

**NORTH CAROLINA
TASK FORCE FOR
RACIAL EQUITY IN
CRIMINAL JUSTICE**

REPORT 2020



DEAR GOVERNOR COOPER,

As co-chairs of the Task Force for Racial Equity in Criminal Justice, we submit our recommendations to eliminate disparities in the criminal justice system in response to Executive Order 145. We had the pleasure of serving alongside the dedicated members of this Task Force, each of whom brought a wealth of experience and vision to our work. Our recommendations are guided by the input we received from people across the state. We are grateful to the many North Carolinians who shared their perspectives on criminal justice and their high expectations for real and lasting change.

North Carolina has a tragic legacy of slavery, segregation, and racist violence. But we also have another inspiring legacy: the 1960 sit-ins in Greensboro and beyond, a state NAACP that filed more racial integration lawsuits than any other, and the founding of the Student Nonviolent Coordinating Committee, among many, many others. Policymakers and advocates have worked hard in recent years to improve our criminal justice system, but there is more to be done. Our state can be a leader in fighting and overcoming racism.


North Carolina can reimagine public safety to provide accountability for victims and safety for communities without the grotesque racial disparities that manifest in so many ways in our criminal justice system. These disparities, and the systems upon which they are built, have long harmed communities of color, particularly Black communities, tying them to oppressive circumstances that trace a long, unbroken, and painful line from the present day back to before the founding of this nation. These disparities represent families separated, opportunities limited, and outcomes prejudged. These disparities are not reflective of the immense resilience, accomplishments, and contributions of this state's communities of color.

While the problems may seem vast, intractable, and multi-dimensional, the system built up by decisions large and small over many years can be changed. Meaningful change will require leaders, public institutions, individuals, and organizations to center equity in their decisions and leverage their circles of influence to seek change. Change will not be immediate, but it is possible through our collective efforts.

Our recommendations provide a framework for meaningful change, but this report is not the first nor final word on what can and should be done to address racial equity in our criminal justice system. North Carolina has experienced moments of reckoning in the past, and this moment is unlikely to be the last. Therefore, this report marks the newest stage of an ongoing effort to advance racial equity in criminal justice so that North Carolina can live up to its highest ideals of equal justice for all and its commitment to be rather than to seem. The time to act is now.



Anita Earls
Associate Justice
Supreme Court of North Carolina



Josh Stein
Attorney General
North Carolina

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THE TASK FORCE'S WORK

Governor Roy Cooper created the Task Force for Racial Equity in Criminal Justice (TREC) in June 2020 to develop policy solutions to address racial inequities in the criminal justice system.¹

Led by Attorney General Josh Stein and Associate Justice Anita Earls, the Task Force is comprised of a diverse cross section of leaders from across the state, including advocates, elected officials, judges, prosecutors, public defenders, and law enforcement, each of whom volunteered a significant amount of time to serve on the Task Force.

The Task Force is divided into four working groups:

- (1) Law Enforcement² Management,
- (2) Policing Policy and Practices,
- (3) Court-Based Interventions to End Discriminatory Criminalization, and
- (4) Advancing Racial Equity in Trials and Post-Conviction.

The recommendations in this report are driven by data and based on extensive discussion and public input. The Task Force met seven times as a full body, and each working group met many more times over a five-month period. The Task Force conducted six regional listening sessions, and three open public comment sessions. Numerous academics, specialists, policymakers, advocacy groups, and individuals submitted research papers, letters, and other materials, and more than 540 written comments were submitted online from North Carolina residents.

The Task Force benefited greatly from the many speakers who shared their expertise with us, including practitioners, researchers, and people with lived experience. The Task Force also acknowledges our data team, which served as an invaluable resource throughout the drafting process and in making recommendations on the need to produce and collect racial data in the criminal justice system. The Task Force consulted many governmental, nonprofit, and community stakeholder groups.

The Task Force conducted its work amid the challenges of the COVID-19 pandemic. Due to the pandemic, all meetings were conducted virtually. Transparency and public input were extremely important to the Task Force's members. Therefore, meetings were open to the public, were livestreamed, and may be accessed on the North Carolina Attorney General's YouTube page.

¹ N.C. Exec. Order No. 145 (June 9, 2020), <https://files.nc.gov/governor/documents/files/EO145-Criminal-Justice-Reform.pdf>.

² We use "law enforcement" in this report to refer to all types of law enforcement agencies, including local police and sheriffs' departments, as well as state law enforcement agencies, where applicable. Where there is a distinction to be drawn or when citing specific data, we may use a more specific reference.

TASK FORCE MEMBERS



Co-Chair:
The Honorable
Anita S. Earls,
Associate Justice,
Supreme Court of
North Carolina



Co-Chair:
The Honorable
Josh Stein,
Attorney General,
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Ms. Tarrah Callahan,
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The Honorable
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The Honorable
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Sheriff, Richmond
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The Honorable
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Mayor, Fayetteville



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Ms. Deborah
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The Honorable
James D.
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Sergeant Billy
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The Honorable Mike
Hawkins, Chair,
Transylvania County
Commissioners



Mr. Henderson Hill,
Senior Counsel, ACLU
Capital Punishment
Project



The Honorable Erik A. Hooks, Secretary, N.C. Department of Public Safety



The Honorable John Ingram, Sheriff, Brunswick County



Chief of Police John W. Letteney, Apex Police Department



The Honorable Mujtaba A. Mohammed, North Carolina Senate



The Honorable Marcia H. Morey, North Carolina House of Representatives



Mr. Kerwin Pittman, Founder, Recidivism Reduction Educational Program Services



Ms. Mary Sheehan Pollard, Executive Director, North Carolina Office of Indigent Defense Services



The Honorable Ronnie Smith, Chair, Martin County Board of Commissioners



The Honorable Alan Thornburg, Superior Court Judge, Buncombe County



Mr. Talley Wells, Executive Director, NC Council on Developmental Disabilities



Ms. Angelica R. Wind, Executive Director, Our VOICE, Inc.



The Honorable James Raeford Woodall, Jr., District Attorney, Prosecutorial District 18

STATE OF RACE AND CRIMINAL JUSTICE

Racial equity is “the condition that would be achieved if one’s racial identity no longer predicted, in a statistical sense, how one fares. When we use the term, we are thinking about racial equity as one part of racial justice, and thus we also include work to address root causes of inequities, not just their manifestation. This includes eliminating policies, practices, attitudes, and cultural messages that reinforce differential outcomes by race or fail to eliminate them.”³ Our state’s criminal justice system is not racially equitable. While relating the long and painful story of how we reached this point is not the purpose of this report, we will attempt to provide some context for our work.

³ *Racial Equity Tools*, Center for Assessment and Policy Development, <https://www.racialequitytools.org/glossary#racial-equity> (last visited Dec, 12, 2020).

A BRIEF HISTORICAL CONTEXT OF RACE AND CRIMINAL JUSTICE

Prior to the formation of this Task Force, protests erupted across the country, including across North Carolina, railing against the state of relations between Black communities and law enforcement. These protests were catalyzed by George Floyd's death in police custody in May 2020. Floyd was a Black man in Minneapolis, Minnesota, who died after a white police officer kneeled on his neck for eight minutes and 46 seconds. His death followed Breonna Taylor's. Taylor was a Black woman in Louisville, Kentucky, who was shot and killed by police executing a no-knock warrant at her apartment.

The executive order that formed this Task Force acknowledged the existence of “a long history of structural inequality and racism in the criminal justice system, underscored by the recent officer-involved deaths of Black people.”⁴ This acknowledgment is important for us to understand the nature of the work before us. Structural inequality and structural racism are not temporary characteristics that have crept into our criminal justice system.⁵ Moreover, the issue is far broader than the important issue of extrajudicial killings by law enforcement. The problems exist throughout the criminal justice system as whole. North Carolina undeniably has a difficult history involving race that may be uncomfortable for those unaccustomed to discussing it. We must do so, however, because we all live with its persistent effects today.

“The criminal legal system intersects with other racially inequitable lived experiences, [it] does not exist in isolation...It has intersected in our city around opportunities to build wealth, the way that we teach public history, the way we experienced trauma, health and housing affordability, and accessibility to health care and environmental justice, and our educational system.”

KAAREN HALDEMAN,
DURHAM RACIAL EQUITY TASK FORCE, DURHAM
TASK FORCE PUBLIC COMMENT SESSION

Following the formal abolition of chattel slavery, involuntary

servitude continued in the United States, including in North Carolina, partly by leveraging the criminal justice system to coerce African Americans into abusive labor conditions. Criminal vagrancy statutes forced African Americans into unfavorable labor contracts⁶ because the

4 N.C. Exec. Order No. 145, *supra* note 1.

5 For the purpose of this report, structural racism is defined as “the macrolevel systems, social forces, institutions, ideologies, and processes that interact with one another to generate and reinforce inequities among racial and ethnic groups.” John A. Powell, Structural Racism: *Building upon the Insights of John Calmore*, 86 N.C. L. Rev. 791 (2008). <https://scholarship.law.unc.edu/nclr/vol86/iss3/8/>.

6 Interestingly, while most former Confederate states passed new vagrancy laws in 1865 or 1866, North Carolina's was the only statute that did not provide for hiring out the labor of people convicted of crimes. William Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 The Journal of Southern History 31, 47 (1976). <https://www.jstor.org/stable/2205660?seq=1>.

alternative was arrest.⁷ Enticement laws, which “made it a crime to solicit the services of a worker already under contract,” prevented African-Americans from receiving better terms of employment, tying them to their employers and “condemn[ing] Negro workers to local labor conditions.”⁸ “False-pretenses” acts, which criminalized breaking a labor contract if one had taken an advance and had entered the agreement intending to violate it,⁹ “spread a veneer of legitimacy over legal proceedings that were nothing less than criminal prosecutions for breach of contract.”¹⁰ States also benefited directly from the labor of convicted Black people. North Carolina used Black convict labor in the construction of roads and railroads after the Civil War as part of a “southern prison system [that] was being shaped specifically to deal with Blacks.”¹¹

FIG 1. A BRIEF HISTORY OF RACE AND CRIMINAL JUSTICE



Criminal vagrancy statutes



Enticement laws



“False-pretenses” acts



Labor of convicted Black people

While the criminal justice system was being used as a tool of exploitation and oppression, criminal law often failed to protect African Americans. The legal protections for enslaved people were practically nonexistent. In 1829, the Supreme Court of North Carolina considered “whether a cruel and unreasonable battery on a slave, by the hirer, is indictable” in a now-infamous decision authored by Thomas Ruffin, the court’s third chief justice.¹² Explaining that the answer was no, Justice Ruffin wrote that a person with control over an enslaved person, whether an owner or a hirer, must have “uncontrolled authority over the body” so as to achieve obedience from the enslaved person.¹³ “The power of the master must be absolute,” he went on to say, “to render the submission of the slave perfect.”¹⁴

7 Randall Kennedy, *Race, Crime, and the Law* 91 (Reprint ed. 1998). North Carolina’s post-Reconstruction vagrancy statute, passed in 1905, imposed either a fine up to \$50 or imprisonment for up to thirty days for violation. *Wheeler v. Goodman*, 306 F. Supp. 58, 59 n.1 (W.D.N.C. 1969).

8 Kennedy, *supra* note 7, at 90–91.

9 Legal developments such as making the breaking of the contract “prima facie” evidence of fraudulent intent made clear that the statutes were not aimed at actual fraud but were instead written to prevent Black laborers from leaving their employment.

10 Cohen, *supra* note 6, at 42. North Carolina passed versions of these laws in 1889 and 1891. *Id.*

11 *Id.* at 56–57.

12 *State v. Mann*, 13 N.C. 263, 264 (1829).

13 *Id.* at 266.

14 *Id.*

Following the end of chattel slavery, Black people were subjected to intensive social control through a campaign of lynching, which “stands out in the minds of many Black Americans as the most vicious and destructive consequence of racially selective underprotection.”¹⁵ Lynching and other forms of violence continued through the Jim Crow era. Then the War on Drugs led to a surge in mass incarceration, dramatically increasing the number of Black people imprisoned in the United States.¹⁶

The enduring effects of the intertwined history of race and criminal justice bear out in the racial disparities and trauma that exist today and are discussed elsewhere in this report. These effects include the enduring stereotypes about Black criminality, which infect our discussions of criminal justice reform and drive discrimination against Black people and other minority groups.¹⁷ They underlie the explicit and implicit biases that color our perceptions and shape our interactions.¹⁸ They lead inexorably to the “undervaluation of the worth and promise of people with dark skin.”¹⁹ By working to move toward racial equity in our criminal justice system, we hope to move this state broadly toward a more just, compassionate, and inclusive future.

UNDERSTANDING THE ROLE OF TRAUMA

Much has been written about our collective struggle as Americans to honestly examine how racism is woven into all aspects of our lives. The outcry for racial justice in 2020, in the middle of a global pandemic, has opened many eyes, especially those of white Americans, to the structural racism that has existed since our founding and continues to the present on a number of interpersonal, environmental, institutional, and cultural levels. By contrast, exposure to and the ramifications of racism have always been unavoidable for people of color throughout the United States.

Scholarship has given a name to this constant experience of racial discrimination along with the stress and emotional pain that accompanies it: racial trauma. Racial trauma is “a cumulative experience, where every personal or vicarious encounter with racism contributes to a more insidious, chronic stress.”²⁰ Like all trauma, “racial trauma can lead to psychological affliction, behavioral exhaustion and physiological distress.”²¹ Often, this exposure to trauma

15 Kennedy, *supra* note 7, at 48.

16 *Id.* at 127–28.

17 *Id.* at 12–13.

18 For the purpose of this report, implicit bias is defined as “unconscious attitudes, reactions, stereotypes, and categories that affect behavior and understanding.” *Awareness of Implicit Bias*, Yale Poorvu Center for Teaching and Learning <https://poorvucenter.yale.edu/ImplicitBiasAwareness> (last visited December 8, 2020).

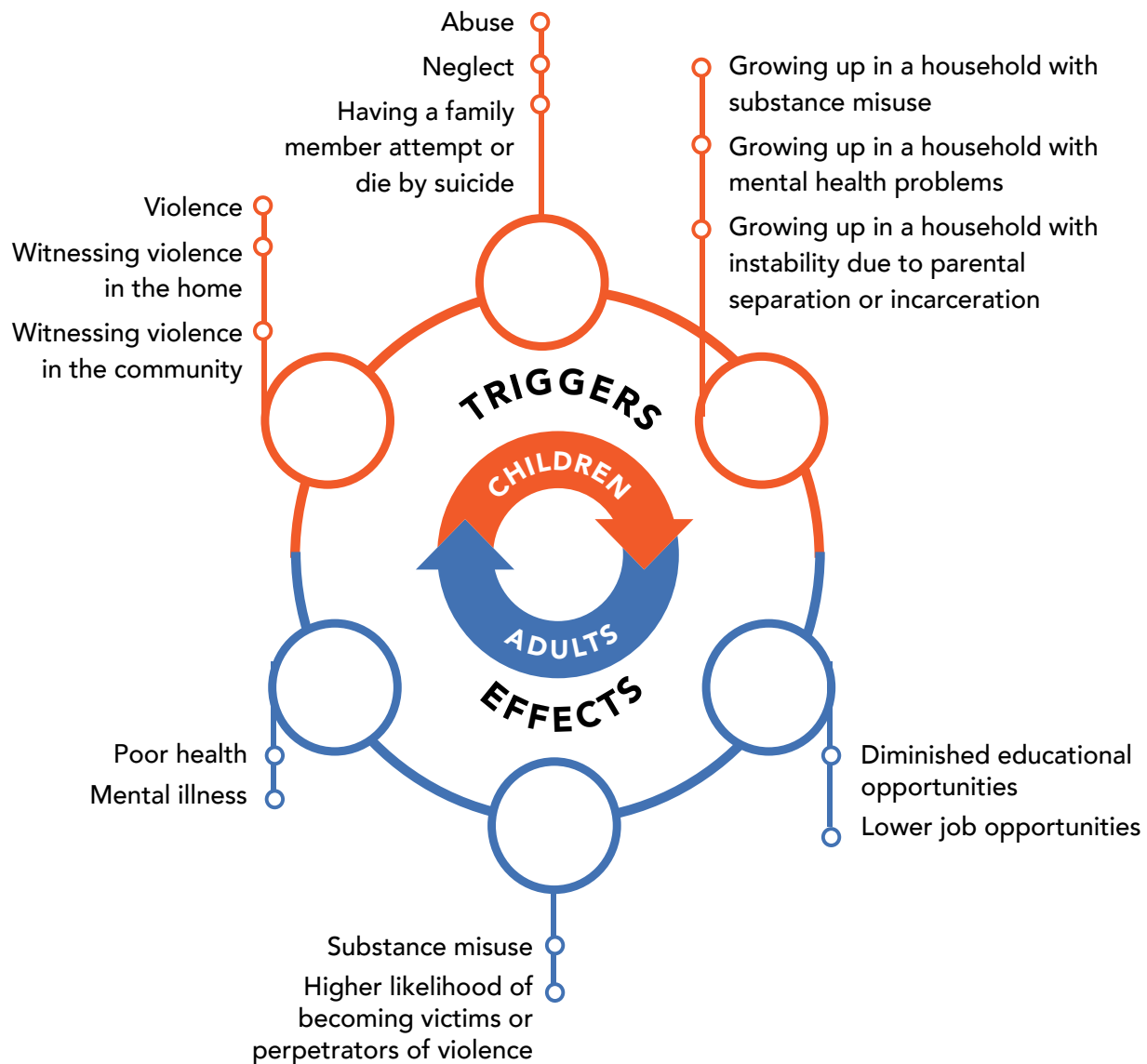
19 Kennedy, *supra* note 7, at 13.

20 Robert T. Carter, *Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-based Traumatic Stress*, 35 *The Counseling Psychologist*, 13 (2007), <https://journals.sagepub.com/doi/abs/10.1177/0011000006292033>

21 Lillian Comas-Diaz & Frederick M. Jacobsen, *Ethnocultural Allodynia*, 10 *Journal of Psychotherapy Practice and Research*, 246 (2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3330674/>.

begins in the formative years of childhood. For many Black and brown North Carolinians, that trauma can feel unescapable. As a result, even if a person never becomes involved in the criminal justice system, a system that perpetuates racism continues to traumatize Black and other people of color in our state. Racial trauma also results in greater involvement with the criminal justice system for those who experience it. Both trauma exposure and trauma-associated mental health disorders are associated with an increased likelihood of Black American adults being arrested and incarcerated.²²

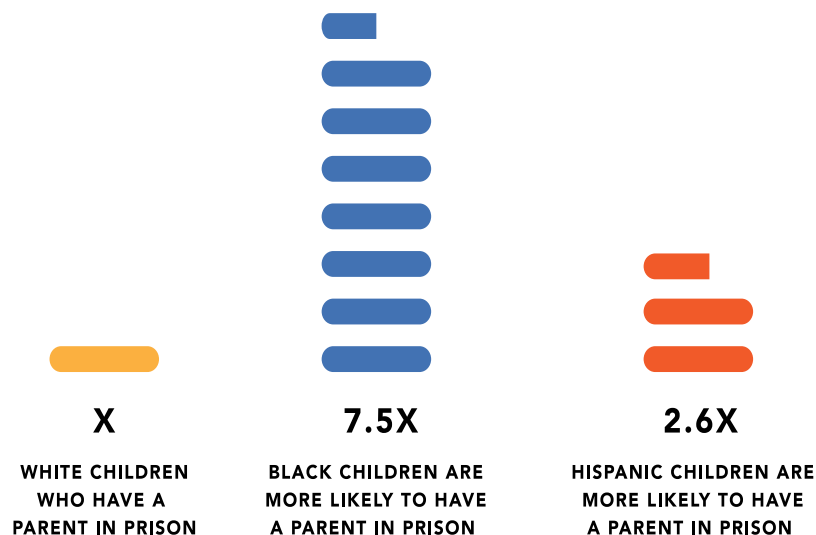
FIG 2. ADVERSE CHILDHOOD EXPERIENCES



22 Lena J. Jäggi et al., *The Relationship between Trauma, Arrest, and Incarceration History among Black Americans: Findings from the National Survey of American Life*, 6 *Society and Mental Health* 187 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5079438>.

One way we can understand the impact of trauma in our criminal justice system is to consider adverse childhood experiences (ACEs). ACEs are “potentially traumatic events that occur in childhood.” ACEs include experiencing violence, abuse, or neglect; witnessing violence in the home or community; having a family member attempt or die by suicide; as well as aspects of the child’s environment that can undermine their sense of safety, stability, and bonding, such as growing up in a household with substance misuse, mental health problems, instability due to parental separation or household members being in jail or prison. ACEs have been “linked to chronic health problems, mental illness, and substance misuse in adulthood. ACEs can also negatively impact education and job opportunities.”²³ ACEs significantly increase the likelihood that children will become victims or perpetrators of violence.²⁴

FIG 3. PATERNAL INCARCERATION RATES



Tragically, due to generations of systemic racism, Black and brown households experience many of these destabilizing factors or traumatic events at a higher rate than white households. For example, a 2007 study by the Sentencing Project found that “Black children are 7.5 times more likely and Hispanic children are 2.6 times more likely than white children to have a parent in prison.”²⁵ Parental incarceration can lead to significant negative outcomes for children, including depression, anxiety, and delinquency.²⁶ It is this cycle — ACEs and racial trauma leading to mental illness and stress disorders, which leads to involvement in the criminal justice system, which leads to ACEs and racial trauma in another generation of children — that contributes to the transformation of historic racism into systemic racism. Unless we break this loop, we are bound to repeat it.

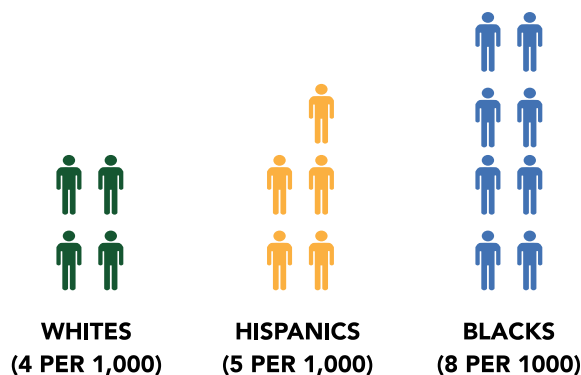
²⁵ *Parents in Prison Fact Sheet*, The Sentencing Project (Sept. 2012), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Parents-in-Prison.pdf>.

²⁶ Kara Gotsch, *Families and Mass Incarceration*, The Sentencing Project (Apr. 24, 2018), <https://www.sentencingproject.org/publications/6148/>.

PUBLIC SAFETY AND RACE EQUITY

We often hear that “tough on crime” policies are necessary to protect Black communities because these policies protect victims, a majority of whom are Black. It is true that Black Americans have a history of disproportionate victimization. The National Bureau of Justice Statistics found “between 2001 and 2005, the average annual rate of aggravated assault for Blacks (8 per 1,000 persons age 12 or older) was nearly twice that of whites (four per 1,000) and slightly higher than that of Hispanics (5 per 1,000).”²⁷ But, the story does not end there. Involvement in the criminal justice system does not fit discreetly into a single category. Despite attempts to place people into boxes of “victim” or “perpetrator,” these categories are frequently changing. They are often cyclical or overlapping and are experienced by people who live in the same communities.²⁸ It is also true that most crime in North Carolina is not violent.²⁹

FIG 4. RATES OF VICTIMIZATION OF VIOLENT CRIME



We also must acknowledge that marginalized people often decline involvement in the criminal justice system when they are victims of crime. Generally speaking, Black Americans do not engage with or trust the police as much as other communities.³⁰ Likewise, immigrant communities, particularly those with larger proportions of undocumented residents, may also

²⁷ Erika Harrell, *Black Victims of Violent Crime*, U.S. Department of Justice, Office of Justice Programs (Aug. 2007), <https://www.bjs.gov/content/pub/pdf/bvvc.pdf>.

²⁸ Jäggi, *supra* note 22, at 187 (“It is individuals from these same socially disadvantaged communities who have a disproportionately increased likelihood of both experiencing trauma and involvement with the criminal justice system....[T]he high correlation between trauma and contact with the criminal justice system experienced by impoverished and minority populations in the United States points to the fact that victims (especially victims of violent trauma) and perpetrators of crime often share the same physical environment.”).

²⁹ We are primarily a misdemeanor system in North Carolina. Violent crime makes up only sixteen percent of charges in our state. Jessica Smith, *Detailed North Carolina Statewide & County-Level Criminal Charging Data*, University of North Carolina School of Government, North Carolina Criminal Law Blog (June 8, 2020), <https://nccriminallaw.sog.unc.edu/detailed-north-carolina-statewide-county-level-criminal-charging-data/>. Felony drug crimes make up 33 percent of state charges. *Id.*

³⁰ G. Tendayi Viki, et al., *Race and Willingness to Cooperate with the Police: The Roles of Quality of Contact, Attitudes towards the Behavior and Subjective Norms* (Dec. 24, 2010), <https://bpspsychub.onlinelibrary.wiley.com/doi/abs/10.1348/014466605X49618>. See also Laura Santhanam, “Two-thirds of Black Americans don’t trust the police to treat them equally. Most white Americans do,” (Jun. 5, 2020), <https://www.pbs.org/newshour/politics/two-thirds-of-black-americans-dont-trust-the-police-to-treat-them-equally-most-white-americans-do>. There has been increasing awareness that we should avoid unnecessary calls to law enforcement, as well as widespread agreement in the Task Force’s discussions that law enforcement’s role in non-criminal and minor matters must be diminished.

mistrust law enforcement.³¹ Victims of sexual assault, particularly those of color, are less likely to engage the criminal legal system.³² The victim may fear the state response more than the behavior that has caused their victimization. Overpolicing, among other things, contributes to that fear.³³ Crime victims in some communities may also fear the re-traumatization that can occur from engaging with the system. Importantly, there is significant overlap between perpetrators and victims, while our current system is premised on a dichotomy between the two. These realities underscore the fact that our public safety systems do not always achieve public safety. Our efforts to keep us safe may make us less so.

As the Task Force engages this work, members have encountered some who frame the work of racial equity and public safety as opposing forces. However, the two are aligned. All of us, as members of communities across North Carolina and as stakeholders in the criminal justice system, want to be safe. We all want our children to grow up free from violence and harm and free from the lasting trauma it inflicts. As North Carolinians, we all must reexamine our long-held beliefs about how our system is working for all our neighbors — especially those who have been marginalized for far too long. It is only from this place of empathy and honesty that we can effectively support and heal the trauma that comes from victimization and in the process, promote public safety. Public safety is furthered by racial equity. Indeed, public safety demands equity, not just in the criminal justice system, but also in our society as a whole. If we can work to improve equity and to improve our understanding of how race impacts public safety, we can make North Carolina both safer and more just.

³¹ A U.S. Department of Justice focus-group report entitled *Policing in New Immigrant Communities* in 2010 found that law enforcement themselves recognize the lack of trust of officers in immigrant communities; focus group participants acknowledged “that when immigrants call law enforcement they may be taking a risk in making their immigration status, or the status of their family members or neighbors, known to authorities. A domestic violence victim who doesn’t have legal status, for example, may not call police for fear that she or her abuser will be deported.” *Policing in New Immigrant Communities*, U.S. Department of Justice, Office of Community Oriented Policing Services (June 2009), <https://cops.usdoj.gov/RIC/Publications/cops-p162-pub.pdf>.

