

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

**Working Group #1**

**Meeting #7**

Date: 22 October 2020

Time: 10:00 AM EST

Chairperson: Mayor Mitch Colvin

**Members in Attendance:** Colvin, Mitch; Dismukes, Leslie; Davis, Cerelyn; Ingram, John; Galliard, James

**Other TREC Members in Attendance:** Earls, Anita; Stein, Josh; Spolar, Ellen

**Members not in Attendance:**

**Special Guest:** Elliot Abrams

# Welcome

*Mayor*

*Colvin:* Begins by thanking everyone for their hard work and dedication to the working group. States that there will be no items to vote on and then turns things over to Ms. Leslie Dismukes to begin the discussion of asset forfeiture.

# Presentation on Asset Forfeiture by Elliot Abrams

*Abrams*: To lead into the discussion, Abrams informs the working group that he will discuss the Equitable Sharing Program (ESP). ESP allows state and local law enforcement agencies to use the federal process to civilly or administratively forfeit assets in a way that would not be permitted under North Carolina law. What we see with ESP is seizures involve minimal amounts of legally gained money. So, when those who have had their assets forfeited try to seek representation, no one will represent them because there's no money in it. This leads to many citizens not being able to recover their assets, even though it was lawfully gained, and they were found to have committed no wrongdoing. Statistics show that minorities are vastly overrepresented in these types of small seizures.

 Proposes that rather than generate money for law enforcement this way, going to the General Assembly to request that the difference for money lost by law enforcement agencies from not using ESP be made up by increased police budgets. Proposals like this will benefit both sides: law enforcement budgets will increase, and fewer people be subject to small seizures of money, which disproportionately affects minorities. This proposal is not to say that criminals' ill-gotten gains should not be seized; it is to say that seized assets of innocent individuals should not be as difficult to recover.

# Discussion of Mr. Abram's Proposal Regarding Asset Forfeiture

*Colvin:* Asks how many times, on average, do these types of small asset seizures happen.

*Abrams*: The data Mr. Abrams has, which comes from the US Dept. of Justice's website, does not break down to actual instances. However, Mr. Abrams states that 167 agencies have participated in ESP over the last three years; the lowest dollar amount seized is $127. If you start from under ten-thousand dollars, there are 37 agencies whose participation with ESP led to the seizures of less than ten-thousand dollars.

*Colvin*: Asks if anyone has any other questions, to which no one responds

# Review of Recommendations Regarding Asset Forfeiture

*Dismukes*: Shares that she has drafted two competing recommendation regard Asset Forfeiture

*Colvin:* States that one of the options under Recommendation #1 is to create incentives for law enforcement agencies not to use the federal asset forfeiture program. The competing option is to ban the use of state and federal asset forfeiture programs and instead increase funding for law enforcement agencies as necessary to continue their operations.

# Discussion for Recommendation No. 1

*Chief Davis*: Is not familiar with small level asset forfeiture cases because many of the cases her investigators work on are long-term drug enterprises. Thinks that submitting a recommendation that the create incentives will be a burden on the state. Gives the example of receiving $100,000 from one case when dealing with the large drug enterprise cases. Chief Davis is not sure if there are agencies are receiving smaller amounts of money and agrees that seizing $5,000 from an individual could have a significant impact on someone.

*Ingram:* Has never been a proponent for asset forfeiture-driven agencies but could not in good conscience agree to a ban on these kinds of programs. Asset forfeiture has allowed for Sheriff Ingram's agency to dismantle organizations in several ways. While Sheriff Ingram is aware of cases involving smaller amounts of money, he notes that those seizures do not only affect innocent people. Has witnessed some agencies who seemingly have full teams of officers dedicated to seizing assets and not on enforcing the law. Recognizes the downfalls for the programs but finds it to be a formidable tool in dismantling criminal organizations across the state.

*Dismukes*: Poses a question to both Chief Davis and Sheriff Ingram regarding their thoughts on a middle ground between the two options in Recommendation #1. For example, enacting a statute with a monetary limit that allows law enforcement to go after bad actors and incentivizes officers not to use the programs for the wrong purposes.

*Chief Davis*: Agrees with Sheriff Ingram. In Durham, officers are not allowed to do any type of seizures of assets on the local level. The only monetary incentives received in Durham are those from long term, large scale investigations. Does believe that there are some potential problems with allowing law enforcement officers to seize assets on a local level and using state programs for smaller seizures. Agrees with Ms. Dismukes's statutory example.

