*: Is this similar to the manner in which consent decrees are handled?

*McGhee*: Not in the current draft, although it could be looped into the new statewide accreditation process. This is still individual case review intended to be non-punitive.

*Dismukes*: Sentinel Event Review is up for our consideration as a broader statewide systems – look at what systemically went wrong in order to get to a particular place. When we consider Civilian Oversight Boards on whether to make recommendations on a local level. Lastly, whether this group wants to recommend certain changes to officer involved shooting investigations. Do we want it standardized where the SBI does all of them or some other group does all of them?

*Mayor Colvin*: What are the percentages of cases that have been referred to the SBI and come back in favor of the officer? Is there ever a review of that?

*Dismukes*: Uncertain if we have those statistics at hand. However, the Sentinel Event Review Committee gets to choose which cases (or event) they want to review and begin the process from there. It is not intended to take the place of reviewing every officer-involved shooting or killing that takes place. Sentinel Review does not take the place of what law enforcement agency and what prosecutorial agency will handle the case.

As to the Civilian Review Board, do we want to have recommendations to counties, cities, or jurisdictions to also happen in addition to what law enforcement and prosecutorial investigation they will look at.

*Sheriff Ingram*: Has not seen enough information to know if Civilian Review Boards are effective. It would be easy to stack the deck at the local level where they would be more in line with local law enforcement. There are a number of moving parts especially regarding the use of force resulting in death. It sounds like there is a lack of public confidence in that process. The vast majority of use of force cases result in death are investigated by the SBI to determine if a crime was committed—not whether policies were violated. That information is passed along to the DA who makes the decision to move forward or not. Cases are also, and can be, referred to the Attorney General’s office. When the information is presented to a Grand Jury to indict, it is important to take all of that information into consideration before suggesting something that may not be effective or redundant beyond what we have in place, we need to be careful. In looking at systems, this Task Force is making a lot of progress in that area right now. Now it is a choice whether to use the SBI or not, we could suggest legislation to mandate it across the board. But you have to look at when an SBI agent is investigated, who investigates that.

*Mayor Colvin*: We need to distinguish between the effectiveness of Civilian Review Boards as the law currently exists in NC (probably ineffective because they are not allowed to review personnel files and do certain things). Any recommendation from this group has to have the legal piece changed. If legislators are unwilling to do that right now, I am uncertain if going down this road is effective or not. Interested in learning more from a state with Civilian Review Boards that does not have the Sunshine laws and restrictions as NC. Agrees we need some empirical data to show if it even works or not.

*Ms. Perez*: NACOLE does not set up Civilian Review Boards, but provide resources and training for communities looking to create oversight agencies. There are various models that vary state-to-state because of the different laws with respect to the extent of authority oversight agencies have within the state. Some have been around 30-40 years while others were created of late. The oversight model is not intended to look at criminal or potential charges against an officer. They do not have that authority. Instead, the look more at the administrative process of those investigating because an officer sometimes cannot be charged criminally but can be looked at administratively for violation of policies, etc. The oversight agency serves and the checks and balance to ensure complaints from citizens are looked at fairly.

Virginia is looking to create a legislative mandate giving oversight entities broadened powers across the state that will allow a minimum amount of oversight authority with no cap within connecting cities (eg, if one city wants subpoena power and another does not, it is fine). Often asked if oversight agencies are effective, and how can I prove it. Ms. Perez indicated while there is no statistical data, she talked about how an oversight agency is Syracuse, NY discovered 40+ case files over a two year period had never been investigated by Internal Affairs under the belief they were waiting for the Statute of Limitations to toll and the cases closed. She also described the Tucson model which takes on the role of an auditor to audit investigations that Internal Affairs was doing to ensure they were thorough and fair for both sides. There are different ways to set up these models with different levels of authority.

*Mayor Colvin*: Now understands this Board would be more of an administrative review and leave the investigation to the folks that handle that. Think the group is headed on the right path but more time is needed.

**VI. Next Steps**

*Dismukes*: Expect the redlined edits and get back to me with you approval as soon as possible.

The meeting adjourned at 12:12 p.m.