³² The U.S. Department of Justice estimates that for every white woman that reports her rape, at least five white women do not report theirs; and yet, for every African-American woman that reports her rape, at least fifteen African-American women do not report theirs. *Reporting Crime to the Police, 1992-2000*, U.S. Department of Justice, Office of Justice Programs (March 2003), <https://static.prisonpolicy.org/scans/bjs/rcp00.pdf>.

³³ Jäggi, *supra* note 22, at 187 (citations omitted) (“Law enforcement’s selective targeting of areas with high victimization elevates the likelihood of detecting minor transgressions (e.g., vandalism, loitering), which might go unnoticed in places with less police presence.”).

CULTURE CHANGE AND RACISM

This Task Force was formed to address racial equity in the criminal justice system. However, it is impossible to divorce racial equity in the criminal justice system from racial equity in our larger society. We must achieve both if we seek to realize justice in North Carolina. The work of the Andrea Harris Social, Economic, Environmental, and Health Equity Task Force,³⁴ for example, will be critical to helping North Carolina achieve its broad equity goals. As a state, and as North Carolinians, we must do the hard work of recognizing the problems and implementing the solutions that move us toward a more racially equitable future. That will mean that white North Carolinians must educate themselves about structural racial inequities and commit to addressing them. That will mean challenging what may be deeply held views about the “race-neutral” character of our current state of affairs. At all times, it will mean taking seriously the viewpoints of those with whom we disagree and with whom we may not often come into contact, acknowledging that there is a problem and considering in good faith how we can best solve it. Both the state and people of North Carolina have the opportunity to make real and lasting change. If we do the work, that change is possible.

THE DATA ABOUT INEQUITY IN CRIMINAL JUSTICE

Data is a vitally important part of policymaking. It provides us with important information about the world we live in, contextualizing and informing our views; it provides us with a roadmap to the areas of our work that need changing; and it allows us to better track the policies and programs we enact to determine their efficacy. Data is paramount when addressing a problem as emotionally charged and nuanced as racial inequity. It provides us the opportunity to move beyond the limits of anecdotal evidence and examine the concrete outcomes our society is producing.

As of 2019, 62.6 percent of North Carolina’s population was white and approximately 22 percent was Black.³⁵ If our society and criminal justice system were producing racially equitable outcomes, we would find a similar breakdown in arrest rates, prison population, and sentencing decisions. But we do not.

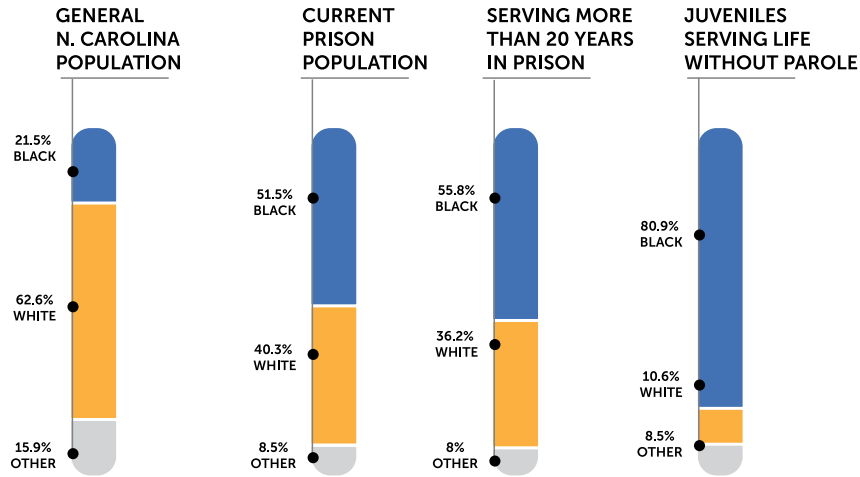
In 2018, on average across the state, Black individuals were arrested more than 2.5 times as often as white individuals.³⁶ The current population of incarcerated individuals in North

34 *The Andrea Harris Social, Economic, Environmental, and Health Equity Task Force*, NC Department of Administration, <https://ncadmin.nc.gov/ahtf> (last visited Dec. 6, 2020).

35 *Quick Facts - North Carolina*, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/NC/PST045219> (population estimates, July 1, 2019).

36 Jonah Kaplan, et al, *‘It’s become a part of life:’ Black North Carolinians arrested more often than white counterparts, I-Team investigation shows*, ABC11 (June 11, 2020), <https://abc11.com/arrest-data-naacp-police-brutality-black-people-arrested-more-often/6243206/>.

FIG 5. RATES OF CRIMINAL JUSTICE SYSTEM INVOLVEMENT BY RACE



Carolina Department of Public Safety (NCDPS) custody is 40.3 percent white and 51.5 percent Black. Of those serving more than 20 years in prison, 36.2 percent are white and 55.8 percent Black. Of the juveniles sentenced to life without the possibility of parole from 1994-2018, 8.5 percent are white and 80.9 percent are Black.³⁷ These data reflect a society and criminal justice system producing racially inequitable outcomes that demand our attention and action.

While these figures are illuminating, they are only part of the picture. Unfortunately, there are significant holes in the state- and community-specific data necessary to help us create and track policies that could help alleviate these racial disparities. For example, a statewide jail database in North Carolina would provide the important information necessary to more deeply examine our state’s criminal justice system and to develop ways to eliminate racial inequities from that system. We must commit ourselves to the development of data systems throughout the criminal justice system that will hold us accountable.

³⁷ Ben Finholt, Brandon L. Garrett, Karima Modjadidi, & Kristen M. Renberg, *Juvenile Life Without Parole in North Carolina*, 110 *J. Crim. L. & Criminology* 141 (2020), <https://scholarlycommons.law.northwestern.edu/jclc/vol110/iss2/2>.

A NOTE ON IMPLEMENTATION

Executive Order 145 mandated that the Task Force’s work include “practical implementation plans.” We have taken that mandate seriously. For ease of reading this report, we have provided some information regarding necessary actions to implement each recommendation. Where we have proposed legislation, the recommendation notes whether a new statute or revision to an existing statute is needed and we cite that statute where applicable. Likewise, when we have recommended administrative or judicial rulemaking, we identify the rulemaking authority and whether it is a new rule or a change to an existing rule. We cite that rule where applicable. Finally, we have also made recommendations for adoption by state agencies, local governments and law enforcement agencies. In such case, we identify the policymaking authority. In some cases, we have suggested model language, but usually we did not find that necessary. For some recommendations, we share principles to consider in legislative, rule, or policy drafting.

Implementing these recommendations will take time, effort, and, in some cases, money. However, the Task Force is committed to this work. After the publication of this report, we anticipate working with the Governor’s Office and all stakeholder member groups to achieve the specific recommendations included herein and to keep centered on the larger goal of racial equity. It is too important to do anything less.

We must also note that we are a state-based Task Force charged with focusing on North Carolina-based reforms. However, many important issues in this work are of federal concern and beyond the scope of our charge. That said, we encourage the federal government, including the United States Congress, to take a serious look at issues within its purview, including the federal doctrine of qualified immunity, federal civil asset forfeiture of people not convicted of crimes, civil rights investigations, and financial investment in the social determinants of public safety.³⁸ The Task Force members are also concerned about combative practices and the use of military equipment, some of which are tied to the federal Law Enforcement Support Program (LESO), also referred to as the 1033 Program.

³⁸ Ayse İmrohoroğlu, et al., *Understanding the determinants of crime*. *J. Econ Finan* 30, 270 (2006), <https://doi.org/10.1007/BF02761491>; Gregg D. Caruso, *Public Health and Safety: The Social Determinants of Health and Criminal Behavior*, UK: ResearchLinks Books (October 17, 2017), <https://ssrn.com/abstract=3054747>.

RECOMMENDATIONS

**RACIAL EQUITY
AND LAW
ENFORCEMENT
RECOMMENDATIONS**

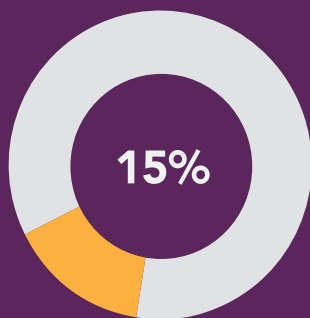
REIMAGINING PUBLIC SAFETY

Law enforcement officers are often asked to address issues on which they receive little training and that are outside the core of their expertise. At the same time, not all problems faced by our communities are appropriately addressed through the criminal justice system. The Task Force recommends steps to rethink responses to emergency calls and invest in public health and community responses to public safety.

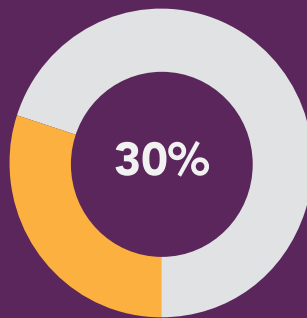
FIG 6. REIMAGINE PUBLIC SAFETY AND REINVEST IN COMMUNITIES

2 MILLION PEOPLE

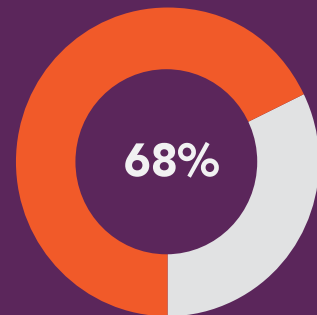
WITH MENTAL ILLNESS ARE BOOKED INTO JAILS EACH YEAR



Of **men** booked into jail have a serious mental health condition



Of **women** booked into jail have a serious mental health condition



Of people with serious mental illness have a co-occurring substance misuse disorder

About **65%** of people in jail have substance use disorder



Only **11%** receive treatment

REIMAGINE PUBLIC SAFETY AND REINVEST IN COMMUNITIES

Law enforcement officers today are called upon to address a vast array of social issues. Some of these calls may involve criminal behavior, but often the root is crisis, not criminality. People call 911 when a loved one is experiencing a mental health crisis, when they see a person on the street who appears to be impaired by drugs or alcohol, and when they see someone in need asking for money or going through trash cans. Responding to individuals in crisis is not the core purpose of law enforcement, and others, such as social workers, receive extensive training on how to respond to these situations.

The outcomes of these interactions may result in injury or death, or otherwise may be unhelpful for the individual. Because law enforcement is trained to look for violations of criminal law and address those violations through arrests, interactions between law enforcement and people in crisis often result in incarceration rather than a more helpful referral to supportive services. As the National Alliance on Mental Illness summarizes: “In a mental health crisis, people are more likely to encounter police than get medical help. As a result, 2 million people with mental illness are booked into jails each year.”

This is also a racial equity problem, in part because some of the conditions at the root of these interactions are not evenly distributed by race. For example, the National Alliance to End Homelessness points out that Black Americans constitute 40 percent of the homeless population nationwide despite being only 13 percent of the overall population.³⁹ Furthermore, low-income people and communities of color may have less access to appropriate mental health treatment, increasing the chances that they will reach a mental health crisis for which law enforcement is called. When law enforcement does respond, there have often been bad outcomes for communities of color. For example, in March of 2020, Daniel Prude, a Black man, was restrained by Rochester Police Department officers while he was suffering from a mental health episode – he stopped breathing as a result and later died.⁴⁰

³⁹ *Homelessness and Racial Disparities*, National Alliance to End Homelessness (Oct. 2020), <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality/>.

⁴⁰ Michael Gold, *What We Know About Daniel Prude's Case and Death*, NYT, (Oct. 8, 2020), <https://www.nytimes.com/article/what-happened-daniel-prude.html>.

Communities should respond to people in crisis by addressing the underlying problems. These responses should be tailored and compassionate, while still recognizing that people in crisis may be volatile. When possible, law enforcement should be unburdened from addressing these situations. To the extent that law enforcement is involved in responding to these calls – either to ensure safety or due to a lack of other alternatives – officers should be well-trained in crisis response.

At the same time, all communities want to be safe. They want children to grow up in neighborhoods free from violence. While violent crime makes up a small part of our criminal justice system, it has an outsized impact on community well-being. Unburdening officers from crisis response will allow them to focus on violent crime. The Task Force also believes that we need to be creative in our responses to reducing violence in communities. The criminal justice system cannot solve these challenges alone. As such, part of reimagining public safety requires solutions outside of the criminal justice system. For instance, programs such as Recidivism Reduction Educational Programs Services⁴¹ in Raleigh work to reduce repeat crime. Communities should also fund programs and initiatives that seek to do this difficult, important work. The safety of our communities requires it.

Although some of these recommendations focus on the nature of the public safety response to individuals in crisis, North Carolina must also address issues that may lead to these interactions, such as the elimination of local criminal ordinances regarding begging and funding for services that provide alternatives to arrest.

1

RESPOND MORE APPROPRIATELY TO CALLS FOR EMERGENCY SERVICE.

Emergency response strategies should emphasize that law enforcement is not the best fit for every type of call for services and instead focus on providing needed services and support. Communities should consider approaches that include:

- Co-responder units pairing crisis-trained officers with social workers or other professionals, which the town of Chapel Hill has done since 1973.
- Models such as CAHOOTS (Eugene, Oregon) and STARS (Denver, Colorado) that provide for the dispatch of non-law-enforcement personnel to appropriate calls.
- At a minimum, the dispatching of officers with crisis intervention training (CIT), but ideally officers who specialize in crisis intervention and are CIT Officers.

⁴¹ Task Force member Kerwin Pittman is the Founder and Executive Director of Recidivism Reduction Educational Programs Services.

Local jurisdictions should create and fund these new models to begin these best practices. These models should track metrics and provide training on mental illness, autism, intellectual disabilities, substance misuse, and homelessness to all system stakeholders, including emergency dispatch operators, to ensure that these models are implemented in a racially equitable way. Legislative and grant funding at the state level will greatly assist communities in establishing these programs, as will the availability of training and technical assistance from the North Carolina Justice Academy (Justice Academy) and the North Carolina Department of Health and Human Services (NCDHHS). The North Carolina Criminal Justice Education and Training Standards Commission and North Carolina Sheriffs' Education and Training Standards Commission (Standards Commissions) have opportunities to consider rulemaking in this area.

"There is a serious connection between a lot of people that are in prison who have suffered severe mental illness. Studies show a high percentage of people in prison or like have stuff from those conditions. It's not that mentally ill folks are more likely to be violent or more likely to commit crime. If they cannot get the type of mental health services that we should, as a nation and as a state, be able to provide, they would not be going to prison."

JONATHAN BROWN, CARRBORO
TASK FORCE PUBLIC COMMENT SESSION

Necessary Action: local policy change; administrative rule change by the Standards Commissions; legislative change.

2 ADD CRISIS INTERVENTION TRAINING.

Crisis intervention training should be provided to all current law enforcement officers. Mental Health First Aid, or a similar program covering the same information, should be added to the curriculum for Basic Law Enforcement Training (BLET) and should be provided to all current law enforcement officers where CIT training has not yet been implemented. Similar mental health training should be made available to court personnel, including trial judges.

Necessary Action: administrative rule change to 12 NCAC 09B .0205 by the Standards Commissions; state policy change by the Justice Academy.

3 FUND GRASSROOTS ORGANIZATIONS.

State and local governments should provide financial and other support to grassroots and community organizations that provide services to people, families, and communities, with particular focus on communities adversely impacted by drug use, drug sales, and drug enforcement.⁴² These organizations employ promising and peaceful strategies to help communities promote public safety for themselves while mitigating racial disparities in criminal justice involvement. Law enforcement agencies should communicate with these organizations and work with them to the extent possible.

Necessary Action: local policy change; state policy change.

4 DEVELOP VIOLENCE PREVENTION PROGRAMS.

Grant funding and technical assistance should be provided to support communities in developing violence prevention programs. Funding options include, but are not limited to, federal funds, state appropriated funds, grant funds through the Governor's Crime Commission (GCC), and local government funds. Violence prevention programs, such as Bull City United in Durham,⁴³ include community- and hospital-based programs that approach violence as a public health problem and provide solutions including mediation, mentoring, job training, and counseling.

Necessary Action: local policy change; state policy change.

5 FORM COMMUNITY SAFETY AND WELLNESS TASK FORCES.

Local communities should form Community Safety and Wellness Task Forces to examine communities' needs, educate residents on existing safety and wellness resources, and provide recommendations for additional programs to enhance public safety and wellness that rely on community-based prevention, intervention, and re-entry services as alternatives to criminal justice involvement. An example of this is Durham's newly enacted Community Safety and Wellness Task Force.

Necessary Action: local policy change.

⁴² See, e.g., North Carolina Center for Non-Profits Crime & Legal-Related List, https://www.nnonprofits.org/connect/directory?title=&field_member_category_tid=382&field_member_county_value=All&items_per_page=10.

⁴³ Bull City United, Public Health - Durham County, N.C., <https://www.dcopublichealth.org/services/health-education/bull-city-united/bull-city-united>.

IMPROVING POLICING PRACTICES

The lack of trust between Black and other communities of color on the one hand and law enforcement on the other cannot solely be addressed by small-scale fixes to law enforcement policies. Regaining communities' confidence will require law enforcement to adopt a community policing approach that fosters trust and is centered in accountability. The Task Force also recommends critical revisions to use of force policies, law enforcement training, and reforms to the use of School Resource Officers (SROs). These recommendations prioritize public safety and promote alternatives to arrest that, when appropriate, give people the help they need.

STRENGTHEN COMMUNITY POLICING PRACTICES

Public confidence in law enforcement is declining. A recent Gallup poll found “confidence in the police fell five points to 48 percent, marking the first time in the 27-year trend that this reading is below the majority level.”⁴⁴ The relationship between law enforcement and communities of color has sometimes been strained, but the situation today is at a troubling low point. That same study found only 19 percent of Black Americans have “a great deal” or “quite a lot” of confidence in the police.⁴⁵ In some neighborhoods, law enforcement is viewed as an occupying force. Community policing is an approach to law enforcement that is designed to bridge the gap between law enforcement and the community “to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.”⁴⁶

Community policing has been around for decades; most law enforcement agencies report that they have adopted this practice. Yet in some cases, community policing is more lip service than reality. Just 28 percent of residents of low-income areas say that the police are responsive to community concerns, and only 35 percent see police as part of the neighborhood.⁴⁷ A new, deeper commitment to community policing is needed.

Ideally, law enforcement agencies should work closely with the communities they serve, especially vulnerable and disadvantaged communities. Policing should not be something done to a community, or even for a community, but rather with a community. Law enforcement and community members should jointly identify public safety problems and priorities and jointly seek solutions. The relationship should be collaborative and grounded in mutual respect and familiarity.

44 Megan Brenan, *Amid Pandemic, Confidence in Key U.S. Institutions Surges*, Gallup (August 12, 2020), <https://news.gallup.com/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx>.

45 Jeffrey M. Jones, *Black, White Adults' Confidence Diverges Most on Police*, Gallup (August 12, 2020), <https://news.gallup.com/poll/317114/black-white-adults-confidence-diverges-police.aspx>.

46 *Community Policing Defined*, U.S. Department of Justice, Office of Community Oriented Policing Services (2012, Revised 2014), <https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf>.

47 Nancy La Vigne, et al., *How Do People in High-Crime, Low-Income Communities View the Police?*, Urban Institute (Feb. 2017), https://www.urban.org/sites/default/files/publication/88476/how_do_people_in_high-crime_view_the_police.pdf.

6 ADOPT A COMMUNITY POLICING PHILOSOPHY AND PLAN FOR COMMUNITY POLICING PROGRAMS.

Law enforcement agencies should adopt community policing as an agency-wide philosophy. Adopting this philosophy requires agencies to work with neighborhood residents to co-produce public safety, including jointly identifying problems and collaborating on solutions.

Agencies should develop community policing plans in collaboration with the communities they serve. This also requires developing and cultivating trusted relationships between members of the community and law enforcement officers and meeting regularly with those liaisons and other community members.

Necessary Action: local agency policy change; state agency policy change.

7 TRAIN LAW ENFORCEMENT AGENCY HEADS ON COMMUNITY POLICING.

The Justice Academy should develop training for law enforcement agency heads that focuses on community policing and make the training widely available throughout the state.

Necessary Action: state policy change by the Justice Academy.

8 ENCOURAGE BETTER CONNECTIONS TO COMMUNITIES SERVED.

Agencies should encourage or require officers to spend non-enforcement time in the neighborhoods they serve. Non-enforcement time may include officers coaching sports teams, doing community service projects, or simply engaging in conversation with residents. Providing more non-directed time to officers may require changes to officer scheduling.

Law enforcement agencies and city and county governments should consider working together to provide financial incentives, such as housing subsidies, to encourage officers to live in the communities they serve.

Necessary Action: local agency policy change; state agency policy change; local government policy change.

"The basis of trust between law enforcement and our communities out in the street is burning. I wholeheartedly know there are good police officers out there and African American leaders within law enforcement who lead their departments to the best of their ability. But, each time an officer of the law shoots an unarmed Black man or profiles a Black woman, that bridge just burns more and more."

ROBERT DAWKINS, CHARLOTTE
TASK FORCE PUBLIC COMMENT SESSION

9 PUBLICLY ACKNOWLEDGE MISTAKES BY LAW ENFORCEMENT.

When law enforcement agencies make mistakes that impact the community, they should publicly acknowledge the mistakes as a way of building trust and transparency.

Necessary Action: local agency policy change; state agency policy change.

REFORM INVESTIGATIONS

The priorities and practices of law enforcement agencies can contribute to racial disparities in the criminal justice system. Two areas of concern are drug investigations and traffic enforcement.

Evidence presented to the Task Force showed that nationally, nearly 40 percent of drug arrests are for possessing or selling 0.25 grams of drugs or fewer, and an additional 20 percent of arrests are for possession or sale of between 0.25 grams and one gram. The people arrested for these crimes are disproportionately people of color – not because they are more serious offenders in terms of quantity, but because they possess and sell drugs that are more frequently targeted for arrest.⁴⁸ Drug enforcement operations may also focus disproportionately on minority neighborhoods where housing density and other factors make drug transactions and drug use more visible, though not necessarily more common.

Data regarding North Carolina traffic stops shows that Black drivers are twice as likely to be pulled over as white drivers.⁴⁹ Once pulled over, Black drivers are twice as likely to be searched, yet less than 10 percent of these searches lead to arrest.⁵⁰ These disparities contribute to distrust of law enforcement in communities of color.

The Task Force is also concerned about federal asset seizures by law enforcement, which is subject to a byzantine process that does not ensure that innocent parties can keep or reclaim their property. While the existence of federal asset forfeiture is a question for the U.S. Congress, North Carolina can place restrictions on the use of the process by local law enforcement agencies.

48 Joseph E. Kennedy, et al., *Sharks and Minnows in the War on Drugs: A Study of Quantity, Race and Drug Type in Drug Arrests*, 52 U.C. Davis L. Rev. 729, 730, 746-59 (2018), <https://lawreview.law.ucdavis.edu/issues/52/2/Articles/52-2-Kennedy.pdf>.

49 *North Carolina Traffic Stop Reporting Program Series: Part 1*, NC Department of Public Safety, Governor's Crime Commission, Criminal Justice Analysis Center (July 2020), [https://weare.ncdps.gov/docs/Justice percent20Analysis percent20Review July2020 PQ.pdf](https://weare.ncdps.gov/docs/Justice%20Analysis%20Review%20July2020_PQ.pdf).

50 See generally Frank R. Bumgartner, *Suspect Citizens: What 20 Million Traffic Stops Tell Us about Policing and Race* (2018).

10 IMPROVE LAW ENFORCEMENT DRUG ENFORCEMENT DATA COLLECTION.

Improve drug enforcement data collection and reporting by:

- Requiring every law enforcement agency to participate fully in the NIBRS system.
- Requiring every law enforcement agency to publish drug enforcement data on its department website in easy searchable fashion, including number of arrests and citations by drug, quantity, race, gender, and reason for search. This may necessitate providing additional resources to law enforcement agencies, especially smaller agencies.

Necessary Action: legislative change.

11 USE DATA TO AVOID OVERPOLICING.

The amount of law enforcement presence in a neighborhood should be driven by objective factors including calls for service, community policing practices, and reports of serious crimes, rather than by officers' subjective perceptions or beliefs, which could lead to negative community interactions.

Necessary Action: state policy change; local policy change.

12 DEEMPHASIZE DRUG POSSESSION.

Deemphasize (or make the lowest drug law enforcement priority) drug possession arrests for trace quantities under 0.25 grams in non-ABC permitted locations.

Necessary Action: state agency policy change; local agency policy change.

13 PRIORITIZE TRAFFIC STOPS THAT IMPROVE TRAFFIC SAFETY.

Agencies should focus on traffic stops that improve traffic safety, including by:

- Deprioritizing “regulatory” traffic stops.
- Reducing pretextual stops.

- Focusing on traffic enforcement on thoroughfares rather than in residential neighborhoods absent complaints or clear safety concerns.
- Not using quantity of vehicle stops as a consideration in measuring productivity/performance.

Necessary Action: state agency policy change; local agency policy change.

14 IMPROVE CONSENT SEARCH REQUIREMENTS.

Require all consent searches to be based on written, informed consent.

Necessary Action: state agency policy change; local agency policy change; legislative change.

15 LIMIT FEDERAL ASSET FORFEITURE.

North Carolina should follow best practices of other states by placing suitable restrictions on the use of equitable sharing of federal asset seizures of currency. Federal adoptions occur when a state or local law enforcement agency calls in federal agents to adopt a currency seizure. Ideally, these restrictions will completely ban federal adoptions, and prevent state or local law enforcement agencies from sharing the proceeds of assets seized in the course of joint investigations, if they do not result in a criminal conviction and the dollar amount of the seizure is \$5000 or less.

Necessary Action: Task Force collaboration; legislative change; agency policy change.

PROMOTE DIVERSION AND OTHER ALTERNATIVES TO ARREST

Well-designed diversion programs can conserve resources, reduce recidivism, and minimize the collateral consequences of justice system involvement. When diversion precedes charging, participants can avoid the stigma of a criminal record entirely.

Diversion programs should exist side-by-side with other “upstream” interventions such as mobile crisis outreach teams and co-responders, which are the subject of other recommendations in this report.

The Task Force recognizes that as we attempt to divert entry into the criminal justice system or remove criminal justice responses to certain issues, we must consider access to alternatives to criminal justice responses. Adequate, long-term funding is critical to the creation and stability of the social determinants of public safety, including substance use disorder and mental health treatment. Nonetheless, we cannot afford to continue to use law enforcement and the criminal justice system to solve public health problems.

16 ESTABLISH AND EXPAND ACCESS TO DIVERSION PROGRAMS.

Local government entities, including city councils, county commissions, judicial/prosecutorial districts, and school boards, in partnership with law enforcement agencies, service providers, and directly impacted people, should establish pre-arrest and post-arrest diversion programs throughout the state. Law enforcement and prosecutors should consider the impact of collateral consequences of a criminal record during charging decisions and the state should encourage and support these programs through appropriated and/or grant funding.