*Galliard:* Asks that Chief Davis or Sheriff Ingram give some background as to what is lacking in the state law that would require law enforcement officers to circumvent the state asset forfeiture laws.

*Ingram*: Using the state system allows for a large amount of money that has been seized to be turned over to the school board. There are some situations regarding amounts where a threshold must be met regarding the amount of drugs found, the vehicle, car, or cash. In Sheriff Ingram's agency, seizures only occur when the case has turned into a federal case.

*Galliard:* For clarification purposes, Galliard would like to know if circumventing the state law via ESP could potentially lead to asset forfeiture of an innocent person who was never convicted of anything. Asks if there is a way to give law enforcement a way to do their job while protecting innocent citizens who need to get their assets back.

*Abrams*: Mr. Abrams believes that there is a way to achieve the balance Mr. Galliard asks about. For example, it could be said that you can use the federal program (ESP) if you have a federal conviction, and you cannot use ESP if you do not have a federal conviction. Believes that the school board may be willing to split some of the money gained by using the state asset forfeiture program.

*Galliard*: Asks Ms. Dismukes whether there a possibility that the WG could recommend a statutory revision requiring state law enforcement to return seized assets if there is no conviction.

*Dismukes*: In Ms. Dismukes's experience, many seizures at the state level end up being "federally adopted" in the federal system. This would make it difficult to make or amend state law because the state cannot require federal entities to return money to the state. Could create an anti-circumvention statute which says the North Carolina law enforcement cannot circumvent state law that says forfeiture has to coincide with a conviction.

*Chief Davis*: States that in regards to drug trafficking, the working group also has to keep in mind the crossing of jurisdiction lines and state lines that occurs. The nature of drug trafficking makes it difficult for one state attorney to handle a case. District Attorneys and law enforcement have to work alongside other states and jurisdictions to fully investigate these types of cases.

*Ingram*: Mentions that there is a process on the state side that involved civil seizures under the NC Dept. of Revenue. Essentially, a person can purchase a stamp for the number of controlled substances they have, regardless of whether it is illegal. However, if they are found with the drugs, they can be seized. 70% of seized assets go back to the agencies, and 30% are maintained by the state to facilitate the program. Sheriff Ingram impresses on the working group that it should be careful to limit or put a cap on officers' ability to seize assets and the amount of assets that can be seized.

*Colvin*: Asks a question about if the case where a federal task force is working with a local agency is the state then required to use ESP.

*Dismukes*: Responds that it is a choice by the local agency. When making an arrest and seizure, the local agency can choose to charge as a state charge or federal charge. Typically, there are local law enforcement agencies have task force officers that work with federal agents. Recently, there has been a change that there has to actually be federal involvement with a local agency for that agency to choose to charge federally.

*Colvin*: Asks if there could be some type of requirement on NC agencies that says whether the case is state or federal, there has to be a conviction before funds are seized.

*Ingram*: Notes that in previous years, local agencies could seize under federal law. Now, NC agencies cannot seize any assets under the federal program unless there is federal involvement. With that said, limiting local agencies' ability to work with federal agencies could negatively impact local law enforcement's ability to dismantle criminal organizations.

*AG Stein*: The problem that AG Stein has already struggled with when it comes to seizures is the lack of due process. Asks whether there is a way to limit, through state law, the ways that local agencies participate in federal seizures.

*Colvin*: Asks if this will be an item we will have to research before going any further, to which Ms. Dismukes responds yes and that the working group should table the discussion until the next meeting.

*Abrams*: The due process focus is what caused Mr. Abrams to bring this issue to the working group's attention. State law allows the seizure upfront on drug convictions, and those seized assets must be carried through until conviction. Believes the cap of saying local agencies cannot participate in ESP unless the seizure is of a certain amount may respond to most of the due process issues.

*Colvin*: Believes that the working group needs to be able to focus on the equitable part of the seizure issue. Asks the working group if they would like to have more time to learn about the statutory options or recommendations that could be made.

*Ingram*: States that he does not necessarily like the idea of attorney fees dictating the threshold amounts for seizures.