Pre-arrest diversion efforts should build on current examples such as Law Enforcement Assisted Diversion (LEAD) or the Coordinated Opioid Overdose Reduction Effort (COORE)

program in Orange County, North Carolina. For post-arrest diversion, we should fund and establish recovery courts and other types of diversion programs. If a case should be dismissed outright, prosecutors should not route to diversion instead. All programs and treatment offered should be evidence-informed.

Many of these diversion programs have not historically benefited people of color, but they are an upstream intervention that can prevent criminal justice involvement. Those who design, implement, or fund such programs should insist that the programs emphasize racial equity in every aspect of the program and guard against the risk of racial inequity in a discretion-based program, including by:

- Prioritizing systematic data collection on race and ethnicity at all points of programming.
- Comparing program demographics to county- or state-level demographics for people who are eligible for the program but not enrolled.
- Including cultural competency training and education not just on substance misuse but also on racial equity and the overuse of the criminal justice system, the concept of collateral consequences of criminalization, and the effects of the racialized War on Drugs.
- Ensuring that these programs are provided at no cost to the participant and do not exclude people because of their criminal history.

Necessary Action: state policy change; local policy change; legislative change.

17 TREAT ADDICTION AS A PUBLIC HEALTH CRISIS.

Declare that addiction is a public health crisis, including substance use disorders that disproportionately impact minority communities, such as crack cocaine. All substance misuse should be treated with the same understanding, compassion, resources, treatment, and recovery supports that are available for opioid addiction.

Necessary Action: Task Force collaboration; state policy change.

“When we get into the reference of mass incarceration, racial disparities, collateral consequences, and recidivism, it all comes under the tree of substance abuse and mental health.”

JOSEPH SCOTT, WARRENTON
TASK FORCE PUBLIC COMMENT SESSION

18 ENCOURAGE CITATIONS AND SUMMONS IN LIEU OF ARREST.

Encourage law enforcement to issue citations in lieu of arrest whenever possible for misdemeanors. For Class III misdemeanors and violations of local ordinances, the process shall be the issuance of citations. Magistrates are encouraged to issue summons in lieu of arrest whenever possible, including for any civilian-initiated charges. Before a local hospital police force can issue a citation for minor assault against a patient who committed the offense while psychotic or otherwise cognitively impaired, a physician must also sign the petition.

Necessary Action: state agency policy change; local agency policy change; legislative change.

REVISE THE ROLE OF SCHOOL RESOURCE OFFICERS

SROs are law enforcement officers who are assigned to one or more public schools to assist with school security, safety, and emergency preparedness and response.⁵¹ The number of SROs has increased sharply over the past 20 years.⁵²

With this increase in SROs, it is critical that communities proactively examine and define the role of SROs to minimize the use of harsh disciplinary tactics against Black and brown students. While systematic data on SROs' performance and their role in juvenile court referrals is lacking, existing data shows that Black students are disproportionately represented in school-based delinquency complaints. During the 2018-19 school year, Black students were 48 percent of school-based delinquency complaints yet represented only 25 percent of the state's public school enrollment.⁵³ This is of particular concern given the relationship between the school system and the juvenile court system. In 2018, "44 percent or 10,453 of juvenile offenses and complaints were school-based."⁵⁴

51 *School Resource Officer Training*, North Carolina Justice Academy, 4. https://files.nc.gov/ncdps/documents/files/Justice_Academy_SRO_Training_Update.pdf

52 Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. Crim. Just. 280, 281 (2009), <https://www.sciencedirect.com/science/article/abs/pii/S0047235209000464> (finding that the number of SROs "has swelled since the late 1990s," driven in part by fear of school shootings). There are an estimated 1,200 SROs in North Carolina. *North Carolina School Resource Officer Survey*, 3, North Carolina Department of Public Instruction (2018), <https://files.nc.gov/dpi/documents/cfss/law-enforcement/2018-srosurvey.pdf>.

53 *2018 North Carolina School Resource Officer Survey*, 26-30, North Carolina Department of Public Instruction (June 5, 2018), <https://files.nc.gov/dpi/documents/cfss/law-enforcement/2018-srosurvey.pdf>.

54 *Juvenile Justice 2018 Annual Report*, North Carolina Department of Public Safety Division of Adult Correction and Juvenile Justice, 11-12, <https://files.nc.gov/ncdps/documents/files/JuvenileJustice-2018AnnualReport.pdf.pdf>.



Fig 7. Revise the role of school resource officers

BLACK STUDENTS REPRESENTED
IN PUBLIC SCHOOL



BLACK STUDENTS REPRESENTED IN
DELINQUENCY COMPLAINTS

10 BLACK YOUTH
INCARCERATED



1 FOR EVERY
WHITE YOUTH



HIRE BEHAVIORAL HEALTH PROFESSIONALS IN SCHOOLS.

Schools should devote resources to hiring a sufficient number of nurses, counselors, psychologists, and social workers to meet the needs of students with behavioral difficulties. If additional resources are needed, they should be provided. Funding sources that should be considered include at a minimum: local funding, state funding, State Children’s Health Insurance Program (SCHIP) funding, and Medicaid funding.

Necessary Action: legislative change; local policy change.

FUND SCHOOL PERSONNEL TRAINING.

There should be funding for all school personnel to complete Mental Health First Aid, first aid, cultural competence/diversity/inclusion, and developmental disability training.

Schools and communities should create structured and well-supported opportunities for youth involved in the juvenile justice system to participate in decision making activities, ensuring lived experience is integrated into knowledge base of the SRO training curriculum and School Justice Partnerships.

Law enforcement agencies should participate in the International Association of Chiefs of Police One Mind Campaign,⁵⁵ which seeks to ensure successful interactions between police officers and persons affected by mental illness.

Necessary Action: legislative change; local policy change.

DEVELOP INCLUSIVE PROCESSES FOR SELECTING AND OVERSEEING SROS.

Law enforcement agencies that provide SROs, in collaboration with the communities they serve, should develop processes for selecting SROs that include input from schools and parents and that prioritize assigning officers who actively desire to serve as SROs. Communities should also use inclusive tools to monitor and provide feedback on the work of SROs; some communities may choose to use advisory boards for this purpose.

Necessary Action: local policy change.

22 TRAIN ALL PUBLIC SCHOOL EMPLOYEES AND SROS ON THE PROPER ROLE OF SROS.

The North Carolina Department of Public Instruction (NCDPI), in consultation with the Justice Academy, should provide training for all public school employees and SROs on: (1) the role and proper use of SROs; (2) recognizing signs of trauma in children; (3) Mental Health First Aid. Training should aim to avoid children being misdiagnosed or punished for responding to undetected trauma. Training should also include working with children with autism and other types of disabilities.

Necessary Action: state policy change by NCDPI and the Justice Academy.

23 COLLECT DATA ON DISCIPLINE IN SCHOOLS.

NCDPI, in collaboration with NCDPS and local law enforcement agencies, should collect data regarding exclusionary discipline in schools and school-based referrals to the juvenile courts. The data should be published online at least annually and be searchable by school, by district, by student race, sex/gender, disability status, economic status, and grade, and by SRO and juvenile court involvement, all to the extent compatible with applicable confidentiality requirements. This Task Force or its successor should examine this data and engage in listening sessions and further research regarding the impact and use of SROs in schools, to make a recommendation regarding the continued use of SROs in elementary, middle, and high schools.

Necessary Action: state policy change by NCDPI and NCDPS; local agency policy change.

24 ENCOURAGE SCHOOL JUSTICE PARTNERSHIPS.

School Justice Partnerships are a group of community stakeholders that develop and implement effective strategies to address student misconduct to reduce the number of suspensions, expulsions, and referrals to the justice system.⁵⁶ These partnerships are a proven tactic for reducing students' juvenile court involvement. Communities, including school leadership, juvenile courts, behavioral health providers, and law enforcement, should continue

⁵⁶ *School Justice Partnership*, N.C. Administrative Office of the Courts, <https://www.nccourts.gov/programs/school-justice-partnership>.

to develop these collaborations and implement strong memorandums of understanding (MOUs) that clearly define SROs' role and prioritize solutions to behavior problems that keep students in school and out of court to the maximum possible extent.

Necessary Action: local policy change.

25 SUPPORT IMPLEMENTATION OF THE STATE ACTION PLAN FOR SCHOOL SAFETY.

The State Action Plan for School Safety⁵⁷ is a five-year plan designed to coordinate North Carolina's school safety efforts across state government. The Task Force for Safer Schools will provide oversight to the implementation of the State Action Plan. The initiatives of the State Action Plan for School Safety should be implemented.

Necessary Action: Task Force collaboration.

⁵⁷ *State Action Plan for School Safety: 2025*, N.C. Department of Public Safety (Draft as of Dec. 10, 2020) <https://nc-doj.gov/wp-content/uploads/2020/12/SAPSS-Final-Draft-V2-2020-12-10-1430-hrs.pdf>.

CODIFY JUDICIAL APPROVAL OF NO-KNOCK WARRANTS AND CLARIFY REQUIREMENTS FOR USE OF FORCE IN SERVING SEARCH WARRANTS

In some jurisdictions, law enforcement officers can enter a location without knocking if they have a search warrant. No-knock warrants have come under significant public scrutiny, and several jurisdictions across the country have limited or banned their use. Unlike some states, North Carolina already has a statute designed to limit the use of no-knock warrants, N.C.G.S. § 15A-251. Under that law, an officer may forcibly enter a location to execute a search warrant without first knocking and announcing his identity, but only if that officer has probable cause to believe knocking and announcing would endanger someone's life or safety.

Anecdotal evidence from law enforcement officers in North Carolina suggests that no-knock warrants are rarely used in the state. In most cases, law enforcement officers who believe that a no-knock entry might be necessary will include the probable cause for that belief in their search warrant application so that a judge can review it.

Even so, the no-knock warrant statute could be improved. The law does not require officers to state probable cause for no-knock entry in a search warrant application, nor does the law require a judge to find probable cause specific to the no-knock entry. The statute could also be improved by defining the "unreasonable delay" that might justify entry into a premises.

Communities and law enforcement personnel are justifiably concerned about the potential misuse of these warrants. There is a genuine concern that officers executing knock-and-announce search warrants may not wait long enough before forcibly entering. While no-knock entry is often inappropriate, there are some situations where it is necessary to ensure public safety. If we amend the law regulating no-knock warrants, North Carolinians can have greater confidence that this practice will be used only rarely and responsibly.

26 CHANGE ENTRY BY FORCE STATUTE.

Amend statute as follows:

N.C.G.S. § 15A-251. Entry by force.

An officer may break and enter any premises or vehicle when necessary to the execution of the warrant if:

- (1) The officer has previously announced his identity and purpose as required by N.C.G.S. § 15A-249 and reasonably believes either that admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or
- (2) The officer has probable cause to believe that the giving of notice would endanger the life or safety of any person **and such probable cause is specifically listed in the warrant.** (Change bolded and underlined)

The legislature should clarify and define the meaning of “unreasonably delayed” as it appears in N.C.G.S. § 15A-251(1).

Necessary action: legislative change to N.C.G.S. § 15A-251.

PEACEFULLY FACILITATE PROTESTS AND DEMONSTRATIONS

Over the past several months in the wake of the death of George Floyd, North Carolinians have marched in protest against racism, law enforcement violence, and the devaluation of Black and brown lives. For the most part, these demonstrations have been peaceful. And for the most part, law enforcement agencies and officers have displayed professionalism in their interactions with demonstrators, journalists, and the public. This is vitally important, as peaceful protest has long been a critical avenue for oppressed racial groups in our country and in our state to elevate the level of attention given to urgent issues. Indeed, a proud part of our state's history are the Greensboro sit-ins, which began when four young Black men, students at North Carolina A&T, sat down at a lunch counter which served only white people. The four were denied service and refused to give up their seats. They returned the following day with more demonstrators, and the sit-in movement spread throughout the country.

When law enforcement overreacts to peaceful protests, it can cause deep harm to the relationship between law enforcement and the communities that they serve. A more positive and productive relationship is possible. Through these recommendations, the Task Force underscores the importance of law enforcement agencies working in cooperation with community groups to facilitate peaceful demonstrations and diminish the possibility of violence. When that happens, all people in our state can have confidence that their right to peaceably assemble will be honored and protected.

27

FACILITATE PEACEFUL DEMONSTRATIONS.

The Task Force recommends adoption of comprehensive policies on law enforcement facilitation of peaceful demonstrations statewide. Adoption and enforcement of these policies should be mandatory as part of the North Carolina Law Enforcement Accreditation program. Policies should include coordination and communication by law enforcement with assembled public, avoid enforcement of low-level violations and focus enforcement on those causing harm to person or property, minimize militarization of law enforcement and use of

weapons, including kinetic impact projectiles and chemical irritants, and ensure transparency and accountability of officers. [See Appendix A for more details on model policies.] All law enforcement agencies should make public and easily accessible their policy regarding Law Enforcement Facilitation of Peaceful Demonstrations by March 1, 2021.

Necessary Action: administrative rule change by the Standards Commissions; local agency policy change; state agency policy change.

28

CREATE AND UPDATE PROTEST GUIDELINES.

Recommend that the Standards Commissions convene stakeholders including state and local law enforcement, community members, and subject matter experts to develop a model policy and ensure updated guidelines reflect promising practices, best evidence, and consideration of First Amendment concerns.

Necessary Action: administrative rule change by the Standards Commissions.

REAL WORLD IMPACT

ACCOUNTABILITY AND TRANSPARENCY FOR LAW ENFORCEMENT RESPONSE TO PROTEST

Highlights:

- In May and June of 2020, Asheville, NC, saw an outpouring of protest in response to local and national racial injustice.
- Asheville also experienced protest-related conflict between law enforcement officers and community members. Complaints arose that officers failed to warn the entire crowd before using chemical munitions and aimed munitions at individual demonstrators, failing to immediately attend to the injured.
- The Asheville Police Chief has announced an after-action report that will identify “policies and practices that failed to meet community expectations in law enforcement professional standards.”

Source: Asheville Police to Probe Complaints About Excessive Force

<https://apnews.com/article/race-and-ethnicity-asheville-north-carolina-police-racial-injustice-47e885a1dd1481b31c82bf793583efd5>

REVIEW AND UPDATE PROTEST TRAINING.

Recommend the Standards Commissions and the Justice Academy update, expand, or add the following topics to BLEET and in-service training:

- First Amendment
- Legal updates (unlawful assembly, curfew, etc.)
- Professional, ethical, and moral responsibilities
- Crowd psychology (including that crowds are not inherently irrational or prone to violence and that aggressive or unjustified policing actions can antagonize and galvanize otherwise peaceful crowds)
- De-escalation
- Community relations and advance planning
- Use of force proportionality, including emphasis on restraint and accountability, de-escalation, and AB 392 necessity requirement
- Distinguishing civil disobedience from violence or riots
- A train the trainer course developed in coordination with NCDPS' Emergency Management
- Best practices and training guides for law enforcement to identify, monitor, and strategically detain individuals suspected of violence and/or destruction of property during protests and demonstrations

Necessary Action: administrative rule change to 12 NCAC 09B .0205 and 12 NCAC 09E .0105 by the Standards Commissions; state policy change by the Justice Academy; Task Force collaboration.

STUDY RACIAL DISPARITY IN PROTESTS.

Commission a study of whether there are racial disparities in how protests and demonstrations are policed in North Carolina.

Necessary Action: state policy change.

REVISE USE OF FORCE POLICIES

When law enforcement officers use excessive force while interacting with the public, it harms both the individual subjected to the use of force and the community at large. There have been high-profile instances nationwide and in North Carolina where the use of force against people of color, people with intellectual or developmental disabilities, people in crisis, and others have highlighted that individuals in those communities are sometimes harmed rather than helped by interacting with law enforcement. Too often, force is used where it may be lawful, but is unnecessary. This contributes to the belief that law enforcement is not working to serve the people with whom officers interact.

Data on the use of force is very limited. Efforts to collect use of force data nationally have floundered for the past 30 years.⁵⁸ As of May 2020, only 40 percent of police departments nationwide were participating in the Federal Bureau of Investigation (FBI's) National Use-of-Force Data Collection, which collects information on incidents resulting in death, serious bodily injury, or the discharge of a firearm.⁵⁹

North Carolina does not collect statewide data on uses of force. Law enforcement agencies across the state of North Carolina do not employ a uniform policy on the use of force, and the state of North Carolina does not have a uniform definition for what constitutes a use of force.

During the period from 2015 through 2018, the state of North Carolina had 0.252 deadly police shootings per 100,000 residents.⁶⁰ While this number was below the national average for the same period of time, it reflects that we can do more to prevent adverse interactions between police officers and the public.

The lack of detailed information about the use of force or a uniform definition frustrates comparisons between agencies in the state, prevents the identification of best practices and problem areas, prevents consistent expectations on safe interactions, and hinders our ability to identify solutions to the problem of excessive use of force. In many cases, where use of force reports do exist, they are not available for analysis.⁶¹

⁵⁸ Vera Bergengruen, 'We Continue to Spin in Circles.' *Inside the Decades-Long Effort to Create a National Police Use-of-Force Database*, Time (June 30, 2020), <http://www.time.com/5861953/police-reform-use-of-force-database>.

⁵⁹ *Id.*

⁶⁰ Seth W. Stoughton, et al., *Evaluating Police Uses of Force*, 89 (2020) (noting average national rate of 0.307 per 100,000 residents).

⁶¹ Lucille Sherman, *How do cops use force in NC? Most agencies won't say*, The News & Observer (June 21, 2020, 5:42 PM), <https://www.newsobserver.com/news/politics-government/article239310428.html>.

Use of force should be consistently defined and regulated throughout North Carolina. Ideally, law enforcement agencies and communities of color will trust each other, law enforcement officers will use force only when it is both necessary and legal, and law enforcement agencies will collect and report comprehensive data on the use of force so that progress can be monitored transparently. In this way, North Carolina will be able to ensure that interactions between law enforcement and the public are appropriately situated within a model of service that is “built on mutual respect between officers and their community.”⁶²

“We need to, secondarily, increase accountability, which means ending qualified immunity, having criminal citizens review boards with subpoena power, and mandatory data collections on use of force stratified by racial data. ”

REBECCA TRAMMEL, WILMINGTON
TASK FORCE PUBLIC COMMENT SESSION

31 STRENGTHEN USE OF FORCE PRACTICES.

We recommend law enforcement agencies revise their policies to:

- Require officers to use the minimum amount of force reasonably necessary to apprehend a suspect.
- Require officers to use de-escalation tactics when reasonably possible instead of using force. De-escalation tactics include, but are not limited to, verbal persuasion, redirection, creating time/space/distance, and tactical repositioning/shielding.
- Prohibit neck holds. Law enforcement agencies should consider using the sample policy language below.
 - Sample Policy Language: “NECK HOLDS PROHIBITED. Law enforcement officers shall not use chokeholds, strangleholds, Lateral Vascular Neck Restraints, Carotid Restraints, or any other tactics that restrict oxygen or blood flow to the head or neck unless necessary to protect the life of the officer.”
- Explicitly prohibit the use of deadly force when a reasonable officer would conclude that a person presents an imminent threat of death or serious physical injury only to themselves.

⁶² *Statement on the Death of George Floyd*, North Carolina Sheriffs’ Association, https://ncsheriffs.org/wp-content/uploads/NC_Sheriffs_Association_Statement-George_Floyd.pdf (last visited Sept. 24, 2020).

- Require an officer to alert his or her supervisor any time the officer points a gun at someone.
- Ban hog-tying subjects (defined as connecting a subject's hand and foot restraints behind the subject's back), including when transporting them face down in a vehicle.
- Prohibit officers from using projectiles against a subject's head, neck, face, and spine unless deadly force is justified.
- Prohibit officers from using force to retaliate against subjects for talking back or running away.

Necessary Action: local agency policy change; state agency policy change.

Explicitly prohibit the use of deadly force when a reasonable officer would conclude that a person presents an imminent threat of death or serious physical injury only to themselves.

Necessary Action: legislative change to N.C.G.S. § 15A-401(d)(2).

REAL WORLD IMPACT

DE-ESCALATION IN ACTION

Highlights:

Officer Thaddeus Hines of Burlington, NC, was called to a boardinghouse for an individual experiencing a “mental crisis” who may have been armed with a knife.

When he arrived, he was directed to a back bedroom, where a woman was sitting on a mattress with a 13-inch knife nearby.

He was kind, offered to help, and five minutes later the woman tossed the knife to the floor.

Officer Hines took her to receive mental health treatment. There were no injuries, and no arrests.

Source: Police de-escalation training gaining renewed clout as law enforcement seeks to reduce killings. https://www.washingtonpost.com/local/deescalation-training-police/2020/10/27/3a345830-14a8-11eb-ad6f-36c93e6e94fb_story.html

32 REQUIRE OFFICERS TO HAVE FIRST AID KITS AND RENDER AID.

Law enforcement agencies should adopt policies requiring all officers to carry first aid kits and render immediate reasonable medical assistance, when safe to do so, to anyone in law enforcement custody and to call EMS, where appropriate, when a person in law enforcement custody is injured or complains of an injury.

Necessary Action: local agency policy change; state agency policy change.

33 ENACT AGENCY POLICIES REQUIRING A DUTY TO INTERVENE AND REPORT EXCESSIVE USE OF FORCE OR OTHER ABUSE.

The Task Force recommends that all North Carolina law enforcement agencies enact a policy articulating a duty to intervene and report in any case where a law enforcement officer may be a witness to what they know to be an excessive use of force or other abuse of a suspect or arrestee.

Necessary Action: local agency policy change; state agency policy change.

34 ESTABLISH EARLY INTERVENTION SYSTEMS FOR OFFICERS REPEATEDLY VIOLATING USE OF FORCE POLICIES.

Law enforcement agencies should establish an early intervention system to identify and correct officers who use excessive force. This system should:

- Identify officers who receive two or more citizen complaints of any kind in a single month.
- Identify officers who report two or more use of force incidents or who receive two or more citizen complaints regarding uses of force in a single quarter.

- Require identified officers to attend appropriate training and to be monitored by an immediate supervisor. Consider termination of an officer following multiple reports if multiple instances of misconduct are found.

Necessary Action: local agency policy change; state agency policy change.

35 DEFINE AND COLLECT USE OF FORCE DATA.

A statute should be enacted that requires law enforcement agencies to report to the State Bureau of Investigation (SBI) a standard set of information regarding uses of force by law enforcement officers. The statute should require that:

- Every use of force shall be reported, with “use of force” defined as any physical force, with or without a weapon, beyond that necessary to handcuff a compliant subject.
- Each report shall include information about the type of force used; any injuries sustained; the justification for the use of force; and demographic information, including race, for both the officer(s) and the subject(s) involved.
- Each report shall include any information collected by the FBI’s National Use-of-Force Data Collection, and the SBI shall submit each report to the FBI on behalf of the agency that originally submitted the report to the SBI.
- The data shall be made publicly available and searchable to the extent compatible with personnel privacy laws.

Necessary Action: legislative change.

ENHANCING ACCOUNTABILITY

A widespread lack of data about law enforcement actions makes accountability and change difficult. Because of this lack of oversight, TREC recommends improving accountability by creating review procedures and revising how officer-involved incidents are investigated and prosecuted. We also recommend mandating body-worn and dashboard cameras and allowing broader access to recordings to increase transparency and rebuild community trust.

IMPROVE LAW ENFORCEMENT ACCOUNTABILITY AND CULTURE

As the North Carolina Sheriffs' Association recognized in their May 29, 2020, statement on the death of George Floyd, "when law enforcement officers violate laws or policy, we expect them to immediately be held accountable."⁶³ Accountability is an essential part of change. It is more than an enforcement mechanism — at the same time that accountability ensures compliance with the norms set out by the policy, it re-establishes the legitimacy of the body which is held to account. Put simply, accountability engenders trust. Accountability improves community relations. Accountability is the difference between lawlessness and order.

At the same time, we recognize that culture change is an equally essential part of improving North Carolina's law enforcement agencies. As one of our Task Force members has often said, "culture eats policy for lunch." Currently in our state, there are areas where accountability and law enforcement culture can be enhanced. For example, a number of experts spoke to Task Force members about the importance of officers' shifting from a warrior mindset to a guardian mindset, emphasizing that the latter is critical to achieving positive interactions between law enforcement officers and members of the public. Culture changes such as this one, as well as the policy recommendations that are included in this report, must be accompanied by accountability measures to be effective.

At present, North Carolina has few civilian oversight boards, and those that exist have very little meaningful authority. This hampers the extent to which these boards can serve as true instruments of accountability. Further, the lack of data law enforcement agencies collect limits efforts to ensure that our agencies are functioning as they should to protect and serve all North Carolinians equally. When officers use force against community members in a way that warrants investigation, there is no standard or independent investigative body that is required to conduct those investigations. When a law enforcement officer is fired for excessive use of force or other severe misconduct, there are loopholes that allow them to get another

⁶³ *Id.*

law enforcement job, which is called the “wandering officer” problem. And there is currently no process by which a neutral, non-blaming body can investigate law enforcement-caused deaths and other serious incidents to figure out what happened and reduce the likelihood that it happens again. In all of this, racial equity is implicated by the disproportionate amount of contact, sometimes violent, between law enforcement officers and minority communities in our state.

Through the recommendations in this section, the Task Force expects that we will realize a future in which there is mutual respect, cooperation, and appreciation between law enforcement agencies and the communities they serve. The public will have confidence in the professionalism, integrity, and goodwill of law enforcement officers in this state. Similarly, law enforcement officers will earn that confidence in the everyday realities of their actions.

36

IMPROVE LOCAL CIVILIAN OVERSIGHT BOARDS.

Where Civilian Oversight Boards (COB) (also known as Citizen Review Boards) have been or are created by local governments, North Carolina should expand their investigative and oversight authority. This includes:

- Recommend that any COB that is created be established at the local level by local governments to be responsive to the communities they serve.
- Recommend that local governments that seek to create COBs coordinate with NACOLE regarding best practices and necessary policies and procedures, e.g., the importance of the inclusion of government and community stakeholders and directly impacted people as members.
- Recommend revisions to state personnel laws to require the release of personnel records be made to a local government created COB or the local government governing body itself.
- Recommend revision of N.C.G.S. §§ 126-23, 153A-98, and 160A-168 to allow for inspection of certain records related to internal investigations by COBs and local governing bodies. The revisions should:
 - Specify that only COBs created by a local government, or the local government governing body, itself may gain access.
 - Determine whether COBs fit under N.C.G.S. §§ 126-24(5), 153A-98(c)(5), and 160A-168(c)(5).

- Create a legal distinction between the documents used in the investigation of the incident and the ultimate disposition or personnel action, which would remain a part of the personnel file and therefore be unavailable to COBs.
 - Ensure that any statutory revisions indicate that these documents are not public records with the exception of aggregated use of force data.
 - Allow review of documents related to the internal affairs investigation by COBs or local government council or commission but not allow them to have copies or further release these documents or the information contained therein.
- COBs created by their local governments shall be able to make the following recommendations upon completion of their review:
 - Recommend that the agency involved in the inquiry take certain steps to address the incident.
 - Recommend that the Standards Commissions review certain incidents for compliance with requirements of the NCAC, contingent upon funding being provided to the Sheriffs' Education and Training Standards and Criminal Justice Education and Training Divisions (Standards Divisions) at the North Carolina Department of Justice (NCDOJ) to staff the investigations.

Necessary Action: legislative change to N.C.G.S. §§ 126-23, 153A-98, and 160A-168; local policy change.

37 REFORM OFFICER-INVOLVED INVESTIGATION AND PROSECUTION PROCEDURES.

We should reform investigation and prosecution procedures for certain incidents involving officers using force. To do so, we should:

- Enact a statute requiring that the State Bureau of Investigation (SBI) be designated to investigate the below-defined Officer Involved Use of Force Incidents (OIUFI) in which local law enforcement officers or officers from another North Carolina state agency are involved. OIUFI include the following: officer-involved shootings (regardless of whether they result in death), all other OIUFI in which death results, sexual assaults by law enforcement officers, domestic violence incidents involving law enforcement officers, and all officer-involved in-custody deaths. The SBI must request that any

OIUPI involving an SBI Agent also be handled by an independent entity. This proposed legislation should include a budgetary provision to increase SBI funding to handle these cases that is based on calculations generated by the SBI.

- The SBI shall only be responsible for criminal investigations and not investigations involving violations of policy.
- Enact a statute that requires appointment of a Special Prosecutor to handle all OIUPI cases, as defined above. The Special Prosecutor shall either be a member of the Attorney General’s Staff, pursuant to N.C.G.S. § 114-11.6, an ADA from a neighboring prosecutorial district, or an attorney from the North Carolina Conference of District Attorneys (Conference of District Attorneys). Legislation should contemplate an increase in funding for this purpose.

Necessary Action: legislative change.

38 ESTABLISH SENTINEL EVENT REVIEWS.

The Task Force recommends North Carolina establish non-blaming, future-looking sentinel event reviews to be performed by a joint committee, known as the Sentinel Event Review Committee (SERC), housed within the Standards Divisions. The Task Force recommends the establishment of a SERC to conduct reviews consistent with the proposed structure, mission, and timing in Appendix B to reduce future use of force incidents. However, the Task Force recognizes two statutory changes critical to the work of such a committee. First, the establishment of a statewide use of force model and required reporting of misconduct related to use of force. Second, there should be statutory protection to prevent the use of statements and evidence obtained by the SERC for civil or criminal liability. Until this statutory protection is put in place, we recommend the SERC select for review use of force incidents for which all criminal and civil liability issues have been resolved. Given that criminal and civil liability issues can take years to resolve, it will be challenging to realize the effectiveness and value of sentinel event review absent such statutory protection.

Necessary Action: state agency policy change by Standards Commission; local agency policy change; legislative change.

39 SUPPORT RAP BACK PROGRAM.

The Task Force recommends support for the Rap Back Program that has been approved by the Standards Commissions and now requires legislation and amendments to the North Carolina Administrative Code (NCAC). The Rap Back Program would maintain and continuously compare fingerprints to arrest records throughout the United States so that the Standards Commissions can quickly and efficiently identify when a certified individual has been arrested and take appropriate investigative action.⁶⁴

Necessary Action: Task Force collaboration; legislative change.

40 REVISE STANDARDS REGARDING OFFICER CONDUCT.

The Task Force recommends that the Standards Commissions revise 12 NCAC 09B.0101 (Minimum Standards for Criminal Justice Officers) and 10B .0301 (Minimum Standards for Justice Officers), to require that criminal justice officers not engage in excessive or unjustified use of force or abuse the power of the position.

Necessary Action: state administrative change to 12 NCAC 09B. 0101 and 12 NCAC 10B .0301 by the Standards Commissions.

“Police officers experience traumatic events all too frequently...Here, in the Greenville Police Department, trauma is dealt with by critical incident debriefing and by fellow officers, also not trained or licensed to address repeated trauma and hypervigilance whose bodies react to people and circumstances as life-threatening, sometimes unnecessarily.”

ROD DEBS, GREENVILLE
TASK FORCE PUBLIC COMMENT SESSION

⁶⁴ *Privacy Impact Assessment for the Next Generation Identification (NGI) Rap Back Service*, Federal Bureau of Investigation (Dec. 15, 2016), [https://www.fbi.gov/file-repository/pia-ngi-rap-back-service.pdf/view#:~:text=This%20Privacy%20Impact%20Assessment%20\(PIA,and%20retention%20of%20criminal%20or](https://www.fbi.gov/file-repository/pia-ngi-rap-back-service.pdf/view#:~:text=This%20Privacy%20Impact%20Assessment%20(PIA,and%20retention%20of%20criminal%20or).

41 EXPAND AUTHORITY TO RESPOND TO OFFICER MISCONDUCT.

The Task Force recommends that the Standards Commissions revise 12 NCAC 09A .0204 and 10B .0204 to allow for suspension, revocation, or denial of certification based upon a criminal justice officer's excessive use of force or abuse of power.

Necessary Action: state administrative change to 12 NCAC 09A .0204 and 12 NCAC 10B .0204 by the Standards Commissions.

42 IMPROVE NOTIFICATION OF USE OF FORCE INCIDENTS.

The Task Force recommends that the Standards Commissions revise the notification provisions contained within 12 NCAC 09B. 0101 (Minimum Standards for Criminal Justice Officers) and 10B .0301 (Minimum Standards for Justice Officers) to require notification by both the officer and the agency when a use of force violation of agency policy or general statute is sustained against an officer or when an officer is reported for three or more use of force incidents within a 12-month period. TREC also recommends:

- Standards Divisions maintain this information as part of their publicly available database consistent with the personnel laws.⁶⁵
- Standards Divisions initiate an investigation into the officer's certification when the above-defined use of force incidents are reported.
- Standards Commissions revise the NCAC to require that hiring agencies contact the Standards Divisions to determine if the candidate is in the use of force database before making an offer of employment.
- Survey chiefs and sheriffs to gain their input regarding appropriate timeframes for use of force reporting.

Necessary Action: state administrative change to 12 NCAC 09B. 0101 and 12 NCAC 10B .0301. by the Standards Commissions; Task Force collaboration

⁶⁵ Both Standards Commissions, which regulate the training and certification of sheriffs' deputies, law enforcement officers, corrections officers, and juvenile justice officers, have a staff of employees at NCDOJ, housed in units called the Standards Divisions. They meet quarterly to discuss training and certification topics and to hear cases of deputies or officers accused of violating commission rules. The Standards Commissions are represented by attorneys from the NCDOJ. See *Law Enforcement Training and Standards*, N.C. Department of Justice, <https://ncdoj.gov/law-enforcement-training/> (last visited December 8, 2020).

43 INCREASE TRANSPARENCY ABOUT OFFICER DISCIPLINE AND DECERTIFICATION.

The Task Force recommends support for the Standards Divisions' ongoing efforts to create a publicly available database on the NCDOJ website where information about officer discipline and decertification can be located.

Necessary Action: NCDOJ policy and procedure change; Task Force collaboration.

44 SUPPORT PSYCHOLOGICAL SCREENINGS FOR ALL LAW ENFORCEMENT OFFICERS.

We support the pre-employment psychological screening recommendations 1 & 2 of the CJ Standards Psychological Screening Examination Advisory Group, which are as follows:

- “Based on the foregoing, the Advisory Group recommends that Planning and Standards Committee adopt the following standards or guidelines:
 - All pre-employment psychological screening evaluations for Police and Community Corrections (Probation and Parole) Officer candidates should include: (i) a written test such as MMPI or other supervised by a licensed psychologist or psychiatrist and (ii) a clinical interview conducted by a licensed psychiatrist or psychologist.
 - All pre-employment psychological screening evaluations for candidates for Correction Officer, Juvenile Justice Officer, Local Confinement Personnel, or Juvenile or Chief Court Counselor shall include (i) a written test such as MMPI or other supervised by a licensed psychologist or psychiatrist and (ii) a clinical interview conducted by a licensed psychiatrist or psychologist if the psychologist or psychiatrist reviewing the results of the MMPI or other standard test identifies any issue which he/she believes needs further examination or other information is found that raises questions of the psychological suitability of the candidate.”

- Recommend the Sheriffs' Standards Commission include requirements for psychological screening in the NCAC provisions addressing minimum employment standards similar to the recommendations in the code section applicable to the CJ Standards Commission.

Necessary Action: state administrative change to 12 NCAC 09B. 0101 and 12 NCAC10B .0301. by the Standards Commissions.

45 REPEAT PSYCHOLOGICAL EVALUATIONS.

We recommend to the Standards Commissions that psychological evaluations be repeated either after a number of years of service or before promotion, to be determined by the Commissions after further study and discussion.

Necessary Action: state administrative change to 12 NCAC 09B. 0101 and 12 NCAC10B .0301 by the Standards Commissions.

46 STRENGTHEN THE ONGOING DEVELOPMENT OF A STATEWIDE LAW ENFORCEMENT ACCREDITATION PROGRAM.

Support the ongoing work of the North Carolina Law Enforcement Accreditation (NCLEA) Committee. Recommend the incorporation of the following additional elements into the NCLEA program:

- Accreditation should be mandatory for all law enforcement agencies in the state of North Carolina. Establish a deadline by which all law enforcement agencies must be accredited. Accreditation standards should make allowances for the feasibility of certain standards based on department size.
- Members of the NCLEA Committee should reflect the diversity of racial, ethnic, gender, law enforcement, and geographic communities of North Carolina.
- The NCLEA program should partner with a research institution to assist with evaluation and technical needs.
- The results of an accreditation assessment should be made public in a timely manner upon completion.

- The NCLEA Committee should convene to update accreditation standards regarding use of force within one month of any statewide legislative changes. The NCLEA Committee should convene annually to update accreditation standards regarding all other law enforcement agency statutory changes. The Committee should establish processes to determine how and when all accredited law enforcement agencies are responsible for demonstrating adherence to new statutory standards.
- The NCLEA Committee should consider a process for loss of accreditation for agencies with repeated instances of improper use of force or civil rights violations.
- The NCLEA Committee should regularly review the efficacy of the accreditation program's standards on best practices related to racial bias in policing. This review should consider the following reports:
 - TREC
 - GCC
- Recommend legislation to ensure that NCLEA has the proper staffing and overhead costs for assessment, technology, and administrative needs, including the possibility of no cost or sliding scale fee structure.

Implementation will require collaborating with the Standards Commissions on the accreditation process and to obtain legislative funding.

Necessary Action: Task Force collaboration; administrative rule change by the Standards Commissions; legislative change.

MANDATE BODY WORN/ DASHBOARD CAMERAS AND INCREASE TRANSPARENCY OF FOOTAGE

In North Carolina, many law enforcement agencies, but not all, require use of body worn and dashboard cameras. The cameras can provide objective evidence when there is an altercation between law enforcement and a member of the public. Transparency can also serve as a deterrent of improper behavior on both the part of the officer and the citizen.

While law enforcement agencies can use the recordings for various purposes, public access to the recordings requires a court order. The trial court must balance the public's interest in the release of the footage against potential impacts on a criminal investigation and public safety, among other considerations. This requirement can lead to substantial delays in the public receiving video footage when there is an incident of public concern, such as a shooting by law enforcement. While there are sometimes good reasons for the footage to remain private, the lack of public access can also foster distrust of law enforcement.

COBs are made up of members of the public; therefore, COBs also do not have access to body-worn and dashboard camera recordings. Without access to any relevant video recordings and other law enforcement records, COBs have no meaningful way to provide oversight of civilian complaints.

Increasing the use of body-worn and dashboard cameras and making sure important footage is publicly accessible will allow us to increase law enforcement accountability and promote public trust in law enforcement officers. Creating a record of interactions with the public also promotes law enforcement efforts to ensure professional service to the community. By providing access to COBs, we can promote transparency and public confidence in how complaints of officer misconduct are handled. North Carolina should amend existing statutes to require law enforcement to use body-worn and dashboard cameras and to increase access to recordings on the part of the public and COBs.

MANDATE BODY WORN CAMERAS FOR ALL LAW ENFORCEMENT AGENCIES.

The Task Force recommends requiring body-worn cameras for all law enforcement agencies in North Carolina. Legislative changes to accomplish this objective should include the following:

- Compliance within two years of enactment of the statute should be required for all agencies.
- Body-worn cameras must be worn by any criminal justice officer on patrol or who is performing patrol functions. This does not apply to plainclothes or undercover officers, whose use of body-worn cameras should be determined by the law enforcement agency based upon their specific job duties.
- Body-worn cameras should be worn by criminal justice officers when conducting investigations unless the investigation is of a sensitive nature. To further define this set of interactions drafters should consult similar statutes in other states (e.g., Colorado, Minnesota), as well as best practices from the International Association of Chiefs of Police, the Police Executive Research Forum, and the National Institute of Justice (NIJ).
- Random audits should be conducted by supervisors within the law enforcement agency to ensure compliance with the mandate to wear the camera, that the camera is activated at the appropriate time per agency policy, that the equipment is functioning appropriately, and information is being archived.
- Officers should not be penalized for mechanical failure of body-worn cameras outside their control; however, officers may be penalized for failure to activate their body-worn cameras in accordance with statute or policy.

Necessary Action: legislative change.

EXPAND USE OF DASHBOARD CAMERAS.

Recommend that all agencies deploy dashboard cameras in all patrol and field vehicles, except for undercover vehicles. The agency shall be responsible for ensuring that vehicles equipped with dash cameras operate appropriately.

Necessary Action: local agency policy change; state agency policy change; legislative change.

PROVIDE COBS AND LOCAL GOVERNMENT GOVERNING BODIES ACCESS TO LAW ENFORCEMENT RECORDINGS.

Give COBs and City and Town Councils/County Commissions access to law enforcement recordings of critical incidents in line with the Task Force’s recommended amendments to the personnel laws with respect to release of personnel files.

- Only COBs created by their local municipality or the governing board of the local jurisdiction may gain access.
- COBs or local government governing bodies may review the recordings but may not have copies or further release these recordings or the information contained therein.
- As noted above, a “critical incident” is defined as: (i) an incident involving the discharge of a weapon by a justice officer in the performance of duty when interacting with the public, or (ii) an incident in which the use of force by a justice officer results in death or serious injury.

Necessary Action: local agency policy change; state agency policy change; legislative change to N.C.G.S. § 132-1.4A(c).

INCREASE ACCESS TO LAW ENFORCEMENT RECORDINGS.

Enact legislation requiring that law enforcement recordings of critical incidents be publicly released within 45 days unless a court finds that release would compromise the integrity of a criminal investigation. A critical incident will be defined as the discharge of an officer’s firearm in the performance of duty when interacting with the public or a use of force that results in death or serious injury. Legislation should include the following:

- Release may be extended for a specified period of time by court order if clear and convincing evidence exists that release would compromise the integrity of an ongoing criminal investigation.
- Contemplate the ability of parties to object to release of certain portions of recordings that may involve sensitive situations or implicate other privacy concerns.

- Any law enforcement recording of a critical incident released to the public must be redacted to adequately protect victims and the privacy interests of non-involved individuals.
- Individuals who appear in law enforcement recordings should be notified of the recording's release at least 10 days prior.
- Drafters should work with victim advocacy groups to ensure that statutory changes adequately take into account concerns related to victim privacy.

Necessary Action: legislative change to N.C.G.S. § 132-1.4A.

STRENGTHENING RECRUITMENT, TRAINING, AND THE PROFESSION

Law enforcement is a socially important profession that has become increasingly complicated. We want the best and brightest young people and those who reflect the diversity of the communities they serve to choose this career. We also want them to effectively manage the complexities of the job and keep us safe. This requires that we recruit them creatively and train them appropriately. We must support them on the job with adequate resources for their mental and physical health so they can accomplish their work successfully.

RECRUIT AND RETAIN A RACIALLY EQUITABLE WORK FORCE

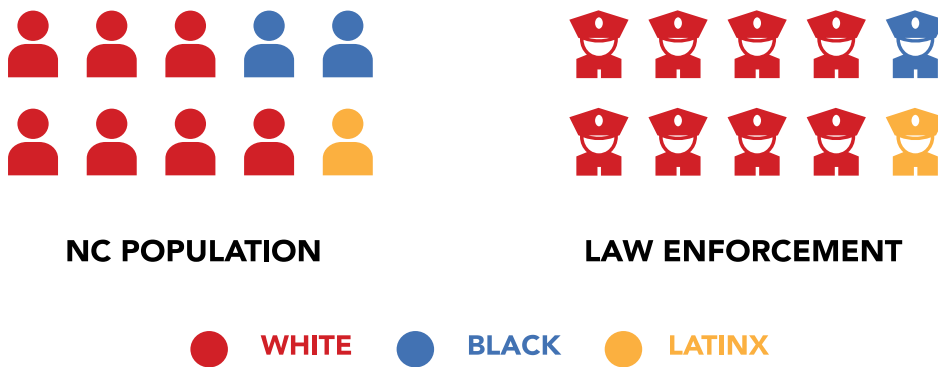
Law enforcement agencies do not always reflect the racial and cultural diversity of the communities they serve, which may lead to miscommunication and feelings of distrust. As of July 2020, out of a total of 19,451 certified law enforcement officers in the state of North Carolina, 15,597 reported their race as white.⁶⁶ While approximately 80 percent of law enforcement officers are white, only about 70 percent of North Carolina's population is white. By contrast, only 12 percent of law enforcement officers in North Carolina reported their race as Black, while Black people make up about 22 percent of the state's population.

These numbers, however, are only part of the picture. State-level demographic reporting is voluntary for law enforcement officers, which creates gaps in data. Moreover, minimal demographic data is collected at the agency level, so it is difficult to accurately evaluate at scale the demographics of local law enforcement agencies as compared to the communities they serve.

We must reduce the barriers, both social and professional, applicants of color have that limit their interest, entrance, and advancement in the law enforcement profession. We also know that truly representing a community goes beyond racial diversity alone; law enforcement leaders must recruit and train candidates that are public-spirited and emotionally intelligent to enhance the law enforcement profession. Additionally, these officers must operate in agencies with a culture of respect for and service to the public.

These recommendations will increase the diversity and caliber in the ranks and leadership of law enforcement and ensure that law enforcement agencies benefit from the wealth of perspectives, experiences, and skills possessed by North Carolinians.

FIG 8. LAW ENFORCEMENT REPRESENTATION



51 DEVELOP AND DISSEMINATE BEST PRACTICES GUIDE FOR RECRUITMENT AND RETENTION.

The Task Force recommends collaboration with the North Carolina Association of Chiefs of Police and the North Carolina Sheriffs’ Association to create a “best practices” document for recruitment and retention. Doing so will help all agencies — large and small — understand how to achieve diversity, increase cultural awareness, and ensure that officers have emotional intelligence necessary to serve their communities. Recognizing that not all officers are able to live in the communities they serve, agencies should prioritize educating their employees about the specific needs of their constituency. Because the needs of each agency and each community are different, this document will be scalable based on the size of the agency. The document will address, at a minimum, the desired traits of prospective officers and the composition and outreach efforts of recruitment committees. [More detail can be found in Appendix C.]

Necessary Action: Task Force collaboration; administrative rule change by the Standards Commissions; legislative change; local agency policy change; state agency policy change.

52 EXPAND CRIMINAL JUSTICE FELLOWS PROGRAM STATEWIDE.

Recommend that the legislature delete the reference to “eligible county” in the statute to ensure that young people from every county in North Carolina are eligible. Legislators should increase the allotted budget amount to reflect support for the administrative needs of the program as well as the additional eligible students.

Necessary Action: legislative change N.C.G.S § 17C-20(5).

53 COLLECT DATA ON LAW ENFORCEMENT RECRUITMENT AND DIVERSITY EFFORTS.

Each Commission should collect demographic data for those entering BLET, those graduating BLET, and those currently certified by each Commission. Every law enforcement agency in North Carolina should be required to maintain accurate demographic data about its employees and report that data annually to the Standards Commission that certifies their employees. This information, in de-identified form, will be publicly available.

Necessary Action: administrative rule change by the Standards Commissions; legislative change; local agency policy change; state agency policy change.

54 ENSURE THE NORTH CAROLINA ADMINISTRATIVE CODE PROVISIONS REGARDING MINIMUM STANDARDS AND REVOCATION, DENIAL, AND DECERTIFICATION ARE THE SAME FOR BOTH STANDARDS COMMISSIONS.

Currently, the code provisions for the Standards Commissions are not the same with respect to entry into the profession and what qualifies for discipline or decertification. The Task Force encourages the Standards Commissions to form a joint working group to review both codes and make the appropriate changes in order to ensure that all law enforcement officers are held to the same standards in North Carolina.

Necessary action: administrative rule change to 12 NCAC 09B. 0101 and 12 NCAC 10B .0301 by the Standards Commissions

REQUIRE LAW ENFORCEMENT AGENCIES OF A CERTAIN SIZE TO CREATE A DIVERSITY TASK FORCE.

Legislation should be enacted to require law enforcement agencies of more than 25 employees to create a diversity task force within the agency to foster and monitor recruitment, training and retention of a racially diverse force that reflects the population served. Smaller agencies are encouraged to adopt these same best practices to the extent practicable. Municipalities should also create a diversity task force to incorporate throughout the local government. These will be particularly helpful to law enforcement agencies that are too small to create their own task forces.

Necessary Action: legislative change, Task Force collaboration; local agency policy change; state agency policy change.

TRAIN LAW ENFORCEMENT TO PROMOTE PUBLIC SAFETY AND EARN COMMUNITY SUPPORT

Law enforcement training that meets the needs of communities is critical to improving outcomes and relationships between law enforcement agencies and the communities they serve. Training initiatives such as shifting to a guardian mindset, learning to better interact with diverse populations, developing emotional intelligence skills, de-escalating tense situations, recognizing and addressing implicit bias, and dealing with psychological stressors are critically important to the effectiveness of our law enforcement agencies.

The current version of North Carolina's BLET program does not adequately address all these topics. Further, North Carolina's annual mandatory in-service training includes only a limited number of topics which are covered every year. Many essential skills, particularly communication, problem-solving, and emotional intelligence, are not reinforced through training on an annual basis.

The Justice Academy is currently undergoing a full revision of the BLET curricula that incorporates many of the topics suggested below. The Task Force will continue to communicate with the Justice Academy and make additional recommendations. Internal agency trainings are equally important to ensure that skills learned in BLET and in-service trainings are reinforced. Research suggests that one-time, one-size-fits-all training does not lead to lasting cultural change within a law enforcement agency.⁶⁷ Training received from outside sources must be embedded in each agency's policies, and each agency must follow up with its own training about the consequences of violating policy to effectuate lasting cultural change.

We anticipate that these recommendations will support law enforcement agencies in their efforts to modernize training practices and better align training curricula with the needs of agencies, officers, and communities. As law enforcement officers strengthen their skills in de-escalating conflict, engaging in effective community interactions, maintaining mental health,

⁶⁷ Letter from Research Triangle Institute to TREC (Sept. 8, 2020), <https://ncdoj.gov/wp-content/uploads/2020/11/RTI-International-and-the-North-Carolina-Task-Force-on-Racial-Equity-in-Criminal-Justice-The-Ability-of-Training-to-Impact-Law-.pdf>.

and addressing implicit bias, both the reality and public perception of their ability to serve and protect will improve.

56

REVAMP BASIC LAW ENFORCEMENT TRAINING.

The Task Force recommends that the Standards Commissions revise the BLET requirements in consultation with the Justice Academy. The Task Force also recommends that a new position is created at the Justice Academy to strengthen and develop the suggested trainings.

Specific recommendations include, but are not limited to:

- Ensuring that North Carolina’s BLET program is sufficient to cover all needed topics, regardless of the number of hours currently allotted.
- Ensure that each block of instruction considers ethical issues as appropriate.
- Ensure that BLET includes at least one block of implicit bias and racial equity training, crisis intervention concepts, and Mental Health First Aid for new recruits.
- Ensure that all blocks focus on creating emotional intelligence in officers, including practical applications, to help create guardian officers.
- Create more opportunities for hands-on learning surrounding communication skills and team building.
- Consider interactions with communities during training.
- Focus on scenario-based training in order to learn problem solving.

Support legislation to add staff to the Justice Academy to focus on development of additional problem-solving skills trainings, interpersonal skills trainings, and other types of training aimed at eradicating bias and creating equity.

Necessary Action: administrative rule change to 12 NCAC 09B .0205 by the Standards Commissions and the Justice Academy; legislative change.

RECOMMEND CHANGES TO IN-SERVICE TRAININGS.

The Task Force will work with the Joint IST Committee to suggest training topics for IST and to suggest additional mandatory training to be completed yearly while recognizing that the Committee should have the flexibility to choose the exact trainings to fulfill the topic areas.

The Task Force recommends that mandatory IST include certain topics, some to be given every year and some to be given periodically, are based on research and input from experts in the field of criminal justice training. The topics include:

- Ethics (every year)
- Mental health for officers (every year)
- Community interactions (e.g.: CIT training, dealing with persons who have mental health issues or disabilities, communications skills) (Frequency to be determined)
- Implicit bias and racial equity training (e.g.: TRUUTH) (frequency to be determined)
- Use of force training (e.g.: revised SCAT, De-escalation training, Verbal Judo) (frequency to be determined)
- Duty to intervene training (every year)

The Task Force will draft legislation, in consultation with the Joint IST Committee, to make certain topics mandatory by statute. The Task Force will draft recommendations to the Standards Commissions that certain topics be included every year in 12 NCAC 09E .0105.

Necessary Action: administrative rule change by the Standards Commissions to 12 NCAC 09E .0105.; legislative change to N.C.G.S. § 17C-6(a)(14); state policy change by the Justice Academy

58 REQUIRE TRAININGS ON INTERNAL LAW ENFORCEMENT AGENCY POLICIES.

Work with individual agencies to ensure that they have policies in place that prioritize emotional intelligence, respectful community interactions, and good mental health. Agencies should formalize these priorities through policy and procedure and train their employees regarding the consequences of policy violations. The Task Force should work with the NCLEA to ensure that this type of policy/procedure training is embedded within the state accreditation standards.

Necessary Action: local agency policy change; state agency policy change.

59 EVALUATE TRAINING PROGRAMS FOR EFFECTIVENESS.

We recommend additional research to show the effectiveness of certain types of trainings, to include implicit bias training for law enforcement, de-escalation training, and racial equity training. To ensure that there are no unintended consequences and that training is successful, we must study the effectiveness of this training. However, our current training providers do not have staff who are trained to conduct this type of extensive study. It is necessary to provide additional funding to the Justice Academy to hire staff to create these specialized trainings, as well as funding to allow them to partner with outside agencies to set goals for training, measure those goals, and adjust the trainings to ensure the desired outcomes.

Legislative funding is necessary to hire additional staff to develop these trainings, measure outcomes, and report back.

Necessary Action: Task Force collaboration; state policy change by the Justice Academy; legislative change.

ENHANCE THE LAW ENFORCEMENT PROFESSION

If law enforcement officers are navigating their own physical or mental health challenges without the necessary resources, they and the communities they serve may suffer. As law enforcement officers work to protect the rights and safety of citizens, the law enforcement system should work to promote professionalism among its ranks. For officers to execute their duties effectively, develop strong community relationships, and promote trust between communities and law enforcement, leaders should support the enhancement and protection of officers' mental health, fitness, and overall well-being. If all law enforcement officers are in good physical and mental shape, these public servants will be better able to navigate the stressors and challenges of the profession.