*Galliard*: Rep Galliard refocuses the conversation from the way he interpreted it to be. Believed the conversation was about protecting innocent from a lack of due process and equity. States that if someone did not do anything wrong, they would not have to even get a lawyer to get their assets back.

*Dismukes*: Built into the federal asset forfeiture statutes is a process where if you can show proof of the money seized, then you can possibly recover your assets without a lawyer. The problem is the process is so complicated that people typically need a. lawyer to navigate through the process.

*Colvin*: Asks if there is consensus to table this issue until the working group can get more information. The group unanimously moves to table the issue of asset forfeiture. Moves on to Recommendation #2 – No-Knock warrants.

# Review of Recommendation #2 regarding statutory changes to no-knock

# warrant provisions

*Dismukes*: Catches Rep. Galliard up on the discussion of this recommendation in a previous working group meeting regarding statutory language changes. This meeting's questions are (1) if the working group wants to recommend the language changes regarding no-knock warrants and (2) if the fine-tuning of the verbiage used should be left up to legislative drafters.

# Discussion of Recommendation #2

*Colvin*: Opens up the floor for discussion by members of the working group

*Ingram*: States that in the last 20 years, his department has only had a handful of no-knock warrants, and in every case, the justification for the warrant had to be explicitly stated in the search warrant.

*Dismukes*: The previous subsection two (i.e., the way it reads right now) says that an officer has probable cause that giving notice would endanger the life or safety of any person. States that, in her experience, most law enforcement agencies would not do a no-knock warrant without having it explicit in the warrant. The concern was about situations where it is not practicable, or an officer is unable to get the judge to sign off on a no-knock warrant. This leads to the question of whether the statute should be changed to say that a judge has to sign off on a no-knock warrant before they are executed.

*Colvin*: Asks Chief Davis and Sheriff Ingram if requiring a judge or magistrate to sign off on no-knock warrants.

*Chief Davis*: Believes that this will be fine, given that most agencies do not execute no-knock warrants without having a judge sign off on it.

*Ingram*: Agrees with Chief Davis and reiterates his previous statement regarding any issues with requiring no-knock warrants to be judicially approved.

*AG Stein*: States that it seems that there are two circumstances where a no-knock warrant would be permissive. One would be when an officer decides to go to a judge beforehand because there is probable cause on the front end that giving notice could endanger the life or safety of someone. The second instance would be if an officer is outside of the house, and exigent circumstances lead the officer to proceed with a no-knock warrant.

*Ingram*: Believes that in the case of exigent circumstances – for example, a situation where an officer, without any prior knowledge, observes someone with a gun being held to their head – that the officer is not necessarily executing a warrant as much as they are preventing the loss of life. In this scenario, adding something about exigent circumstances could lead to abuse of no-knock warrants.

*AG Stein*: Follows up Sheriff Ingram's statement by suggesting that maybe the working group should not include additional statutory language for exigent circumstances. Asks Chief Davis if she would get a warrant before executing a no-knock warrant.

*Chief Davis*: Responds that her department would get a warrant and describe the probable cause that requires a no-knock warrant be issued. Chief Davis also agrees with the previous statements of Sheriff Ingram regarding the possibility of abuse of no-knock warrants via exigent circumstances.

*Dismukes*: Says that there seems to be a desire to say officers can only execute a no-knock warrant if probable cause to believe that the giving of notice would endanger the life or safety of any person is presented to the judicial official who issues the warrant. Removes the language regarding exigent circumstances. States that the language change in subsection one from "reasonably believe" to "has probable cause" strengthens the statute and the need for probable cause by officers.

*Ingram*: Offers the scenario of an officer approaching a residence, knocks and announces, and then hears a flushing noise (an exigent circumstance). Asks if an officer enters at that time, would that allow attorneys to get warrants thrown out because of the lack of probable cause described in the warrant.

*Dismukes:* Responds that the flushing sound would be probable cause, from the perspective of someone who is a career prosecutor.

*Chief Davis*: Agrees with Sheriff Ingram. States that situations which involve exigent circumstances can become deadly, unfortunately. Chief Davis is aware that the working group is responding to the outcry for reform surrounding no-knock warrants but believes that the statute, as written, is pretty strong and does not want to weaken the statute in any way.