60 STUDY THE EFFECTS OF OFFICERS' PHYSICAL AND MENTAL HEALTH ON JOB PERFORMANCE.

Conduct research on officers' physical and mental health and what relationship, if any, it has to on-the-job performance; implement minimum standards as necessary.

Necessary Action: administrative rule change by the Standards Commissions; local agency policy change; state agency policy change.

**RACIAL EQUITY
IN THE CRIMINAL
JUSTICE SYSTEM
AND THE COURTS
RECOMMENDATIONS**

ELIMINATING RACIAL DISPARITIES IN THE COURTS

Implicit and explicit bias in the criminal justice system and the courts disproportionately harm Black people and people of color, particularly those who are accused of or are victims and survivors of crime. These outcomes are driven by discretionary decision-making, laws that criminalize poverty and disadvantaged communities, and severe sentences that are unequally handed down to people of color. To make the criminal justice system fairer, TREC recommends a wide range of potential solutions aimed at decreasing racially disparate outcomes at all stages of the court process. These include rethinking juvenile justice, reforming certain pretrial and trial practices, eliminating racial bias through training, providing alternatives to harsh sentencing, and decriminalizing offenses that do not significantly impact public safety but produce racially inequitable outcomes.

SUPPORT RESTORATIVE JUSTICE INITIATIVES AND VICTIM EQUITY

Crime victims are affected by our criminal justice system as much as any other stakeholder. Indeed, addressing harm to crime victims is a central purpose of the system. Too often, however, victims are treated inequitably. While Black people are disproportionately victims of some crimes,⁶⁸ they are also less likely to engage with the criminal justice system when they are victims.⁶⁹ Further, national data suggest that Black victims are underrepresented as victim compensation fund claimants relative to the victim population.⁷⁰ Perhaps most importantly, we fail to center what victims need when they have been harmed — to the extent we identify it, we do not fund and promote it.

In an ideal system, when people are harmed, we would support redress for that harm whether or not they engage in traditional criminal justice system processes. We would promote a justice system where harmed parties are less scared of the system than the crime they experienced. Most importantly, in developing that system, we would ask harmed parties how the system can serve them.

61 ESTABLISH AND FUND RESTORATIVE JUSTICE PROGRAMS.

Restorative justice is “a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that allow all willing stakeholders to meet, although other approaches are available when that is impossible.”⁷¹ We recommend establishing and funding Restorative Justice programs in local communities across the state. These programs should be available at various points of the criminal justice system,

⁶⁸ Harrell, *supra* note 27.

⁶⁹ Viki, *supra* note 30; *see also* Santhanam, *supra* note 30. The U.S. Department of Justice estimates that for every white woman that reports her rape, at least five white women do not report theirs; and yet, for every African-American woman that reports her rape, at least 15 African-American women do not report theirs. *Reporting Crime to the Police*, *supra* note 32.

⁷⁰ Jennifer Alvidrez et al., *Reduction of State Victim Compensation Disparities in Disadvantaged Crime Victims Through Active Outreach and Assistance: A Randomized Trial*, 98(5) *Am. J. of Pub. Health* 882 (2008), <https://doi.org/10.2105/AJPH.2007.113639>.

⁷¹ *Lesson 1: What is Restorative Justice?*, Centre for Justice & Reconciliation, Centre for Justice & Reconciliation, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.6vJLx4rY.dpbs> (last visited Dec. 3, 2020).

including at the start of a potential criminal proceeding and during incarceration. These programs should not require the use of traditional criminal justice processes.

Necessary Action: local policy change.

62 FORM A VICTIM ADVISORY GROUP.

During the implementation of the Task Force’s recommendations, form a victim advisory group to help develop restorative justice programs and other equity programs for victims of crime.

Necessary Action: Task Force collaboration; local policy change.

63 IMPROVE AND EXPAND ACCESS TO NORTH CAROLINA’S VICTIM COMPENSATION FUND TO INCREASE RACIAL EQUITY.

National data suggests that Black victims are underrepresented as claimants relative to the victim population. Improve North Carolina’s Victim Compensation Fund to increase racial equity by:

- Exploring additional ways to validate claims besides police reports and eliminate barriers for claims to be awarded.
- Allowing victims who have been subjected to improper use of force by law enforcement to be eligible to apply for compensation.

Necessary Action: state policy change by NCDPS.

“Our criminal justice system stands guilty of committing substantial harm to the Black and POC community and needs to account for this...A more effective solution is to consider tools such as restorative justice holistically so that the very system itself is held to a standard favoring restitution, not retribution.”

ANGELA COLON, WILMINGTON
TASK FORCE PUBLIC COMMENT SESSION

64 SCREEN INCARCERATED INDIVIDUALS FOR VICTIMIZATION AND PROVIDE APPROPRIATE SERVICES.

When people are incarcerated, they should be screened for victimization and appropriate services should be provided during incarceration to help to heal previous harm.

Necessary Action: state policy change by NCDPS.

65 CONSIDER THE EXPERIENCES OF HARMED COMMUNITIES.

Recognize racial equity and the rights and perspectives of, and the potential consequences to, harmed parties, survivors, and their families during the justice system process and when any reform is proposed.

“Racial and ethnic disparities in the system only serve to foster public mistrust of the criminal legal system and impedes our ability to promote public safety.”

KRISTIE PUCKETT-WILLIAMS, CHARLOTTE
TASK FORCE PUBLIC COMMENT SESSION

STEM THE SCHOOL-TO-PRISON PIPELINE AND RETHINK JUVENILE JUSTICE

Necessary Action: Task Force collaboration; state policy change.

Justice system involvement can have negative lasting effects on children, and youth of color are overrepresented in the juvenile justice system. Youth of color make up 46 percent of the youth population ages six-17 in North Carolina but accounted in fiscal year 2019-2010 for:

- 71 percent of complaints received.
- 80 percent of commitments to Youth Development Centers.⁷²

Of states that specify a minimum age for prosecution in juvenile court, North Carolina sets the lowest minimum age in the country, with juvenile court jurisdiction beginning at the age of six.⁷³ In FY20, youth under the age of 12 comprise approximately 6 percent (n=1,724) of all juvenile complaints. Of those, 60 percent are school-based.⁷⁴

The issue of juvenile sentencing is related. While the imposition of juvenile life without parole (JLWOP) has markedly declined in North Carolina, the state still has people serving life without parole for crimes committed as juveniles. JLWOP sentences are primarily concentrated in a small number of North Carolina counties and are plagued by racial disparities. Researchers have observed that there are “highly disparate rates of imposing JLWOP on persons of color.”⁷⁵ In North Carolina, researchers found that the vast majority, or 91.5 percent of those sentenced to JLWOP from 1994 to 2018, are people of color or members of minority groups.⁷⁶

⁷² Presentation of William L. Lassiter, Deputy Secretary for Juvenile Justice, N.C. Department of Public Safety to TREC (Sept. 30, 2020), <https://ncdoj.gov/wp-content/uploads/2020/12/RRI-to-Gov-task-Force-.pdf>.

⁷³ Presentation of Jacqui Greene, Professor, UNC School of Government to TREC (Oct. 7, 2020), https://ncdoj.gov/wp-content/uploads/2020/12/Minimum-Age-and-Capacity_TRECworkinggroup3.pdf (citing National Juvenile Defender Center, January 2020).

⁷⁴ Lassiter, *supra* note 72.

⁷⁵ Finholt, *supra* note 37.

⁷⁶ *Id.* at 158.

66 RAISE THE MINIMUM AGE OF JUVENILE COURT JURISDICTION TO 12.

Raise the minimum age of juvenile court jurisdiction to 12 years of age.

Necessary Action: legislative change to N.C.G.S. § 7B-1501(7).

67 REQUIRE A SCHOOL ADMINISTRATOR OR SCHOOL SOCIAL WORKER TO SIGN A SCHOOL-BASED PETITION INITIATED BY AN SRO BEFORE IT CAN BE ACCEPTED FOR FILING IN JUVENILE COURT.

Before a school-based petition initiated by an SRO can be accepted for filing in juvenile court, a school administrator or school social worker must also sign the petition.

Necessary Action: legislative change.

68 EXPAND PROSECUTORIAL DISCRETION IN JUVENILE COURT CASES.

In 2017, in recognition of the cognitive and the psychosocial differences between children and adults, North Carolina passed legislation raising the age of juvenile court jurisdiction for most 16 and 17-year-olds. Raise the age legislation mandates that any 16 or 17-year-old who is charged with an A-G felony be automatically transferred to the adult system upon a finding of probable cause or indictment. We propose a modification to allow prosecutors to have the discretion to accept pleas in juvenile court for juveniles charged with Class A through G felonies. This would allow 16 and 17-year-olds to remain in the juvenile justice system, where appropriate and with consent of the district attorney.

Necessary Action: legislative change to N.C.G.S. § 7B-2200.5.

69 CHANGE JUVENILE LIFE SENTENCING.

We recommend replacing juvenile life without parole with juvenile life with parole sentences and parole eligibility after 25 years for first degree murder convictions, and parole eligibility after fifteen years for people convicted of other offenses and sentenced to more than fifteen years. This legislation would merely allow defendants to be eligible for a parole hearing after either 15 or 25 years. It would not mandate release. The legislation would also help bring North Carolina into compliance with the U.S. Supreme Court's 2016 decision in *Montgomery v. Louisiana*,⁷⁷ which required the ban on mandatory life without parole sentences for juveniles be applied retroactively.

Necessary Action: legislative change to N.C.G.S. § 15A-1340.19B.

⁷⁷ *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

REAL WORLD IMPACT

SECOND LOOK AT JUVENILE LIFE WITHOUT PAROLE SENTENCE RESULTS IN FREEDOM

Highlights:

- In 2000, Kentay Lee was sentenced to life without the possibility of parole for murder at fourteen years old and with a history of being sexually assaulted.
- Lee told detectives that the man he murdered had been groping him all night.
- After prosecutors and Lee's attorneys agreed to revisit the case, Lee was allowed to plead guilty to second-degree murder and was released after spending more than 20 years in prison.
- Without that intervention, he would have remained in prison for the rest of his life.

Source: 'This is justice': Man convicted of murder at 14 walks free 20 years later
<https://www.wsocv.com/news/local/this-is-justice-man-convicted-murder-age-14-set-walk-free-20-years-later/FV7JUSDSTZFPNCQN3K56BKT2XA/>

ESTABLISH A JUVENILE REVIEW BOARD WITHIN THE GOVERNOR'S CLEMENCY OFFICE.

We recommend that the Governor's office establish via executive order a Juvenile Review Board for clemency. The purpose of the Review Board would be to review sentences imposed on juveniles in North Carolina and make recommendations to the Governor concerning clemency and commutation of such sentences when appropriate. Any person held in custody in NCDPS would be able to seek review of sentences upon the completion of 25 years or the minimum term required by law had all the sentences in the person's current term of incarceration run concurrently.

Necessary Action: state policy change.

DECRIMINALIZE MARIJUANA POSSESSION

Marijuana is the mostly widely used illegal substance in the United States. Studies demonstrate that Black and white Americans use marijuana at similar rates.⁷⁸ Notwithstanding comparable usage rates, Black North Carolinians are significantly more likely than whites to be charged and convicted for possession of marijuana. In 2019, there were 31,287 charges and 8,520 convictions for possession of up to 0.5 ounce of marijuana (Class III misdemeanor).⁷⁹ Sixty-one percent of those convicted were nonwhite. In 2019, there were 3,422 charges and 1,909 convictions for possession of more than 0.5 ounce, up to 1.5 ounces of marijuana (Class I misdemeanor). Sixty-one percent of those convicted were nonwhite.⁸⁰

71 DEPRIORITIZE MARIJUANA-RELATED ARRESTS AND PROSECUTION.

Deemphasize (or make the lowest drug law enforcement priority) marijuana possession arrests in non-ABC permitted locations. Prosecutors should immediately deprioritize marijuana-related prosecution.

Necessary Action: state agency policy change; local agency policy change; prosecutorial policy change.

78 Dayna Bowen Matthew & Richard V. Reeves, *Trump won white voters, but serious inequities remain for Black Americans*, Brookings (January 13, 2017), <https://www.brookings.edu/blog/social-mobility-memos/2017/01/13/trump-won-white-voters-but-serious-inequities-remain-for-black-americans/>.

79 North Carolina Sentencing & Policy Advisory Commission, *Marijuana Convictions and Race* (October 2020), <https://ncdoj.gov/wp-content/uploads/2020/11/Sentencing-Commission-Marijuana-Convictions-and-Race-Report.pdf>.

80 *Id.*

72 DECRIMINALIZE THE POSSESSION OF UP TO 1.5 OUNCES OF MARIJUANA.

The Task Force further recommends legislation to decriminalize the possession of up to 1.5 ounces of marijuana by making such possession a civil offense and to expunge past convictions through an automatic process. When determining what civil penalty is appropriate, legislators should consider alternatives to fines such as community service to avoid inequity in civil justice debt. Implementation should include robust data collection to measure racial equity.

Necessary Action: legislative change.

73 CONVENE A TASK FORCE OF STAKEHOLDERS TO STUDY MARIJUANA LEGALIZATION.

The Task Force further recommends that North Carolina convene a Task Force of stakeholders, free from conflict of interest, to study the pros and cons and options for legalization of possession, cultivation and/or sale, including government or not for profit monopoly options. The study should be guided by a public health, public safety, and racial equity framework.

Necessary Action: state policy change; legislative change.

SHRINK THE CRIMINAL CODE

Even when initial contact with law enforcement is in response to minor criminal offenses, such interactions can sometimes escalate and prove traumatic. Interactions between law enforcement officers and the public should be trauma-informed and public safety-focused. There is a real need to reexamine the behaviors our current penal code deems criminal and to eliminate the legal need to begin arrest proceedings against individuals committing non-violent crimes. We recognize that the current system does not adequately fund the services needed to address behaviors criminal penalties attempt to curb. As such, this series of recommendations works hand in glove with our recommendations on Reimagining Public Safety, Diversion, and Alternatives to Arrest.

74 RECLASSIFY CLASS III MISDEMEANORS THAT DO NOT IMPACT PUBLIC SAFETY.

Enact legislation that provides for the reclassification of all Class III misdemeanors that do not impact public safety or emergency management as noncriminal/civil infractions, including, but not limited to, sleeping in a public place (local ordinance), taxi fraud (local ordinance), consuming beer in a public place (local ordinance), open container of alcohol violation (local ordinance), begging (local ordinance), failure to provide proof of fare pay (local ordinance), failure to return rental property, N.C.G.S. § 14-168.4, and driving while license revoked (not impaired revocation) N.C.G.S. § 20-28(a).

Necessary Action: legislative change.

75 ENACT LEGISLATION WITH A SUNSET PROVISION FOR ALL LOCAL ORDINANCE CRIMES THAT CRIMINALIZE POVERTY OR BEHAVIOR IN PUBLIC PLACES.

Legislation will sunset all local ordinance crimes that criminalize poverty or behavior in public places, such as disturbing the peace, asking for money, and public urination. Legislation should also establish guidelines for the creation of new ordinance crimes, particularly those that criminalize poverty, homelessness, and addiction. This legislation should have an explicit exception for ordinances that are issued under the emergency powers conferred in N.C.G.S. § Chapter 166A. Local governments should undertake a review of their local ordinance crimes at least once every ten years.

Necessary Action: legislative change.

76 ELIMINATE CITIZEN-INITIATED CRIMINAL CHARGES.

In most jurisdictions in the United States, only public authorities, not private citizens, may commence a criminal case. Where there are exceptions, they typically involve procedural safeguards absent from North Carolina law or are limited by statute to minor offenses or special circumstances.⁸¹ Given the potential for abuse of the criminal process, the Task Force recommends eliminating citizen-initiated criminal charges. Criminal charges should be brought by public prosecution, and non-criminal disputes between individuals can be addressed in the civil court system.

Necessary Action: legislative change to N.C.G.S. § 15A-304.

77 REVIEW AND RECOMMEND CHANGES TO THE CRIMINAL CODE.

The Task Force should further engage in, and/or collaborate with the General Statutes Commission and other stakeholders to undertake an ongoing review and study of the criminal code and make further recommendations regarding the criminal code to reduce the number of crimes, increase racial equity, and decrease the impact of criminal justice consequences for

⁸¹ Jeff Welty, *Private Citizens Initiating Criminal Charges*, University of North Carolina School of Government, North Carolina Criminal Law Blog (April 9, 2015), <https://nccriminallaw.sog.unc.edu/private-citizens-initiating-criminal-charges/>.

minor violations of the criminal code. This work should also study the implications of moving traffic offenses from the criminal to the administrative code and of lowering some drug offenses from felony status.

Necessary Action: legislative change.

78 PROVIDE FOR THE APPOINTMENT OF COUNSEL IN CASES WHERE THE DEFENDANT IS FACING A \$200 FINE.

TREC recommends that counsel is appointed in cases where the defendant is facing a \$200 fine, including any remaining Class III misdemeanors (see Recommendation 74), as well as failure to appear and failure to comply/pay matters, and increasing funding to Indigent Defense Services to provide counsel in all these additional matters.

Necessary Action: legislative change to N.C.G.S. § 7A-451.

IMPROVE PRETRIAL RELEASE AND ACCOUNTABILITY PRACTICES

Despite a statutory preference in North Carolina for non-financial conditions for pretrial release, secured bonds are the most imposed pretrial condition in North Carolina.⁸² Furthermore, North Carolina law does not require first appearances for in-custody misdemeanor defendants.⁸³ As a result, misdemeanor defendants can sit in jail for weeks or more waiting for their first court date, sometimes for longer than their sentence would be if convicted.

Even short stays in jail pretrial can have destabilizing effects on an individual's employment, health, and recidivism.⁸⁴ These destabilizing effects disproportionately impact people of color. Empirical research finds that judges overpredict the risk of Black defendants committing crimes on pretrial release and underpredict the risk of white defendants committing crimes on pretrial release.⁸⁵ Accordingly, money bail is imposed more often on Black defendants than white defendants, and Black defendants receive higher bail amounts than white defendants for the same crime.⁸⁶ A nationwide study has also found that Latinx and Black defendants “are more likely to be detained [pretrial] than similarly situated white defendants.”⁸⁷

Pretrial release decisions must be made based on evidence-based criteria and reduce disproportionate money bail and pretrial detention conditions against Black defendants, while also promoting public safety. We also must seek ways to promote and assist people with timely court appearance that do not rely on financial conditions.

82 Jessica Smith, *2019 North Carolina Conditions of Release Report*, University of North Carolina School of Government, North Carolina Criminal Law Blog (Feb. 24, 2020), <https://nccriminallaw.sog.unc.edu/2019-north-carolina-conditions-of-release-report/>.

83 N.C.G.S. § 15A-601.

84 Christopher T. Lowkenkamp, et al., *The Hidden Costs of Pretrial Detention* (2013), <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=61863907-cfod-3coc-55a2-b8ee73f86829&forceDialog=0>; Paul Heaton, et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 *Stanford Law Review* 711, 717–19, 737 (2017), <https://www.stanfordlawreview.org/print/article/the-downstream-consequences-of-misdemeanor-pretrial-detention/>.

85 David Arnold et al., *Racial Bias in Bail Decisions*, 133 *The Quarterly Journal of Economics* 1885, at 1889–90 (2018), <https://academic.oup.com/qje/article-abstract/133/4/1885/5025665?redirectedFrom=fulltext>.

86 *Id.* 1885–86.

87 Stephen Demuth & Darrell Steffensmeier, *The Impact of Gender and Race-Ethnicity in the Pretrial Release Process*, 51 *Social Problems* 222, 222 (2004), <http://www.jstor.org/stable/10.1525/sp.2004.51.2.222>.

While several of the following recommendations require legislative action, senior resident superior court judges have authority to revise policies under N.C.G.S. § 15A-535. We encourage all senior resident superior court judges to revise their bond policies consistent with the below provisions.

The North Carolina Administrative Office of the Courts (NCAOC) should develop standardized forms to aid local jurisdictions with implementation of these changes.

79

ELIMINATE CASH BAIL FOR CLASS I, II, AND III MISDEMEANORS UNLESS RISK TO PUBLIC SAFETY.

Explicit guidelines are needed to limit the use of financial conditions of release and improving due process for defendants as these conditions are considered. As such, we should:

- Eliminate financial conditions of release for Class I, Class II, and Class III misdemeanors, unless it is made apparent to the satisfaction of the court that there exists danger to another person or intimidation of a witness.
- For defendants charged with felonies or Class A1 misdemeanors, or where otherwise seeking bond, before imposing a secured bond, a judicial official setting conditions of release should be required to:
 - Strictly adhere to the statutory preference for non-financial conditions of bail.
 - Make an individualized determination and provide written findings that either the person can afford to pay the specified bond from their own funds, or pretrial detention is necessary as no alternative conditions of release will reasonably address the risk of the defendant's flight, prevent a danger of injury to any person, or prevent the destruction of evidence or intimidation of a witness.
- Implement a structured decision-making tool to assist with adherence to statutory and constitutional requirements. Such tools should include assessments of both risk and needs of the defendants. Bond tables should not be used to set pretrial conditions.

Necessary Action: legislative change; judicial policy change; state policy change by the NCAOC.

“I’m very uncomfortable that when we arrest someone, the magistrates have a tendency to take what the police officer says or depending on the appearance of the individual. You can take two individuals with no criminal record and one might get a \$5,000 bond and [the other] might get a bond of written promise to appeal...I think we should have some kind of guidelines in our magistrate system as to what determines a bond and how much the bond should be. It shouldn’t just be [based] on appearance, where a person stays, where a person works. We should have guidelines that magistrates should be able to follow all across the state of North Carolina.”

KELVIN SELLERS, HIGH POINT

TASK FORCE PUBLIC COMMENT SESSION

80 REQUIRE FIRST APPEARANCE WITHIN 48 HOURS OR NEXT DAY IN WHICH DISTRICT COURT IS IN SESSION.

All people held in jail on misdemeanor charges, after the initial appearance, should have a first appearance before a district court judge within 48 hours or at the next day in which district court is in session. The required first appearance for people accused of felonies should be held within 48 hours of arrest or at the next day in which district court is in session, instead of the current 96 hours.⁸⁸

All people who remain in custody after the initial appearance should be represented by counsel at the first appearance. This representation should be provided at the state’s expense unless the person chooses to be represented by privately retained counsel. The judicial officer presiding over the first appearance must make an independent determination of the defendant’s eligibility for release and any conditions of release in compliance with the requirements for individualized and written findings set forth above. The defendant should be permitted to present evidence, cross-examine witnesses, and make arguments related to release.

Necessary Action: legislative change; judicial policy change; state policy change by the NCAOC.

88 N.C.G.S. § 15A-601.

REQUIRE PREVENTATIVE DETENTION HEARING WITHIN FIVE DAYS AND REPEAL BOND DOUBLING.

When defendants have been detained pretrial, we recommend holding preventative detention hearings within five days of secured bond being set.

These hearings, which are separate from the First Appearance, which should also be held, should include, at least:

- The opportunity to present information and cross-examine witness.
- Afford the defendant the opportunity to testify.
- The right to be represented by counsel at the state's expense unless the person chooses to be represented by privately retained counsel.

If a judicial officer finds by clear and convincing evidence that pretrial detention order is necessary as no alternative conditions of release will reasonably prevent a danger of injury to another person, the judicial officer must include written findings of fact and a statement of reasons for continued detention. These recommendations maintain judicial discretion to detain even poor defendants to ensure public safety. Additionally, while we recommend expanded procedural safeguards for preventive detention, we caution that the expansion of preventative detention in the absence of accompanying bail reforms to eliminate the reliance on money bail is ill-advised and likely to result in worsening racial disparities.

Necessary Action: legislative change; judicial policy change; state policy change by the NCAOC.

Eliminate the use of bond doubling when conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense.

Necessary Action: repeal N.C.G.S. § 15A-534(d3).

PROMOTE COURT APPEARANCE STRATEGIES AND DEVELOP ALTERNATIVE RESPONSES TO FAILURE TO APPEAR.

Develop new responses to prevent failures to appear (FTA), including:

- Automatically enroll defendants for the NCAOC's court reminder system.
- Explore ways to provide transportation services to court and childcare at courthouses.

Necessary Action: legislative change; judicial policy change; state policy change by the NCAOC; local policy change.

Develop new responses to failure to appear. Give one opportunity to have an FTA automatically stricken from your record if a defendant is in touch with the clerk of court within 20 days of missing court. Develop NCAOC form to expedite this process and allow it to occur administratively.

Necessary Action: legislative change; judicial policy change; state policy change by the NCAOC.

End suspension of driver's licenses on the first failure to appear by revising N.C.G.S. § 20-24.2.

Necessary Action: legislative change.

Revise the NCAOC's court reminder system by altering the automated email and text messages to reflect a combination of consequences and plan-making details such as the fines and/or charges that could be levied or dismissed because of a court appearance and the location of the courthouse. All system revisions should be undertaken with behavioral science in their design.

Necessary Action: state policy change by the NCAOC.

CREATE INDEPENDENT PRETRIAL SERVICES AND IMPROVE DATA COLLECTION.

Encourage the use of independent pretrial services whenever possible at no cost to defendant. Explore state funding and regional models to support best practice pretrial services in small or rural counties.

Improve statewide data collection to ensure robust evaluation of pretrial practices, including equity considerations.

Necessary Action: local policy change; legislative change; state policy change by the NCAOC.

IMPLEMENT RACIAL EQUITY TRAINING FOR COURT SYSTEM ACTORS

Racialized outcomes in the criminal justice system, lack of awareness amongst court actors of their own biases, and the role of systemic racism produce disparate outcomes in our criminal justice system, just as in our broader society. This reality impacts all system actors and especially victims and people accused of crime. Ideally, we would have a criminal justice system free from racially disparate outcomes and one in which the participants in the system have confidence in its fairness for all people, without regard to race.

84 REQUIRE RACIAL EQUITY TRAINING FOR COURT SYSTEM PERSONNEL.

The Task Force recommends that all court personnel be required to undergo continuing, robust racial equity 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.

Personnel to include:

- Judges
- Public defenders
- District attorneys
- Juvenile justice system staff
- Court staff including clerks and magistrates

The Task Force recommends making racial equity training a requirement for state employment in the court system. Funding should be allocated to develop and scale effective training programs.

Necessary Action: state policy change by the NCAOC.

85 REQUIRE BIAS AND RACIAL EQUITY TRAININGS FOR PAROLE STAFF.

Implicit bias and racial equity training should be mandatory for Parole Commissioners and all staff. It should also be mandatory for Post-Release Supervision employees, including probation officers. Funding should be allocated to develop and scale effective training programs.

Necessary Action: state policy change by NCDPS.

86 REQUIRE RACIAL EQUITY AND VICTIM SERVICES TRAININGS FOR VICTIMS' SERVICES STAFF.

Racial equity, including implicit bias, and victim services training should be mandatory for Victim Compensation Fund employees and members. Funding should be allocated to develop and scale effective training programs.

Necessary Action: state policy change by NCDPS.

PROMOTE RACIALLY EQUITABLE PROSECUTORIAL PRACTICES

North Carolina is unique in the process by which criminal charges are generated. The vast majority of criminal charges are initiated by law enforcement without prior review by a prosecutor. Additionally, citizens regularly seek misdemeanor criminal charges directly from a magistrate—charges that are largely not approved by prosecutors prior to their initiation. Once criminal charges are generated, it is the responsibility of the prosecutor to review the investigation, weigh the evidence, and either decline or proceed with prosecution. Implicit bias surfaces most often in situations where prosecutors and other system decision makers exercise discretionary decision-making. At the same time, the discretion that prosecutors have can be a powerful tool to promote a more equitable criminal justice system.

Data collection and technological resources in North Carolina prosecutors' offices have fallen behind those available in many other state government agencies. Furthermore, tools to help prosecutors address racial disparities in the criminal justice system are underutilized in North Carolina. Several states, the federal government, and other entities have studied, proposed, or adopted various reforms and/or legislation that may help reduce racial disparities in the criminal justice system and bear directly on the role and responsibilities of prosecutors.

87 PROVIDE UNCONSCIOUS BIAS EDUCATION TO PROSECUTORS AND THEIR STAFF.

TREC recommends that the Conference of District Attorneys develop and provide education on implicit bias in the criminal justice process for prosecutors, their staff, and officers of justice. The training should focus on every part of the criminal justice process including investigation, pretrial charging decisions, plea negotiations, trials, and sentencing and will include recognizing confirmation and implicit bias and reducing its impact. These programs will follow recommendations of the American Bar Association (ABA) and the National District

Attorneys Association (NDAA) National Prosecutions Standards to support the impartial, unbiased pursuit of justice. This training should be developed in coordination with an advisory board of district attorneys, directly impacted people, survivors of crime, and other stakeholders to ensure accountability and effectiveness.

Necessary Action: state policy change by the Conference of District Attorneys.

88 ENHANCE PROSECUTORS' DATA COLLECTION, TECHNOLOGY, TRAINING OPPORTUNITIES, AND STAFFING.

District Attorneys should track data on charging decisions, including status offenses and felony plea offers. This information should include racial and other demographic data and regular strategizing to address racial disparities in these areas. All data collected should be publicly available.

Prosecutors should also enhance their technology, training opportunities, and staffing in a renewed effort to address racial disparities in the criminal justice system.

North Carolina should allocate additional funding to prosecutors' offices and to the Conference of District Attorneys to support these efforts.

Necessary Action: prosecutorial policy change; legislative change.

89 STUDY AND ADOPT EVIDENCE-BASED REFORMS FOR REDUCING AND EVENTUALLY ELIMINATING RACIAL DISPARITIES IN CHARGING DECISIONS AND PROSECUTORIAL OUTCOMES.

North Carolina prosecutors should have individual and collective goals of reducing and eventually eliminating racial disparities in the criminal justice system. They should use a variety of available strategies, including but not limited to the following, to help achieve those goals:

- Deprioritize low-level misdemeanors that do not pose a public-safety risk. Examples include misdemeanor possession of marijuana, possession of marijuana paraphernalia, and ordinance violations.

- Create pre-charge diversion and deflection programs in all North Carolina prosecutorial districts.
- Develop post-charge diversion programs in all North Carolina prosecutorial districts.
- Encourage the appropriate use of mass relief measures, such as categorical expungements, and support with appropriate resources in all North Carolina prosecutorial districts.
- Provide appropriate resources to North Carolina prosecutors to ensure that North Carolina’s Second Chance Act is properly used in all North Carolina prosecutorial districts.

North Carolina should study and consider adopting reforms and/or legislation that have been proven to reduce or seem likely to reduce racial disparities in the criminal justice system. North Carolina prosecutors should participate in studies and surveys on topics that are relevant to reducing and eventually eliminating racial disparities in the criminal justice system, including but not limited to, prosecutorial decision-making studies and surveys.

Examples include the State of Washington’s RCW 13.40.077, recommendations of the ABA, the NDAA National Prosecutions Standards, and the current Harvard University study of “Understanding Prosecutorial Decision-Making.”

Necessary Action: prosecutorial policy change; legislative change.

90

ESTABLISH WORKING GROUPS LED BY DISTRICT ATTORNEYS TO REVIEW AND APPROVE EVERY HABITUAL FELONY CHARGING DECISION.

District Attorneys should establish working groups to review and approve every habitual felony charging decision, such as in the process used by the District Attorney’s Offices in Mecklenburg and Durham counties.

Necessary Action: prosecutorial policy change.

FACILITATE FAIR TRIALS

The essential constitutional protections guaranteed to all individuals to ensure fair verdicts are still not always equally afforded in practice. The Sixth Amendment to the United States Constitution guarantees that, “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...”⁸⁹ In addition to the constitutional assurance that the jurors chosen are unbiased and will reach a verdict based solely upon the evidence presented, the requirement that a petit jury must be selected from a fair cross section of the community is also an essential component of the Sixth Amendment. Not only do individuals have a right to an impartial jury, but each eligible citizen, regardless of race, has the right to jury service. The U.S. Supreme Court held in 1880 that the Equal Protection Clause prohibits race-based exclusion from jury service.⁹⁰ These essential protections are enshrined in our Constitution to ensure that no verdict is tainted by bias.

Yet, even today, enforcement remains elusive. The Civil Rights Act of 1875 very specifically assured formerly enslaved and free African Americans the right to full participation on juries. However, for the next one hundred years, through what Justice Kavanaugh would describe in *Flowers v. Mississippi* (2019) as covert practices by courthouse actors, Black citizens continued to be excluded from the jury box.⁹¹ In *Batson v. Kentucky* (1986), Justice Powell recognized that an impartial jury is essential to our constitutional identity as Americans. “The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposefully exclude Black persons from juries undermine public confidence in the fairness of our system of justice.”⁹² *Flowers*, decided more than 40 years after *Batson*, demonstrates that the covert traditions and practices of discriminatory exclusion are persistent and require vigilance to root out. The research studies conducted under the Racial Justice Act, and the litigation that followed, demonstrate the continued need to pursue representative juries in North Carolina.⁹³

89 U.S. Const. amend. VI.

90 *Strauder v. West Virginia*, 100 U.S. 303 (1880).

91 *Flowers v. Mississippi*, 139 S. Ct. 2228 (March 20, 2019) (describing covert practices to exclude African Americans from juries following *Strauder v. West Virginia*, which held in 1880 that a state statute allowing only whites to serve as jurors was unconstitutional); see also *State v. Ramseur No. 388A10* (June 5, 2020) (Court discussing Michigan State University researchers’ study and conclusions under the Racial Justice Act).

92 *Batson v. Kentucky*, 476 U.S. 79 (1986).

93 See Catherine M. Grosso & Barbara O’Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, Michigan State University College of Law (2012) <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1455&context=facpubs>; Daniel R. Pollitt & Brittany P. Warren, *Thirty Years of Disappointment: North Carolina’s Remarkable Appellate Batson Record*, UNC School of Law (2016) <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4877&context=nclr>.

Underrepresentation of communities of color from the makeup of jury panels degrades public trust in the criminal justice system. The racial makeup of any jury venire or panel should reasonably resemble the racial diversity of the community from which the venire is chosen. Implementation of these recommendations will strengthen the Batson standard, prevent bias from influencing jury decision-making, and require the collection of juror data to monitor racial disparities in North Carolina's jury system.

91

INCREASE REPRESENTATION OF NORTH CAROLINIANS SERVING ON JURIES THROUGH EXPANDED AND MORE FREQUENT SOURCING, DATA TRANSPARENCY, AND COMPENSATION.

North Carolina should increase representation on juries by expanding jury list sources to ensure that more eligible individuals are included in the pool. This requires using sources in addition to 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.

Necessary Action: legislative change to N.C.G.S. § 9-2; local policy change by county jury commissions.

TREC recommends updating master jury pool lists at least annually, rather than every two years, and correcting addresses to reduce undeliverable summonses.

Necessary Action: legislative change to N.C.G.S. § 9-2(b); local policy change by county jury commissions; judicial change by senior resident superior court judges; Task Force collaboration.

TREC recommends that the N.C. Division of Motor Vehicles (NCDMV) Commissioner include race data on jury lists provided to county jury commissions to monitor compliance with Fair Cross Section guarantee.

Necessary Action: legislative change to N.C.G.S. § 20-43.4(b).

Ensuring transparency in data at every stage of the juror formation process by requiring 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 and requiring that, with the exception of personal-identifying information, jury lists be a public record.

Necessary Action: legislative changes to N.C.G.S. § 9-2(k) and N.C.G.S. § 20-43.4(c)

To improve data collection, enact a statute mandating collection of jury data, with the exception of personal identifying information, to be available as public record, including people receiving summons, people reporting for jury duty, people excused or deferred, people challenged for cause, people peremptorily struck, and people seated on a jury.

Necessary Action: legislative change.

Increasing juror pay and considering offering childcare for jurors at the courthouse.

Necessary Action: legislative change; local policy change.

92 BROADEN PROTECTION AGAINST JURY DISCRIMINATION.

The historic exclusion of jurors based on race requires an innovative approach to restrict the discriminatory use of peremptory challenges.

This includes focusing on outcomes over intent, similar to Washington State Supreme Court Rule 37, adopting the objective observer standard, abolishing the prima facie case, disallowing strikes where race could be a factor, reconsidering commonly accepted “race neutral” justifications for strikes, and disallowing demeanor-based strikes. 86

Necessary Action: administrative rule change by the Supreme Court of North Carolina.

Enable a more effective appellate review of Batson challenges by requiring consistent self-identification of race and gender and complete recordation of jury selection. The rule would require self-identification of race during jury voir dire and complete recordation of jury selection.

Necessary Action: administrative rule change by the Supreme Court of North Carolina.

93 PROVIDE IMPLICIT BIAS TRAINING TO ALL JURY SYSTEM ACTORS.

As in all areas, education is fundamental to implement change. Similar to our previous recommendation to train all court system actors, TREC recommends providing adequate, specific training to all participants in jury trials to ensure awareness of unconscious prejudices, including racial equity and implicit bias training, use of implicit bias desk cards, legal education on exploring bias during voir dire, and on proper and improper references to race at trial to judges, prosecutors and defense attorneys. In addition to policy change, to accomplish this goal, the Task Force recommends support for the proposed North Carolina State Bar rule requiring a 1.0 hour mandatory diversity, inclusion, and elimination of bias Continuing Legal Education every three years and encourage making this requirement permanent.⁹⁴

Necessary Action: Task Force collaboration; state policy change by the NCAOC; local judicial district change.

TREC recommends that jurors receive education and instructions on implicit bias by using jury videos, pattern jury instructions, and a juror pledge.

Necessary Action: state policy change by the NCAOC; local judicial district change by clerks of court.

94 ESTABLISH A STATE COMMISSION ON THE JURY SYSTEM.

With an eye towards comprehensive reform, the body would look at issues of data collection, jury list formation and removals, racial equity, peremptory strikes, and accessibility of juror pool software.

Necessary Action: state policy change; legislative change.

⁹⁴ N.C. State Bar, *Proposed Rule Amendments Establishing Diversity, Inclusion, and Elimination of Bias Training* (State Bar Council voted on Oct. 23, 2020 to publish for comment), <https://www.ncbar.gov/media/730626/proposed-amendments-to-cle-rules.pdf>.

PROMOTING RACIAL EQUITY POST-CONVICTION

The criminal justice system's inequities reverberate long past the trial and initial conviction. Sentences are often longer and harsher for Black people. To address these disparities, TREC recommends an undertaking to review, reduce, and revise sentencing disparities, including current and future sentencing, and burdensome fines and fees. TREC further recommends prioritizing rehabilitation and mental health services while people are in prison and providing avenues for restorative justice and employment. This will include training that paves the way for people to successfully re-enter their communities.

REDUCE CURRENT SENTENCING AND INCARCERATION DISPARITIES

The extreme overrepresentation of communities of color in the imposition of active sentences in general, and long sentences in particular, is a serious impediment to both the reality and perception of justice. Our prison population is disproportionately Black as a result of the racial injustices in our criminal justice system and broader society. Today, Black North Carolinians make up 51.5 percent of those in prison, despite making up only approximately 22 percent of the state’s population in the 2010 United States Census.⁹⁵

Additionally, there are people in prison whose sentences far exceed the sentence they would have received if sentenced today. For example, “life with parole” was repealed in 1994; however, of the people serving life with parole sentences who were charged as children, a startling 79 percent are people of color.⁹⁶ Others may be serving unjustly long sentences who are appropriate recipients of review through either the clemency process or other review. The racial disparities become more pronounced for those with the harshest sentences. Black people make up 55.8 percent of the people serving more than 20 years in prison, 59.6 percent of the people serving life without parole who will never be released, and 60.1 percent of the people serving life sentences or the equivalent. Of the people who were sentenced to life with, or without, parole while they were under the age of 18, an astounding 74 percent and 80.9 percent are Black, respectively. Black people make up 80 percent of the people serving life without parole for violent habitual felony status.⁹⁷ Of the 137 people currently on death row in North Carolina, 74 are Black, representing 54 percent of the death row population.⁹⁸

A fundamental shift in the mechanism for reviewing currently incarcerated people’s sentences is in order. Part of this process will ensure the perspective of harmed and impacted parties are taken into consideration and will involve important conversations about the appropriate responses to crime.

95 Presentation from Ben Finholt, N.C. Prisoner Legal Services to TREC (Aug. 18, 2020), <https://ncdoj.gov/wp-content/uploads/2020/11/Extreme-Sentencing.pdf>.

96 Finholt, *supra* note 37.

97 Finholt, *supra* note 95.

98 *Death Row Roster*, N.C. Department of Public Safety, <https://www.ncdps.gov/adult-corrections/prisons/death-penalty/death-row-roster> (last visited November 29, 2020).

INCREASE FUNDING FOR GOVERNOR'S CLEMENCY OFFICE AND PAROLE COMMISSION.

Litigation has shown that the North Carolina Post-Release Supervision and Parole Commission (Parole Commission) is understaffed and under-resourced and that Commissioners have inadequate information and opportunity to make meaningful decisions about who could be safely released into the community.⁹⁹

TREC recommends adding personnel to the Governor's Clemency Office to work with DPS and the Parole Commission to give emergency attention to applications for clemency and commutation in two areas:

- Incarcerated people at high-risk of COVID-19 complications as defined by the Center for Disease Control, including older adults¹⁰⁰ and people who have underlying medical conditions,¹⁰¹ and pregnant women.¹⁰²
- Parole-eligible incarcerated people who would have been released years ago if they have served their minimum sentence under the Structured Sentencing Act.

Necessary Action: state policy change; legislative appropriations.

Add at least one additional appointed Parole Commissioner and add enough staff – parole analysts and administrative – to engage in a meaningful and thorough review in each case for release for all people serving parole-eligible sentences.

Necessary Action: legislative change to N.C.G.S. § 143B-721(a)

Implement a rebuttable presumption of immediate release for parole-eligible incarcerated people who would have been released had they been prosecuted under Structured Sentencing.

Necessary Action: legislative change; state policy change by the Parole Commission.

⁹⁹ *Hayden v. Keller*, et al., 134 F. Supp. 3d 1000 (E.D.N.C. Sept. 25, 2015) (granting partial summary judgment finding that the North Carolina parole review process for juvenile offenders serving life sentences violates the 8th Amendment).

¹⁰⁰ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) Older Adults*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited 11/29/2020).

¹⁰¹ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) People with Certain Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited Nov. 29, 2020).

¹⁰² Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) Pregnancy, Breastfeeding, and Caring for Newborns* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html> (last visited Nov. 29, 2020).

Require the Parole Commission to provide advance notice of a parole-eligible person's parole hearing, as well as an opportunity to present evidence and witnesses bearing on the individual's maturity and rehabilitation. The Parole Commission should provide specific reasons for the denial of parole as well as any recommendations for specific avenues by which the parole-eligible incarcerated person may remedy the reasons given for the denial of parole and improve their future chances.

Necessary Action: legislative change; state policy change by the Parole Commission.

Create a Clemency Initiative that includes an advisory group of system stakeholders, including communities most directly impacted, reentry organizations, prosecutors, and defense attorneys. The Initiative's core mission would be to advise the Governor and the Clemency Office on populations and individuals to consider for clemency.

Necessary Action: state policy change.

96

INCREASE NCDPS FLEXIBILITY ON INCARCERATED INDIVIDUALS' RELEASE DATES.

NCDPS currently uses its legislative authority to determine individual release dates based on a variety of factors. Expanding on and reviewing this work could result in more equitable outcomes.

- Recommend the expansion of access to and funding for NCDPS programs and tools currently in force to release incarcerated individuals, such as Extended Limits of Confinement and all manner of Sentence Credit programs.
- Eliminate Confinement in Response to Violation (CRV) of post-release supervision for technical violations.
- Recommend the creation of NCDPS Task Force to examine racially disparate access and outcomes associated with the department's work.

Necessary Action: state agency policy change by NCDPS.

97 ESTABLISH A SECOND LOOK ACT.

The idea for a second look originates in part from the American Law Institute’s (ALI) Model Penal Code, adopted in 2017.¹⁰³ Aside from the value of taking a second look at the individual, changes might have occurred within society that impact how a particular sentence is viewed. Just as the public view on the War on Drugs has shifted to one that considers it to have been too harsh, so, too, could the public shift its view about extreme sentencing. The extreme racial overrepresentation of individuals of color in the imposition of long sentences is a serious impediment to both the implementation and perception of justice. A second look allows for changed societal attitudes toward sentence gravity. A second look also incorporates any technological developments in risk assessment and changes in the perspective of harmed parties.

Establish a Second Look Act that:

- Requires all current active sentences, excluding murder and rape, to be reviewed at 20-year mark or before by a judge or judicial panel.
- Requires the appointment of counsel, once a person makes a threshold showing.
- Provides review only if certain conditions have been met, such as successful completion of relevant rehabilitation programming, pursuit of educational goals, maintaining a steady employment and/or programming while incarcerated, and a relatively clear disciplinary record without any recent infractions.

Before a Second Look Act is enacted, policymakers should establish a formal method to consider the needs of harmed individuals, families, and communities in response to violent crimes to effectuate the goals of public safety, harm reduction, and restorative justice and include those needs in the statutory process.

As discussed below, this second look should also establish a process for review of future sentences.

Necessary Action: legislative change.

¹⁰³ American Law Institute, *Model Penal Code: Sentencing (Proposed Final Draft)* (approved May 2017), <https://robinainstitute.umn.edu/publications/model-penal-code-sentencing-proposed-final-draft-approved-may-2017>.

CREATE AN INDEPENDENT CONVICTION INTEGRITY UNIT.

Despite procedural mechanisms in place, overturning a wrongful conviction can take years, even when there is overwhelming evidence of innocence. In North Carolina, out of ten people sentenced to death who have been exonerated, nine of them were men of color.¹⁰⁴ Even one innocent person incarcerated unfairly is worthy of our time and attention as a state.

North Carolina should establish and fund an independent Conviction Integrity Unit (CIU) with representation from prosecutors and defense lawyers and ensure IDS has significant funding to pay lawyers who handle post-conviction work. The CIU should also study methods to reduce the length of time to resolve claims of innocence.

Necessary Action: legislative change.

PROVIDE MECHANISM FOR JUDGE TO ADDRESS RACIAL DISCRIMINATION.

Amend Motion for Appropriate Relief statute to allow a judge to overcome technical defects in the interest of justice or where the petition raises a significant claim of race discrimination.

Necessary Action: legislative change to N.C.G.S. § 15A-1419.

“In North Carolina, felony murder carries a life sentence without the possibility of parole, which is essentially the death penalty because you were sentenced to die in prison. Since the inception of this law, there has been a disparate impact in Black and brown communities. Over 70 percent of those charged and convicted under those rules are Black and brown with an average age of 19, many of whom are first time offenders with no prior convictions.”

**MELISSA POWELL, JAMESTOWN
TASK FORCE PUBLIC COMMENT SECTION**

¹⁰⁴ Center for Death Penalty *Litigation*, *Racist Roots: Origins of North Carolina’s Death Penalty* (2020), <https://racistroots.org/>; see also Presentation from Gretchen Engel, Executive Director, Center for Death Penalty Litigation to TREC (Sept. 15, 2020), <https://www.youtube.com/watch?v=gTkUi2KTTfo&list=PLgjs325opMUV6znScXTnSWMV5NTluphB-C&index=34&t=1758s>. (referencing *State v. Poole*, 203 S.E.2d 786 (N.C. 1974); *State v. Spicer*, 204 S.E.2d 641 (N.C. 1974) *State v. Rivera*, 514 S.E.2d 720 (N.C. 1999); *State v. Alan Gell*, 524 S.E.2d 332 (N.C. 2000); *State v. Jonathon Hoffman*, 505 S.E.3d 80 (N.C. 2007), *State v. Chapman*, Order for Allowing Motion for Appropriate Relief, 92 CRS 18186 (Sup. Ct. Catawba Co. 2007), *Levon Jones v. Polk*, Order, No. 5:00-HC-239-BO (E.D.N.C. 2006), *State v. Henry McCollum*, *Leon Brown*, Order for Relief, 83 CRS 15506-07, 83 CRS 15822-23 (Sup Ct. Robeson Co. 2014), *Finch v. McKoy*, 914 F.3d 292 (4th Cir. 2019).)

100 REINSTATE THE RACIAL JUSTICE ACT.¹⁰⁵

North Carolina’s death penalty prioritizes executions for cases with white victims and relies on the sentencing verdicts of juries, many of which have been all-white, that violate constitutional rules regarding jury selection. Among defendants on death row as of 2010, “at least thirty were tried by juries that had no African American members.”¹⁰⁶ In nearly 40 additional cases, only one person of color served on the jury.¹⁰⁷ Reinstigate the Racial Justice Act for people sentenced to death.

Necessary Action: legislative change.

¹⁰⁵ Justice Earls took no part in the discussion or vote on this recommendation.

¹⁰⁶ Seth Kotch & Robert P. Mosteller, *The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina*, 88 N.C. L. Rev. 2031, 2110-2111, 2110 n.356 (2010), <https://scholarship.law.unc.edu/nclr/vol88/iss6/4>.

¹⁰⁷ See Orders Granting Motions for Appropriate Relief, *State of North Carolina v. Golphin, et al.*, pp. 190-91 para. 359, fn. 48, 97 CRS 47314-15 (Sp. Ct. 2012), <https://www.aclu.org/legal-document/north-carolina-racial-justice-act-order-granting-motions-appropriate-relief>.

REDUCE USE OF FINES AND FEES

The racial disparities in who shoulders the burden of state and local government reliance on court fines and fees are stark.¹⁰⁸ Since 1995, the General Court of Justice Fee for district court has risen over 260 percent, from \$41.00 to \$147.50.¹⁰⁹ The list of court fines and fees varies from a \$250 community service fee to a \$10/day jail fee to a \$600 lab fee,¹¹⁰ each receiving its own treatment regarding whether it can be remitted or waived.¹¹¹ Fines and fees are not simply used to fund the court system.¹¹² In fiscal year 2018-2019, the North Carolina judicial branch General Court of Justice fee revenue equated to approximately 41 percent of its judicial appropriation.¹¹³

Across North Carolina, judges do not hold meaningful hearings to determine an individual's ability to pay. There is no systemic collection of data on how fines and fees are operating in practice across the state and no formalized practice for how judges assess fines and fees.¹¹⁴ After the 2016 enactment of a statute requiring the NCAOC to issue a report on the number of waivers by judges' names, the total waivers of fines and fees statewide dropped from 86,006 to 28,036.¹¹⁵ Furthermore, legal challenges have been made related to supervision fees imposed on people on probation for felony convictions, which individuals are unable to pay, resulting in a continued infringement of their voting rights.

108 Cristina Becker, *At All Costs: The Consequences of Rising Court Fines and Fees in North Carolina* (2019), https://www.acluofnorthcarolina.org/sites/default/files/field_documents/aclu_nc_2019_fines_and_fees_report_17_singles_final.pdf

109 NC Equal Access to Justice Commission, *When Debt Take the Wheel* (Sept. 29, 2020), <https://storymaps.arcgis.com/stories/8c48ba140a7a496b98fa916c08467f24>; see also Daniel Bowes, *An Introduction to the Operation and Impact of Legal Financial Obligations and Debt Collection Mechanisms in North Carolina*, Presentation to U.S. Commission on Civil Rights, North Carolina State Advisory Committee (June 25, 2020), https://ncdoj.gov/wp-content/uploads/2020/11/NC-06.25.2020_Minutes-and-PPT-Slides.pdf.

110 *Court Costs & Fees Chart*, N.C. Administrative Office of the Courts (Dec. 2020), https://www.nccourts.gov/assets/documents/publications/2020-criminal-costs-chart.pdf?vRkWWBoFtOCVYKqOFcK7KX_SFXGlrk2e.

111 James M. Markham, *Monetary Obligations in NC Criminal Cases*, Benchcard (2018) [https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card percentE2 percent80 percent93for-proofing.pdf](https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card%20percentE2%20percent80%20percent93for-proofing.pdf).

112 *Disbursements: Clerk of Superior Court Financial Management System (July 1, 2019-June 30, 2020)*, N.C. Administrative Office of the Courts, <https://ncdoj.gov/wp-content/uploads/2020/11/FY-2019-2020-Disbursements-Clerk-of-Superior-Court-Financial-Management-System.pdf>.

113 *Budget Overview*, N.C. Administrative Office of the Courts, Slide 7 (Dec. 5, 2019) [https://www.nccourts.gov/assets/inline-files/FY percent202019-2020 percent20Budget percent20Overview.pdf?tT3Mgw6vTl33lyPmSZwvurw9clT4tjlg](https://www.nccourts.gov/assets/inline-files/FY%202019-2020%20Budget%20Overview.pdf?tT3Mgw6vTl33lyPmSZwvurw9clT4tjlg).

114 Becker, *supra* note 108.

115 Bowes, *supra* note 109.

At the same time, when someone fails to pay a court fine or fee, that person's driver's license will be suspended indefinitely. Statewide, Black drivers have active suspensions for unpaid traffic court fines and fees at a rate four times higher than white, non-Hispanic drivers.¹¹⁶

A person's economic status should never result in the loss of their individual civil liberties. Fines and fees should only be imposed when a meaningful assessment of a person's ability to pay as been conducted, and the fines and fees should be directly related to the conviction at hand. State and local governments, in particular our system of criminal justice, need to be funded without dependence on individual user fines and fees. This includes entities like the Standards Divisions, which play a critical role in law enforcement accountability, and diversion programs, which are a key tool in promoting racial equity in criminal justice.

116 N.C. Equal Access to Justice Commission, *supra* note 109.

REAL WORLD IMPACT

INABILITY TO PAY COURT FINES AND FEES

RISKS REINCARCERATION

Highlights:

- Steven Edwards, on disability as a result of a car accident that left him with one leg, receives \$725 each month in benefits. He is the sole provider for his fiancée and 5-year-old daughter.
- In 2018, he had accumulated \$2,629 in court fines and fees resulting from a 2011 drug charge for which he has otherwise successfully completed his sentence.
- His monthly expenses, which include a payment to a funeral home for his mother's burial expenses, exceed his monthly disability benefits even before the criminal justice debt.
- He was at risk of being re-incarcerated solely because of his inability to pay his fines and fees.