*Dismukes*: Hearing the Chief's concerns, states that maybe the working group should table the language change in subsection one form "reasonably believes" to "has probable cause." Also briefly goes over the other relative changes to §15A-251. Entry by force.

*AG Stein*: Asks Chief Davis and Sheriff Ingram if they are more likely to do a no-knock on an arrest warrant or would the same standards be employed that are used for search warrants.

*Chief Davis*: States that arrest warrants can be just as dangerous as search warrants, but there would still need to be an articulation of probable cause for the arrest warrant. With that said, the language for both statutes could be relatively similar.

*Dismukes*: Reads through §15A-401(e)(1)(c), which is essentially the no-knock provision for arrest, and §15A-401(e)(2) is essentially the no-knock provision.

*Galliard*: Asks Chief Davis and Sheriff Ingram, from a policing procedure perspective, if there are different procedures for the execution for arrest warrants and search warrants, or is the execution of both the same.

*Chief Davis*: Responds that there are general procedures specifically for search warrants and arrest warrants.

*Ingram*: Agrees with Chief Davis and states that his department has a similar procedure in place. Speaks on the extensive planning process for search warrants to ensure the safety of everyone involved. Regarding arrest warrants, there are warrant officers whose job involves executing arrest warrants every day. Those officers have a set of guidelines that they follow when executing arrest warrants.

*Dismukes*: Brings up the legal difference between a search warrant and an arrest warrant. With arrest warrants, they are served, so force will only be used only after a neutral and detached magistrate has found probable cause that precipitates the need for an arrest warrant. With a search warrant, those types of warrants are typically used for investigative purposes. From a legal perspective, enhancing the search warrant statute does not endanger the arrest warrant statute.

*Colvin*: Ask the work about their thoughts on this recommendation.

*Dismukes*: Goes over the changes that have been discussed and put forth by the working group regarding the search warrant statute.

*Galliard*: Asks Chief Davis and Sheriff Ingram about the significance, in terms of the overall body of policing, of no-knock warrants. Also asks how often officers are having to enter homes without knocking and announcing.

*Chief Davis*: For Chief Davis, no-knock warrants are not a tool that is used often, but when a no-knock warrant is used, it is out of absolute necessity. Thus, completely eliminating no-knock warrants could prove to be detrimental to law enforcement in situations where it is necessary for an officer to effectively and safely do their jobs.

*Galliard*: Thinks that is important that when discussing and deliberating significant issues, communal concerns are addressed as well.

*Colvin*: States that this particular working group's makeup lends itself to being able to address issues from both a law enforcement perspective and from a community representative perspective, which is necessary for this type of work.

*Ingram*: Agrees with Chief Davis' previous statement about the use and necessity of maintaining no-knock warrants for the rare occasions when no-knock warrants must be executed.

*Colvin*: Asks where the working group is on this recommendation.

*Chief Davis*: Believes that there should be an educational component to changes that are being made to the statute and to help understand the "why" behind the statute.

*Colvin*: Calls for consensus on the recommendation; the working group agrees unanimously on the recommendation. Brings forward the next recommendation regarding body cameras.

*Dismukes*: Suggests that the no-knock warrant recommendation be voted on during this meeting. With the time left, Dismukes will go over what the working group has left to go over in the coming weeks.

*Colvin*: Calls for a vote on Recommendation #2 regarding statutory changes to no-knock warrant provisions. Motion made by Rep. Galliard, seconded by Chief Davis. The motion passes unanimously.

# Next Steps

*Dismukes*: Remaining topics for the working group to discuss are (1) body-worn cameras; and (2) recommendations to the Standards Commission. There is one recommendation under body-worn cameras followed by a series of questions for the working group to consider in the coming week. States that the working group could go ahead and vote on the one recommendation so that it may be sent out in the straw poll.

*Colvin*: Asks the working group what their thoughts are on voting on the recommendation regarding access to body-worn camera footage.

*Ingram*: Would like clarification on what the word "access" means in the recommendation.

*Dismukes*: Responds that "access" would be covered by language in 1(c) of the recommendation, which states COBs may review recordings by may not make copies or further release recordings. Moves to the Recommendations to Standards Commission regarding standards for entry, decertification, and data collection, explaining the recommended solutions and questions to be considered by the working group.

*Colvin*: Asks if there are any final questions. Moves to adjourn the meeting.

Meeting Adjourned at 12:01 PM EST.