Source: Christina Becker, Mitigation Specialist and Attorney, ACLU Capital Punishment Project

101 ASSESS A DEFENDANT'S ABILITY TO PAY PRIOR TO LEVYING ANY FINES AND FEES.

The Task Force recommends that the Supreme Court of North Carolina enact a General Rule of Practice, which would require an assessment of a defendant's ability to pay prior to the levying of any fines and fees.

Necessary Action: administrative rule change by the Supreme Court of North Carolina.

102 REDUCE COURT FINES AND FEES.

To begin addressing the burdensome costs imposed on people, the Task Force makes the following recommendations:

- Repeal the Installment Payments Fee found at N.C.G.S. § 7A-304(f). In FY 19-20, the Installment Fee was \$20/day, assessed 162,585 times, with a disbursement of \$2.99M to the State's General Fund.
- Repeal the Jail Fees in N.C.G.S. § 7A-313 and 148-29. In FY19-20, the Jail Fee was \$10/day (pre-conviction) and \$40/day (split sentence served in a local facility), with approximately \$4.8 million disbursed to local governments.
- Amend statutory language of N.C.G.S. § 143B-708 to expressly provide that the \$250 community service fee can be waived.
- Amend language of N.C.G.S. § 7A-304(a) to provide that lab fees be assessed for only what is incurred, not to exceed a fee of \$600.
- Reduce the Supervision Fee (currently \$40/month), allow for the fee to be waived, and preclude the imposition of supervision fees when probation is being extended for the sole purpose of complying with monetary obligations.
- Reduce the General Court of Justice fee (currently \$147.50) for infractions and driving offenses and repeal court fees for seat belt citations.
- As part of Structured Sentencing, include a maximum fine for misdemeanor offenses (including DWIs), based on a sliding scale.

- Revise N.C.G.S. § 7A-604(a)(6) to reduce Failure to Appear Fee from \$200 to \$100.

Necessary Action: legislative changes.

103 ELIMINATE STATE GOVERNMENT RELIANCE ON FINES AND FEES.

Restore funding from legislature for NCDMV Hearings Program and eliminate NCDMV hearing fees for non-impaired driving-related offenses. Hearing fees currently span from \$40 to \$450. In January 2018, the NCDMV Hearings Program became completely receipt-funded, while at the same time operating with vacancies of 15 of the 22 hearing officer positions due to reductions in force.

Necessary Action: legislative change.

104 DEVELOP A PROCESS TO ELIMINATE CRIMINAL JUSTICE DEBT.

To create a system that will allow for individuals to be free of criminal justice debt, the Task Force makes the following recommendations:

- Repeal provisions requiring the NCAOC annual report to NCGA on fee waivers by judge's name.

Necessary Action: legislative change.

- Clarify by statute or MOU that the NCAOC provides a monthly notice to all state agencies satisfies requirement that judges give prior notice before waiving a fine and/or fee.

Necessary Action: legislative change; state agency policy change.

- Require judges use a standard NCAOC form when considering waiver of fines and fees.

Necessary Action: Supreme Court of North Carolina rule change.

- Conduct comprehensive trainings for judges and magistrates encouraging the waiver of costs and fines when appropriate. Educate judges and magistrates about (1) their ability to waive costs and fines pursuant to N.C.G.S. § 7A-304, (2) the significance of waiving fines and fees for defendants who are financially unable to pay, (3) the availability of NCAOC form CR-415 Motion for Relief from Monetary Obligations for

waivers and remittance, and (4) the use of the order provided in NCAOC form CR-415 to meet the requirement in N.C.G.S. § 7A-304 that judges and magistrates have a “written order, supported by findings of fact and conclusions of law” in order to waive costs and fines. The accessibility of form for pro se defendants should be considered; clerks, Indigent Defense Services, and contract attorneys will need to provide form to clients.
Necessary Action: Task Force collaboration; state agency policy change.

- Establish an NCAOC form to strike Failure to Comply for traffic violations.

Necessary Action: Task Force collaboration; state agency policy change.

- Encourage district attorneys to utilize amnesty or mass relief opportunities, such as dismissal of cases, forgiveness of court debt, and expunctions.

Necessary Action: Task Force collaboration; state agency policy change.

- Stop the issuance of arrest warrants for criminal contempt charges due to outstanding court debt and for those who fail to appear for traffic violations without first having a show cause hearing.

Necessary Action: state agency policy change.

- Clarify statutory language to preclude imprisonment for nonpayment of fees and fines when an active sentence has been imposed on the underlying offense.

Necessary Action: legislative changes to N.C.G.S. §§ 15A-1364 through 1365.

- Increase access to license restoration clinics, such as the DEAR Clinic.

Necessary Action: state agency policy change; local government action.

- Stop suspending drivers’ licenses because of failures to comply for monetary reasons or failures to appear, excluding cases involving DWI offenses.

Necessary Action: legislative change; state agency policy change.

- Enact legislation that would automatically restore licenses suspended for failure to pay after 12 months.

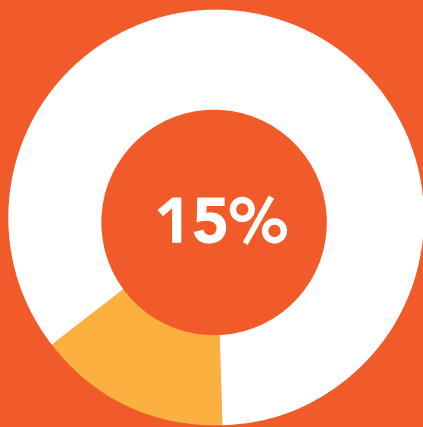
Necessary Action: legislative change (see Senate Bill 494 of Session 2019).

Fig 9. THE EFFECTS OF COURT FEES AND FINES

1,225,000

ACTIVE DRIVER LICENSE SUSPENSIONS

Relating to failure to pay traffic fines and courts, and failure to appear in court for traffic offenses



OF ALL ADULT DRIVERS IN N.C.

8.5 YEARS

AVERAGE LENGTH OF LICENSE SUSPENSION FOR FAILURE TO PAY

LOSS OF DRIVER'S LICENSE LEADS TO



LOSS OF EMPLOYMENT



HIGH TRANSPORTATION COST & COMMUTE TIME



LESS ACCESS TO MEDICAL SERVICES



INCREASED LIKELIHOOD OF CRIMINAL JUSTICE INVOLVEMENT

AMEND INCARCERATION FACILITIES' PRACTICES AND PROGRAMMING AND ADDRESS PRISON DISCIPLINE

The state's correctional system must make rehabilitation, mental health, and community connection a priority for incarcerated people. This will help ensure that the almost 90 percent of the prison population that is ultimately released has the resources and skills necessary to successfully return to their communities.¹¹⁷

To accomplish this goal, we must focus on elevating prison programming for all populations of incarcerated people by recruiting and retaining a professional workforce, re-evaluating its restrictive housing operations, reviewing disciplinary procedures, developing mental health services, and increasing funding for other programming.

Restrictive housing results in a significant likelihood of harm after release from prison. In North Carolina, individuals with restrictive housing at any time during their incarceration period had a recidivist arrest rate of 56 percent (within two years following release) compared to those who had no restrictive housing (44 percent recidivist arrest rate). For those who had restrictive housing any time during the nine months leading up to their release, the recidivist arrest rate was even higher (60 percent).¹¹⁸ Similarly, compared with individuals who were incarcerated and not placed in restrictive housing, individuals who spent any time in restrictive housing were 24 percent more likely to die in the first year after release, especially from suicide (78 percent more likely) and homicide (54 percent more likely); they were also 127 percent more likely to die of an opioid overdose in the first 2 weeks after release. Despite making up 52 percent of the total active prison population, Black individuals make up 80 percent of High Security Maximum Confinement (HCON) and 62 percent of Restrictive Housing for Control

¹¹⁷ Percentage calculated by accessing NCDPS custom statistic report and determining percentage of people incarcerated with sentences other than life without parole or death. N.C. Department of Public Safety Data, <https://www.ncdps.gov/about-dps/departments-public-safety-statistics> (last accessed Nov. 30, 2020).

¹¹⁸ *Profile of the FY2017 Prison Releases, Request*, NC Sentencing and Policy Advisory Commission, (April 2020), (adult recidivism and restrictive housing data) <https://ncdoj.gov/wp-content/uploads/2020/11/2020-Adult-Recid-Restrictive-Housing-Data-to-DPS.pdf>.

Purposes (RHCP).¹¹⁹ Changing the state’s use of restrictive housing could significantly impact recidivism rates and improve public safety.

Likewise, reviewing the process by which disciplinary proceedings are conducted could also result in a decrease in the numbers of people placed in restrictive housing. Increasing due process for individuals charged with infractions, in addition to reviewing the prison’s Security Risk Group program, might also reduce the racial disparities seen in custody classifications.

Expanding access to restorative justice, rehabilitative programs, and maternity programs can only serve to strengthen a person’s bond to their community. Promoting ways for incarcerated people to engage with their families, including opportunities for parenting, will reduce the generational trauma experienced by the parents’ involvement in the criminal justice system. On this note, the state’s health services regulatory body must ensure that jails and local confinement centers are taking into account the rights and best interests of pregnant people by ensuring the safety of their operations and medical programs.

NCDPS has committed itself to receiving accreditation by the American Correctional Association in its 2020-2024 Strategic Plan, which encompasses some of the recommendations set forth below.

105 TRANSFORM THE USE OF RESTRICTIVE HOUSING.

In North Carolina, restrictive housing — or solitary confinement — is often used as a form of punishment either directly related to an infraction or due to infractions that increase the perceived “dangerousness” of a person. Categories of restrictive housing in North Carolina confine people to their cell for 22-24 hours a day. People eat in their cells, have limited visitation, and are restricted in when and how they exercise and shower. This confinement comes at the cost of great mental and emotional harm. Multiple studies have indicated that solitary confinement causes severe psychiatric harm, is “toxic to brain functioning,” and causes harm that manifests as panic attacks, paranoia, perceptual distortions, and problems with impulse control.¹²⁰ In the future, North Carolina will likely join the other states that

119 *Custom Offender Reports*, NC Department of Public Safety (July 2020), <https://www.ncdps.gov/about-dps/departments-public-safety-statistics>; see also Jessa Wilcox, et al., *The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the North Carolina Department of Public Safety*, p. 23, 27 (Dec. 2016), (VERA Institute for Justice reported on a disproportionate number of Black people in restrictive housing, especially in “control” – on one day in 2015. A snapshot of the whole population reflected that 70 percent of those in restrictive housing for “control” were Black. A recommendation was made for NCDPS to “(c)reate a committee to study, monitor, and address disproportionate minority contact with the disciplinary process and representation in restrictive housing units.”).

120 Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol’y 325 (2006), https://openscholarship.wustl.edu/law_journal_law_policy/vol22/iss1/24.

have restricted or completely eliminated the use of restrictive housing, including Colorado, Washington, Delaware, Maine, Vermont, New York, Ohio, Oregon, and North Dakota; California, Texas, Wisconsin, and Indiana are all under court orders to accomplish the same.¹²¹

- Establish a committee with experts from NCDPS, academia, and community and advocacy groups, including those with lived experience in restrictive housing, to monitor and collect data concerning infractions and the use of Restrictive Housing-Control status and to report annually to the General Assembly on the number, ages, race, custody classification, and control status of prisoners for each unit in every institution, as well as duration and information on transfers from segregation to mental health treatment units.
- Limit the use of restrictive housing.
 - Require hard limits on number of hours and days a person can spend in restrictive housing modeled on The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which define “solitary confinement” as “22 hours or more a day without meaningful contact” and prohibits periods of “prolonged solitary confinement,” which is more than 15 consecutive days. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review.
 - End restrictive housing for:
 - People under 21
 - Pregnant people
 - People with diagnosed serious mental illness, disability, or substance use disorder
 - Indefinite period of times
 - Periods of more than 15 consecutive days.
- Reduce types of infractions that can lead to restrictive housing, such as “general dangerousness,” profane language, and unauthorized tobacco use.

¹²¹ Amy Fetting, *2019 was a Watershed Year in Movement to Stop Solitary Confinement*, ACLU News & Commentary (Dec. 16, 2019), <https://www.aclu.org/news/prisoners-rights/2019-was-a-watershed-year-in-the-movement-to-stop-solitary-confinement/>; see also *State Reforms to Limit the Use of Solitary Confinement*, ACLU (May 31, 2013), <https://www.aclu.org/other/stop-solitary-recent-state-reforms-limit-use-solitary-confinement?redirect=criminal-law-reform-prisoners-rights/stop-solitary-recent-state-reforms-limit-use-solitary>; ACLU, *Stop Solitary: Briefing Paper* (2014), <https://www.aclu.org/other/stop-solitary-briefing-paper?redirect=criminal-law-reform-prisoners-rights/stop-solitary-briefing-paper>.

- Implement “step-down” plans, or transition programs, for people in restrictive housing.
 - Establish a multi-disciplinary team to review individuals for “step-down” plans every 30 days
 - “Step-down” an offender 90 days before discharge so they are not released to the community directly from restrictive housing

Necessary Action: state policy change by NCDPS.

106 PROTECT PREGNANT PEOPLE IN JAILS AND PRISONS.

People can find themselves in jails and prisons at any stage of life. Pregnant people, as do all others, require individualized medical care. Absent a pregnant person being a direct threat to themselves or others, periods where they are restrained, particularly with shackles, should be extremely limited.

The NCDHHS Division of Health Services Regulation – Construction Section is charged with inspecting jails in each of North Carolina’s 100 counties twice per year. Inspectors not only inspect the physical aspects of the jail for compliance, but also must also check to ensure compliance with all jail rules including those related to jail population, supervision of incarcerated people, adequacy of health care plan, etc. This section of DHSR currently only employs three jail inspectors. Failures require more work by inspectors to follow up and ensure that any issues have been resolved.

- Pregnant people who are incarcerated experience multiple levels of stressors. Providing appropriate supports, such as opportunities for maternity leave, will help strengthen family bonds and build safe and healthy communities.
- Enact NCDPS use of force policy against restraining pregnant people into state law.
- Encourage NCDHHS to revise state rules (10A NCAC 14J) for jails and detention centers to prohibit restraining of pregnant individuals. Encourage jails and detention center administrators to adopt the prohibition of restraining pregnant individuals into operation manuals.
- Increase funding for the NCDHHS Division of Health Services Regulation – Construction Section to conduct inspections of county, municipal and regional jails to

monitor compliance with state rules and statutes for jail operation and provide technical assistance to local governmental entities.

- Examine Offender Maternity Leave program and expand availability.

Necessary Action: legislative change; administrative rule change by NCDHHS; state policy change by NCDPS.

107 ENHANCE PRISON PERSONNEL.

The Task Force recognizes the incredible pressures placed upon prison personnel and the historic lack of funding that has resulted in tragic loss of human life. Funding for personnel should be evaluated as more than a “beds” issue. Allocations should consider the full spectrum of resources that are needed to operate a safe environment for personnel and those who are incarcerated, including personnel with expertise in education, vocational training, and mental health counseling. NCDPS employees are not consistently trained in CIT, cultural competency, or implicit bias. For these reasons, the Task Force recommends the following:

- Increase funding and resources of prison personnel. Increase wages for prison personnel to ensure a livable wage and to assist in recruitment.
- Require all prison personnel to receive CIT training, Mental Health First Aid, and racial equity and implicit bias training on a periodic basis.
- Provide special training to correctional staff on the Restrictive Housing Blocks and require correctional behavioral health certification.

Necessary Action: Legislative changes; state policy change by NCDPS.

108 INCREASE FUNDING FOR MENTAL HEALTH SERVICES AND PROGRAMS IN PRISONS.

Incarceration has a negative effect on mental health. Fifteen percent of people incarcerated in state prisons report at least one symptom of psychosis, 56 percent suffer from depression or anxiety, and 70 percent of report at least one symptom of depression.¹²² Similarly, female incarcerated people report much higher rates of mental health concerns than their male

¹²² Doris James & Lauren Glaze, *Mental Health Problems of Prison and Jail Inmates*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report (Rev. Dec. 14, 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

counterparts.¹²³ Individuals who are imprisoned at some point in their lives are twice as likely to suffer post-traumatic stress disorder than those who are not imprisoned.¹²⁴ The Task Force makes the following recommendations to improve these figures:

- Develop and expand mental health treatment, with a strong emphasis on cognitive behavioral models and use of therapeutic diversion units (TDUs), particularly as an alternative to restrictive housing, and resort to restrictive housing only as a last resort.
- Increase use of incentives for good behavior with opportunities such as credit days towards sentence and access to more programming and phone calls home.

Necessary Action: state policy change by NCDPS.

109 INCREASE DUE PROCESS PROTECTIONS FOR PEOPLE ACCUSED OF DISCIPLINARY OFFENSES.

People who are incarcerated are afforded basic due process rights when accused of disciplinary offenses that will affect their release dates. To ensure that these rights are protected, the Task Force recommends NCDPS:

- Review procedural due process protections provided to individuals accused of disciplinary offenses and create tracking system to monitor decisions by individual disciplinary hearing officers to monitor for biases.
- Review use of A-99 & B-99 disciplinary offenses related to “conspiracy,” “attempt,” and “aiding” as defined in NCDPS’ Policy Chapter B, .0200 - Offender Disciplinary Procedures.
- Review how information from confidential informants is used in disciplinary proceedings.
- Review and modify the process for identifying individual’s status for Security Risk Groups (SRGs) so that it helps people de-affiliate from gangs and makes Security Threat Group Management Units more accessible throughout NCDPS facilities.

Necessary Action: state policy change by NCDPS.

¹²³ *Id.*

¹²⁴ Seth J. Prins, *Prevalance of Mental Illnesses in U.S. State Prisons: A Systemic Review*, vol. 65 *Psychiatric Services*, no. 7 (July 2014), <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.201300166>.

“Humanity requests us to improve the treatment and conditions of people currently incarcerated as we move towards becoming a community-focused less on harsh punishment and more alternative forms of justice and harm reduction.”

JONATHAN PATTON, RALEIGH
TASK FORCE PUBLIC COMMENT SESSION

110 EXPAND USE OF RESTORATIVE JUSTICE AND REHABILITATION PROGRAMMING.

There must be a focus on rehabilitation from the first day a person comes into state custody. Our communities are stronger when family relationships are nurtured, and parents are provided the supports they need to succeed. This can be accomplished by making efforts to:

- Provide restorative justice and targeted rehabilitative programming at every unit and for every custody level. Implement expanded use of established effective programs, for example Bridges to Life and the S.T.O.P. program for persons convicted of domestic violence. Develop other appropriate programming, including cognitive behavioral therapy communities within prisons.
- Increase opportunities for incarcerated parents to participate in parenting classes and to have meaningful visitation with their children. Expand the M.A.T.C.H. program at NCCIW to Anson Correctional and any facilities that house women. Develop similar programs at the men’s facilities.
- Ensure that all individuals designated with Security Risk Group status have timely access to programming allowing them to work toward this status being lifted and require NCDPS to report on effectiveness of such programming.

Necessary Action: state policy change by NCDPS.

STUDY AND REVISE FUTURE SENTENCING GUIDELINES

In North Carolina, the longest sentences have been handed down to people of color. Efforts need to be undertaken to address future sentencing guidelines, with an eye towards reducing racial disparities.

While programs like Advanced Supervised Release exist that allow people to reduce their minimum sentences, they are restrictive and underutilized. A formal analysis of how sentences are imposed will be required to guide policymakers moving forward.

One important aspect of future sentencing policy should include a periodic review of a person's sentence, with input from harmed and impacted parties, to allow the state to address any disparities that may have taken place at the time of sentencing.

The death penalty is our harshest punishment and is clearly irrevocable once carried out. To see its relationship to white supremacy, one need only overlay a map of executions of Black defendants between 1972-2020 on a map showing the lynching of Black victims between 1883-1940.¹²⁵ Evidence demonstrates that the use of capital punishment in our state has been tainted by racial bias.¹²⁶

Looking forward, enacting these proposals will ensure incarceration is used solely for the purposes of public safety and will mitigate racially disparate outcomes.

¹²⁵ Presentation from Ken Rose to TREC, *Capital Punishment* (Nov. 12, 2020), <https://ncdoj.gov/wp-content/uploads/2020/11/Copy-of-Ken-PP.pdf>.

¹²⁶ *State v. Robinson*, No. 411A94-6 (Aug. 14, 2020); *State v. Ramseur*, No. 399A10 (June 5, 2020).

111 BROADEN THE USE OF ADVANCED SUPERVISED RELEASE.

Expand Advanced Supervised Release use at sentencing, which allows certain incarcerated individuals to be eligible for release from prison before serving their minimum sentence if certain conditions are met.¹²⁷ This will require an education campaign on Advanced Supervised Release.

Necessary Action: prosecutorial policy change, legislative change to N.C.G.S. §15A-1340.18.

112 ELIMINATE THE FUTURE USE OF VIOLENT HABITUAL FELONY STATUS.

Eliminate the future use of Violent Habitual Felony Status. This sentence has been imposed on 53 offenders in the last 19 years, with an average of three offenders/year. 79 percent of individuals sentenced with the status are people of color.¹²⁸

Necessary Action: legislative repeal of N.C.G.S. §§ 14-7.7 through 7.12.

“The numbers suggest that a person’s race can affect a prosecutor’s decision of whether to charge someone as a violent habitual felon, whether to offer a plea to something less, and the terms of any plea offer.”

LAUREN MILLER, WAKE COUNTY
TASK FORCE PUBLIC COMMENT SESSION

¹²⁷ Jamie Markham, *Advanced Supervised Release*, North Carolina Criminal Law Blog (Sept. 22, 2011), <https://nccriminallaw.sog.unc.edu/advanced-supervised-release/>.

¹²⁸ Presentation from Michelle Hall, NC Sentencing and Policy Advisory Commission, to TREC, *Habitual Status Offenders* (Nov. 5, 2020), https://ncdoj.gov/wp-content/uploads/2020/11/20201105-WG4-NCSPAC-Habitual-Status-Offenders_final.pdf.

113 ELIMINATE FUTURE USE OF HABITUAL FELONY STATUS FOR INDIVIDUALS UNDER THE AGE OF 21 OR CONVICTED OF NON-VIOLENT DRUG OFFENSES.

Eliminate future use of Habitual Felony Status for individuals under the age of 21 at the time of the offenses and for individuals convicted of non-violent drug offenses.

Necessary Action: legislative change to N.C.G.S. § 14-7.1.

114 AMEND THE HABITUAL FELONY STATUTE TO LIMIT THE "LOOK BACK" PERIOD TO WITHIN EIGHT YEARS OF THE CHARGED OFFENSE.

Amend the habitual felony statute to limit the "look back" period to require underlying convictions be within eight years of the charged offense.

Necessary Action: legislative change to N.C.G.S. §14-7.1.

115 ANALYZE AND REPORT ON RACIAL DISPARITIES IN SENTENCING LAWS AND RECOMMEND POSSIBLE CHANGES.

Recommend the Sentencing and Policy Advisory Commission (Sentencing Commission) conduct an analysis of sentencing laws and practices to identify areas where racial disparities occur and to determine appropriate punishments for crimes. This analysis should include a review of prior record level calculation, sentence length, habitual felony offenses, drug offenses, felony murder as first-degree murder, and retroactive application of sentencing changes. The Sentencing Commission shall provide a preliminary report of its findings and recommendations within one year and a final report in the second year.

Necessary Action: state policy change by the Sentencing Commission.

116 REVIEW ALL FUTURE SENTENCES AFTER 20 YEARS OR BEFORE.

Require all future sentences to be reviewed at 20-year mark or before by a judge or judicial panel.

Necessary Action: legislative change.

117 NARROW USE FOR THE DEATH PENALTY FOR VULNERABLE POPULATIONS.

Prohibit capital punishment for people with serious mental illness and people 21 or younger at the time of the offense and prohibit the use of juvenile adjudications to be considered as aggravating factors.

Necessary Action: legislative change.

118 ESTABLISH A TRUTH AND RECONCILIATION COMMISSION TO STUDY NORTH CAROLINA'S HISTORY OF CRIMINAL JUSTICE AND RACE.

Establish a study commission to serve as a public truth and reconciliation commission regarding the history of criminal justice and race in North Carolina. An overview of areas for study is below.

- Fund an expert to conduct a statistical study of the use of race in jury selection, prosecutorial charging decisions and jury sentencing.
- Review racial disparities in capital punishment, wrongful convictions, and exonerations.
- Examine costs, both fiscal (raw dollar) and opportunity cost of capital punishment in terms of smart on crime alternative use of public safety dollars.
- Study the current legal system's efficacy in identifying and responding to the needs of harmed individuals, families, and communities in response to violent crimes to effectuate the goals of public safety, harm reduction, and restoration.

- Examine the commutation of sentences, in particular, of capital defendants sentenced to death before July 1, 2001, under the quasi-mandatory death penalty statute that deprived prosecutors of the discretion to seek non-death sentences in capital prosecutions.
- Study an expanded RJA that extends to life without parole cases.
- Review use of the appointment of competent counsel.¹²⁹
- Determine whether the maximum punishment for first degree murder should be life in prison.

Necessary Action: state policy change; legislative change.

¹²⁹ As proposed in the American Bar Association's 2005 Effective Assistance of Counsel Resolution, 2005 AM 107, https://www.americanbar.org/groups/committees/death_penalty_representation/resources/dp-policy/.

REDUCE COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS

At least 2 million people have a criminal record in North Carolina. The collateral consequences triggered by a criminal record, including dismissed charges, can limit employment prospects, public housing assistance and social services.¹³⁰ People with certain felony convictions can have their voting rights and access to nutritional services disrupted.

When released from correctional facilities, too many people receive inadequate preparation, assistance, and resources, making their re-entry into communities challenging. On top of a criminal record, time incarcerated has effects on a person's mental health. Long-term, or even short-term sentences can have lasting mental health effects.¹³¹ The costs of unsuccessful re-entry and reincarceration negatively impacts communities, families, and individuals.

As of 2018, there were 1.23 million people with active driver's license suspensions in North Carolina relating to failure to pay traffic fines and court costs and to failure to appear in court for traffic offenses. These suspensions constitute about 15 percent of all adult drivers in the state. On average, a person whose license is suspended for failure to pay experiences the suspension for more than 8 1/2 years. NCAOC data shows that if a person's traffic court debt is not paid within a year it is not likely to ever be paid.¹³²

An important measure of our state's public safety will be achieved by seeing continued decreases in recidivism rates. This can be accomplished when people are given a meaningful opportunity to participate in their communities.

¹³⁰ North Carolina's laws include more than 1000 collateral consequences, with an additional 1200 in federal law. They have been cataloged by the University of North Carolina School of Government in a database titled C-CAT, <https://ccat.sog.unc.edu/>.

¹³¹ Gergő Baranyi, et al., *Prevalence of Posttraumatic Stress Disorder in Prisoners*, Oxford Journals Epidemiologic Reviews (June 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5982805/>.

¹³² Brandon L. Garrett & William Crozier, *Driver's License Suspension in North Carolina*, Duke Law School Public Law & Legal Theory Series No. 2019-27 (March 19, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3355599. For more discussion on why suspending the driver's licenses of North Carolinians for unpaid traffic court fines and fees is unjust and counterproductive, including interactive statewide maps of suspensions, see N.C. Equal Access to Justice Commission, *supra* note 109.

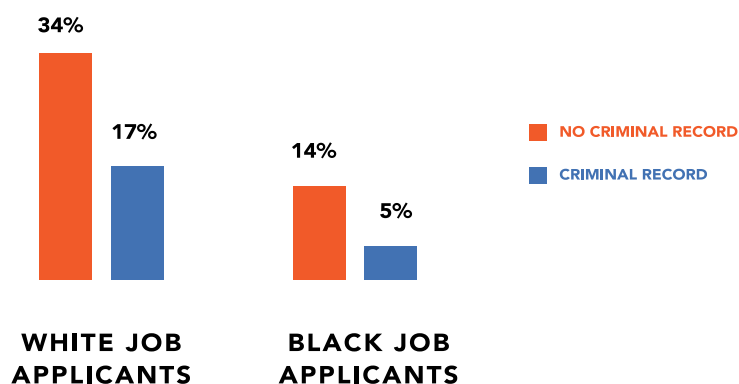
119 EXPAND VOTING RIGHTS.

Felony disenfranchisement policies have a disproportionate impact on communities of color. Black Americans of voting age are more than four times as likely to lose their voting rights than the rest of the adult population; one of every 13 Black adults is disenfranchised nationally. Only two states (Maine, Vermont) have no restrictions on voting rights of anyone

with felony conviction, including if in prison. Eighteen states prohibit individuals with felony convictions in prison from voting. Twenty states prohibit individuals in prison or on parole or probation from voting. Eleven states prohibit those with felony convictions post-sentence from voting.¹³³ The Task Force recommends the extension of voting rights to those on probation, parole, or post-release supervision for a felony conviction.

Necessary Action: legislative change to N.C.G.S. § 163-55.

FIG 10. % JOB APPLICANTS RECEIVING CALL-BACKS



120 ENSURE THAT JUSTICE-INVOLVED PEOPLE HAVE ACCESS TO SNAP BENEFITS.

Federal law bans people with felony drug convictions from receiving Supplemental Nutrition Assistance Program (SNAP) benefits, unless their state chooses to opt out of the ban. Twenty-two states and D.C. have completely opted out of the ban, and 27 states (including North Carolina) have modified the ban so that some people with a felony drug conviction are still eligible to receive SNAP benefits. In North Carolina, people with convictions for Class H or I controlled substance felony offenses are able to re-establish eligibility, but only after a six-month waiting period and the completion of other requirements, including a substance misuse treatment program.¹³⁴ People with convictions higher than Class H are banned for life from receiving SNAP benefits. The Task Force recommends the state opt entirely out of 21 U.S.C 862(a) (Denial of assistance and benefits for certain drug-related convictions).

Necessary Action: legislative change to N.C.G.S. § 108A-25.2.

¹³³ Jean Chung, *Felony Disenfranchisement: A Primer*, The Sentencing Project (June 2019), <https://www.sentencing-project.org/publications/felony-disenfranchisement-a-primer/>.

¹³⁴ Hillary Payne & Mary-Claire Morrow, *The Effects of Denying SNAP Benefits to People with Felony Drug Convictions*, The Network for Public Health Law (April 2020), <https://www.networkforphl.org/wp-content/uploads/2020/04/Issue-Brief-Snap-Felon-Ban-Updated-1.pdf>.

121

ALLOW NCDMV HEARING OFFICERS TO WAIVE SOME FEES.

Currently, the NCDMV is required to collect a restoration fee from anyone whose license was revoked for failure to appear or pay a fine, penalty, or costs for motor vehicle offenses. The Task Force recommends allowing NCDMV hearing officers to waive license restoration fees and other service fees for failure to appear or failure to pay.

Necessary Action: legislative change to N.C.G.S. § 20-24.1(c).

122

CREATE EFFICIENCIES FOR PEOPLE WITH MULTIPLE CONVICTIONS ACROSS MULTIPLE COUNTIES.

Reform the Certificate of Relief petition process so that people with multiple convictions across multiple counties only have to petition once in the county of their most serious conviction rather than having to submit a separate petition in each county.

Necessary Action: legislative change.

123

SUPPORT THE STATEWIDE REENTRY COUNCIL COLLABORATIVE'S RECOMMENDATIONS.

The State Reentry Council Collaborative (SRCC) is a legislatively mandated state body that includes representatives of state agencies, institutions of higher education, business, faith and community-based organizations, nonprofits, and other stakeholders. In 2018, it developed a series of recommendations included in a final report.¹³⁵ The recommendations are the result of extensive research and collaboration regarding post-incarceration transition services and programs. TREC supports the implementation of these recommendations.

Necessary Action: Task Force collaboration; legislative changes; state agency policy changes; local government policy changes.

¹³⁵ *Final Report - 2018 Recommendations*, State Reentry Council Collaborative (Dec. 2018), <https://files.nc.gov/ncdps/documents/files/Final-SRCC-Report.pdf>.

CRIMINAL JUSTICE DATA COLLECTION AND REPORTING

The justice system has immense power. That power must be exercised with wisdom, clear judgment, and oversight to create fair outcomes that are free of racial bias. Achieving these fair outcomes requires transparency, so we can understand what happens to individuals subject to the state's authority and ensure the decisions that system actors make are free from bias and unequal treatment. In many instances, reliable racial data on systemic outcomes does not exist or is not accessible. Without it, bias, disparities, and unequal treatment are masked but nonetheless experienced by those directly impacted. Ultimately the lack of data exacerbates the problem, frustrates any attempt to address it, and erodes the public's trust in the criminal justice system.

The criminal justice system is made up of many moving parts and interconnected actors. Much of the data necessary to capture what happens at the critical decision points during the criminal justice process is lacking. Human beings are flawed, and we cannot rely on our good intentions alone to ensure the decisions made at each point are just and free from prejudice. Data is the only way to truly see the outcomes of our decisions.

The Task Force seeks to use data to make decisions that are fair, impartial, and most importantly, free of racial bias, thereby building a more equitable criminal justice system. The data should be accessible to decision makers, those charged with oversight, and the public. Moreover, the Task Force recommends the creation of a system that produces and reports the data necessary to assess whether the changes and recommendations made by this Task Force are being implemented, are making a difference as intended, and ultimately, are reducing racial bias in our criminal justice system.

DATA COLLECTION

124

Identification of the places along the criminal justice system where data collection directly impacts the implementation, evaluation, and monitoring of the Task Force's recommendations and broader questions of racial equity within the criminal justice system.

STOP AND ARREST DATA

The Task Force recommends the centralized collection and reporting of all manner of arrests and stops by law enforcement agencies in North Carolina.

- Enact a statute that requires law enforcement agencies to report to the SBI a standard set of information with respect to the below types of interactions. Each report should include, at a minimum, the race and gender of any subject(s) involved, whether the involved subject is a juvenile, the location of the stop or arrest, and whether controlled substances are involved. Forms should be created to make reporting easier on officers, using the SBI-122 as a guide.
 - Interactions for which data is collected should include, but are not limited to, the following:
 - Traffic stops (currently N.C.G.S. § 143B-903)
 - Use of force (currently N.C.G.S. § 143B-904)
 - Domestic violence (currently N.C.G.S. § 143B-901)
 - Detentions unrelated to traffic stops
 - Arrests unrelated to traffic stops
 - Searches unrelated to traffic stops
 - Charging by officers
 - Law enforcement officers killed or assaulted
- Recommend revision of the SBI-122 to capture all of this data in one place.

- When creating this report form, current requirements of the FBI’s National Incident-Based Reporting System (NIBRS) should be taken into account to obtain the needed data and to avoid duplicate work. Drafters should work closely with the SBI to address this issue. The Task Force should also consider the inability of smaller agencies to comply with NIBRS due to the administrative burden and whether any solutions are available.
- Agencies should maintain this data in such a way that they can sort and examine the statistics for any one officer to address accountability issues as they arise.
- Recommend revisions of N.C.G.S. § 143B-903 to require that data collection by **all** North Carolina law enforcement agencies be mandatory and include penalties for agencies that fail to comply.
- Ensure that the enacting statute provides additional funding to the SBI for data personnel, data storage, and compliance management.

COURT DATA

The Task Force recommends that the NCAOC include information on race in its data reporting.

The Task Force recommends that court system data be structured in such a way that it can be examined at both the: (1) case and (2) defendant (person) level. The Task Force encourages a definition of “defendant level data” as all criminal charges, past or present, that have been brought against the same unique individual. Case level data is necessary to assess the human cost of the discretionary decisions being made by all of the actors in the criminal justice system.

The Task Force recommends that all data related to a single charge be kept in perpetuity in a way that allows researchers to trace a single charge from beginning to end, including dates for arrest, indictment, and resolution plus crime charged, plea offers extended, conviction/dismissal, consolidation of the charge with others, sentence, and any suspension of that sentence

To ensure the realization of this recommendation, the Task Force recommends continued involvement with the development of the NCAOC’s new electronic court tracking system to ensure complete and comprehensive data collection and reporting with regards to race and ethnicity. The Task Force requests the NCAOC include at least one Task Force member, who is also a Judicial Branch employee, on the NCAOC’s internal committee responsible for the creation of the new electronic system.

The appointed Task Force member shall be responsible for reporting out to the full Task Force at the quarterly meetings regarding NCAOC's ongoing efforts and seek the full Task Force's approval where appropriate.

The Task Force recommends the deployment of dedicated resources to conduct specialized reports requested by governmental partners, academic researchers, and members of the public.

If such a system were implemented, the Task Force and interested stakeholders could pursue research projects described below and analyses that speak directly to racial inequities in a variety of points along the criminal justice system.

JAIL DATA

A statewide jail database in North Carolina would allow for a deeper examination of the criminal justice system and the development of ways in which racial inequities can be eliminated from our current system. With this goal in mind, the Task Force recommends the development of a statewide jail database with the following basic descriptive statistics and/or variables that would allow for baseline understanding of jails and prisons in North Carolina:

- Unique ID (or other record tracking number)
- State ID (if known)
- Adult/youthful offender status
- Name
- Address
- Race
- Age (or date of birth)
- Sex
- Legal status - pretrial, sentenced, both
- Jurisdiction - state, county, federal
- Length of stay
- Pretrial release conditions
- Written promise to appear
- Unsecured appearance bond
- Designated custody
- Secured appearance bond
- House arrest
- Deny pretrial release condition (preventive detention; refer to statute)
- Bail bond amount

- Unsecured appearance bond
- Secured appearance bond
- Reason to deny pretrial release condition (preventive detention; refer to statute)
- Held pretrial for in-ability to pay bail bond
- Secured appearance bond
- Secured appearance bond with electronic monitoring
- Charge information (e.g., class, type, etc.)
- Conviction information (e.g., class, NCAOC docket number, statute, etc.)
- Entry reason (e.g., probation violation, arrest, etc.)
- Release reason – (e.g., transfer to prison, transfer to another jail, completed sentence, etc.)
- Security level
- Risk assessment
- Dates of interest (e.g., entry date, release date)
- Information that would allow for matching into other data systems for the purpose of measuring outcomes (e.g., match with OPUS data to track recidivism using a unique identifier)

PROBATION AND POST-RELEASE DATA

The Task Force recommends the collection and production of transparent, accessible data reflecting justification for extension of probation. Parole, probation, and post-release supervision can be extended for a variety of reasons, including an inability to pay fines and fees, and can directly affect many aspects of public life, such as voting.

The Task Force recommends the study of the post-release and probation extension decisions to minimize disenfranchisement and other collateral consequences.

RECOMMENDED RESEARCH

If such data collection systems were implemented, the Task Force and interested stakeholders could pursue many research projects and analyses that speak directly to racial inequities in a variety of points along the criminal justice system. [More detail can be found in Appendix D.]

STUDY OF RACE MEASURES

The Task Force recommends an analysis of the source, completeness, and validity of current race measures in public safety data systems and an exploration of approaches to address any identified limitations in these measures. The study will be completed within six months of the adoption of this recommendation. Pursuant to the findings from this analysis, the Task Force will identify responsible state-level entities to implement reliable and valid race and ethnicity measures through approaches that are clear and consistent, that acknowledge the limitations of race measured through observation, and that consider and minimize potential harm on individuals asked to self-report race. The state-level entities, which may include the NCAOC, will begin to implement changes to measurement of race and ethnicity within calendar year 2021. In addition to required state-level measurement changes, the Task Force further recommends that a guideline for uniform measurement of race and ethnicity be developed and disseminated to local entities, such as police departments, sheriff's offices, and district attorney's offices to support their more widespread implementation.

UNIFORM CODING OF RACE DATA

The Task Force recommends the uniform coding of racial and ethnic data across all North Carolina systems that allows for easy integration with Census and other federal data collections. All federal statistical collections, including the American Community Survey and U.S. Department of Justice statistical collections, follow Office of Management and Budget guidance to measure race and ethnicity uniformly.

PUBLIC ACCESS TO DATA

The Task Force recommends the creation of an open-source data portal available to the public with statewide arrest, court, jail data and other criminal justice-related data. The portal will include an interface that regularly uploads information from state-level entities and provides summary statistics on at least an annual basis to allow government stakeholder, researchers, and members of public to make meaningful comparisons between identity groups. This portal will also include demographic data to allow for appropriate context when reporting out disparity and trends. The portal will further provide on-demand access to create customized tables and analyses for public users.

COST AND FINANCIAL IMPLICATIONS

TREC is proposing an array of changes to the administration of justice in North Carolina. Some of these changes require resources. It will be incumbent on policymakers to determine the short-term costs to implement these changes, as well as the long-term savings to the public that will result from enhanced public safety. We believe that these investments are necessary to improve our criminal justice system, reduce racial disparities, and enhance North Carolinians' confidence in its fairness.

GOING FORWARD

NEXT STEPS FOR THE TASK FORCE

In accordance with Executive Order 145, the Task Force will continue in its current structure through December 2022 with the expressed goal of assisting with the implementation of the recommendations put forth in this initial report. However, the mission of the Task Force – the elimination of racial inequities in the criminal justice system – cannot be accomplished fully in just two years and certainly cannot be realized without structure, resources, and thoughtful planning. Therefore, the Task Force is not only establishing a plan for its operations over the next two years, it is recommending the establishment of a permanent body to continue in this work after December 2022.

Task Force Structure and Responsibilities

Meeting Schedule

Task Force will meet quarterly from December 2020 through December 2022, on the first Friday in March, June, September, and December. Task Force committees will meet monthly with the option to meet more frequently. The Task Force staff will meet at least twice a month.

Duties and Responsibilities

The recommendations in the December 2020 report will serve as the blueprint for the Task Force's work from December 2020 to December 2022. Executive Order 145 made explicit that the Task Force recommendations should include practical implementation plans and improvement metrics. The December 2020 report has implementation strategies. The Task Force's first responsibility post-December 15th is to implement those strategies by the completion and deployment of implementation plans for the recommendations.

Implementation of Task Force recommendations will require differing strategies dependent on the nature of the recommendation and stakeholder involved. The Task Force will organize itself into committees according to implementation strategy with an assigned Chair. The duties of the committees shall include working with staff to track the progress of all recommendations implemented using their assigned strategy for reporting to the full Task Force at quarterly meetings. The Implementation Committees will address the following areas:

1. Administrative Rule/State Policy Change

All recommendations identified as administrative rule change should have at least identified the responsible rule or policymaking authority upon publication. As such, the Task Force is responsible for making contact with the stated authority within six months of the Task Force's final report or of making public the recommendation, for those passed by the Task Force after the final report. The Task Force will assist in the drafting of new rule language or language to amend the current rule within one year of making public the recommendation, as necessary.

2. Legislation

All recommendations slated to be implemented using legislation should have at least identified if either revisions to current legislation or new legislation are required to implement the recommendation. The Task Force will assist in the drafting of new legislative language or language to amend current legislation within one year of the final report or of making public the recommendation if passed by the Task Force after the final report.

3. Local Policy Change

Many recommendations also rely entirely on local policy changes. Within one year of the publication of the December 2020 report, the Task Force should make a plan for the creation and facilitation of statewide or regional convenings to assist in recommendation implementation at the local level. The Task Force should explore collaboration with governmental, educational, and philanthropic actors on this endeavor.

4. Funding, Outreach, and Evaluation

Many of the recommendations from the Task Force's December 2020 report require funding and programmatic support. The Task Force will assist with plans for securing implementation funding for the approved recommendations. The Task Force will encourage the exploration of both legislative and grant funding sources.

Many of the recommendations will also seek to implement culture change and encourage ongoing collaboration with community members. As such, most recommendations will require robust outreach efforts.

The Task Force will also begin monitoring and evaluating the implementation and impact of the recommendations.

The Task Force is also free to bring additional recommendations at any time, as well as make modifications to recommendations previously approved. The Task Force will produce a status report in December 2021 and December 2022.

CREATION OF PERMANENT RACIAL EQUITY COMMISSION

125

The racial inequities that currently exist in the criminal justice system were created over a long period of time. They cannot be corrected immediately. TREC was designed to start an institutional reform process, not serve as the conclusion of North Carolina's efforts to eliminate racially disparate outcomes in the criminal justice system.

Implementing and monitoring the changes necessary to achieve racial equity in North Carolina's criminal justice system requires a longer-term commitment to cross-agency, intergovernmental, and community collaboration. As such, in recognition of the long-standing racial inequities in the criminal justice system and the need to improve the administration of justice for all North Carolinians, TREC recommends the establishment of the Commission for Racial Equity in the Criminal Justice System as a permanent, independent commission. [More details regarding the structure, membership and core functions of the Commission can be found in Appendix E.]

CONCLUSION

To truly make our communities safer and our system of justice fairer, we must broaden our horizons beyond the confines of the criminal justice system. We need to reduce the number of young people experiencing adverse childhood traumas. We need a better health care system. We need stronger public schools and more accessible economic opportunities for all. It is only by strengthening communities more broadly and fundamentally that we can fully achieve the goal of reducing racial disparities of all kinds.

TREC's task, however, was focused on addressing inequities in our criminal justice system through reasonable and proven steps to eliminate systemic racial disparities. Therefore, we have made a number of recommendations to improve our criminal justice system – from recruiting, training, and holding officers accountable to addressing the disparities of our court and correctional systems. We are committed to working with policy makers to implement these changes so we can see meaningful progress towards our goal of equal justice under law.

APPENDIX

APPENDIX A.

Recommendation #27. Facilitate peaceful demonstrations.

The Task Force recommends adoption of comprehensive policies on law enforcement facilitation of peaceful demonstrations statewide. Adoption and enforcement of these policies should be mandatory as part of the North Carolina Law Enforcement Accreditation program. Policies should include coordination and communication by law enforcement with assembled public, avoid enforcement of low-level violations and focus enforcement on those causing harm to person or property, minimize militarization of law enforcement and use of weapons, including kinetic impact projectiles and chemical irritants, and ensure transparency and accountability of officers. All law enforcement agencies should make public and easily accessible their policy regarding Law Enforcement Facilitation of Peaceful Demonstrations by March 1, 2021. A model policy is below:

Coordination and Communication: Law enforcement should communicate clearly with assembled civilians, before and during a protest, to maintain safety. Law enforcement agencies should work to establish and keep open lines of communication with protest organizers when possible. They should also reinforce expectations and values with partnering agencies to promote consistent practices.

- Local law enforcement, particularly those in partnership arrangements with other law enforcement agencies, should convene local stakeholders, including community members, and local government representatives to update or establish county operations and response plans (including tabletop exercises) for demonstrations, protests, and other mass events.
- Establish communication and coordination channels between government actors in advance of known demonstrations or protests so that decisions can be quickly made and/or communicated.
- Establish early and open lines of communication with organizers as a key strategy for planning, facilitating, and de-escalating issues if needed. This communication should include a plan for interactions before, during, and after the demonstration.
 - Establish relationships before crises to build trust.
 - Train community ambassadors or other responders to assist with communication, de-escalation/intervention, and other functions.

- Designate a point of contact for media inquiries.
- Establish clear and visible leadership with prescribed protocols for relaying of commands, with a clear understanding of how law enforcement agencies in partnership arrangements will work with one another.
- Provide clear communication to public in advance of known protests and demonstrations about its commitment to protecting rights and intolerance for violence.
- Use dispersal orders strategically (as they may have an escalating effect); when given, ensure dispersal orders are clear, loud, in multiple languages where appropriate, and that individuals are given sufficient time to disperse with clear, visible, and ample means of egress.

Avoiding unnecessary enforcement: During protests and demonstrations, enforcement of low-level offenses or imposing unnecessary constraints on movement can spark avoidable conflict. Enforcement should target those who are causing harm to avoid disrupting the First Amendment rights of other participants.

- Establish and reinforce with all participating officers clear goals (e.g., protecting 1st Amendment rights, protecting critical infrastructure and private property), and plans for how to accomplish.
- Establish and reinforce common standards, training, and rules used by law enforcement agencies in partnership arrangements including enforcement priorities, use of force standards, warnings, and equipment.
- Establish a standard decision-making framework for the imposition of curfews and make clear the goals and standards for enforcement of a curfew.
- Recognize that law enforcement presence can have an escalating effect and be prepared to dial up or dial down visibility (e.g., do not start with visible armored vehicles and riot gear).
- Recognize importance of quick, targeted intervention to stop violence and/or incitement; need to isolate antagonizers and not disrupt peaceful demonstrators (“identify, target, isolate, remove”).
 - Identify and address the role of hate groups, including white supremacists, in disrupting protests and committing and instigating violence and looting.

- Partner with protest organizers, legal observers, demonstration marshals, and public safety liaisons to help identify and address potential problems before they escalate.
- Prohibit the undercover infiltration of constitutionally protected demonstrations and protests unless there is a criminal predicate to support such activity.

Minimizing militarization:

Militaristic presence (e.g., with armored vehicles, combat-style helmets or weapons) can be counterproductive and threatening to peaceful protestors and may incite or escalate conflict.

Minimizing use of weapons:

Deploying weapons, including kinetic impact projectiles and chemical irritants, can, in addition to causing injuries and even death, rapidly escalate conflict. They should be used as a last resort to protect life, repel assaults, and when other means have been exhausted or are not feasible, to disrupt the significant destruction of property. Policies should prohibit use of dogs and water cannons for crowd control or to disperse crowds. Further, the Task Force will further study whether the use of CS gas (tear gas), as opposed to pepper spray, should be prohibited for crowd control, as has been done by the Charlotte-Mecklenburg Police Department.⁵⁷

Accountability and Transparency

- Require all officers in direct contact with demonstrators to wear insignias that clearly identify the officer’s agency and name or badge number.
- If equipped, require all officers in direct contact with demonstrators to wear and activate their body cameras during protests and demonstrations.
- Ensure protection for journalists and legal observers exercising their right to record and observe law enforcement activities during protests and demonstrations.
- Provide officers training on the role and rights of journalists and how to facilitate their ability to report on protests and demonstrations.
- Establish a media center and/or point of contact for journalists who are covering the event.
- Conduct daily briefings with all local enforcement agencies with participating officers to reinforce policies, priorities, and command structure.

- Conduct after-action reviews to identify what went well and what can be improved.
- Involve prosecutors' offices in front-end discussions regarding the outcome of any potential charging.
- Include legal advisors on-site at emergency operations centers to provide legal advice and guidance, including on the use of curfews or other enforcement strategies and priorities and to provide training on relevant laws (e.g., distinguishing burglary from looting charges).
- Tailor oversight to local jurisdiction; consider role to include monitoring event, accepting and investigating complaints, compliance with policies, procedures, and training.
- Lead law enforcement agencies should coordinate centralized civilian complaint processes to ensure all complaints associated with demonstrations and protests are received and investigated.
- Limit amount of time officers can be on the line and establish ability to tap out or be pulled out based upon risk factors observed by the officer, other officers, or a supervisor. Risk factors should include signs such as fatigue, unmanageable stress, or other factors which may impact an officer's ability to safely and appropriately perform their assignment.

APPENDIX B.

Recommendation #39. Establish sentinel event reviews.

Recommend North Carolina establish non-blaming, future looking sentinel event reviews to be performed by a joint committee, known as the Sentinel Event Review Committee (SERC), housed within NCDOJ's Standards Divisions. The Task Force recommends the establishment of a SERC to conduct reviews consistent with the proposed structure, mission, and timing below to reduce –future use of force incidents. However, the Task Force recognizes two statutory changes critical to the work of such a committee. First, the establishment of a statewide Use of Force model and required reporting of misconduct related to Use of Force. Second, statutory protection is needed to prevent the use of statements and evidence obtained by the SERC for civil or criminal liability. Until this statutory protection is put in place, we recommend that the SERC select for review the Use of Force incidents for which all criminal and civil liability issues have been resolved. Given that criminal and civil liability issues can take years to resolve, it will be challenging to realize the effectiveness and value of sentinel event review absent such statutory protection.

Establishing Document

a. Sentinel Event Reviews

In a complex system, negative outcomes are rarely caused by a single act or mistake and instead are often the result of a multitude of factors. This negative outcome is known as a sentinel event, and the process of examining and learning from the event to minimize or eliminate its reoccurrence is known as a sentinel event review (SER or Review).

Sentinel event reviews are a common practice in the medical and aviation fields. After a sentinel event, such as the death of a patient during a medical procedure or a plane crash, the sentinel event review process engages various stakeholders to assess the issue and to work together to arrive at future solutions to avoid future similar sentinel events.

In 2014, the NIJ sought to apply this process to the criminal justice system. After examining a similar effort nationwide, developing basic protocols, and deploying several pilot sites, NIJ arrived at three values core to criminal justice sentinel events reviews:

Non-blaming: Reviews must not be framed as a hunt for a bad actor. Rather, they must seek to understand what occurred and if there were errors; why decisions seemed like the best decisions at the time; and how the system is structured to allow, foster or contribute to any mistakes.

Forward-looking: Reviews must be conducted for the purpose of learning, with an eye toward using information to improve policy and practice, and to reduce the likelihood of future harm.

All-stakeholder: Reviews must include representatives from all aspects of the system whose actions and/or failure to act could have reasonably contributed to error, if any. They must be willing and able to share all relevant information across disciplines to inform a deliberative, transparent process.

While keeping a firm commitment to these values, sentinel event reviews differ greatly from criminal proceedings and internal affairs investigations, which may seek to assign blame. Sentinel event reviews seek exclusively to identify and internalize culture-change practices that minimize future sentinel events and increase public confidence in the criminal justice system as a whole.

b. Body to Perform Sentinel Event Reviews in North Carolina

The placement, structure, and composition of the body designated to perform sentinel event reviews must uphold the three core values. These elements must also commit to enact meaningful change as a result of the review. Therefore, the placement, structure, and composition of this body must be both a part of North Carolina's law enforcement regulatory system in order to enact meaningful change and apart from the system to effectively review events without bias.

(1) Placement

Sentinel event reviews will be performed by a joint committee, known as the Sentinel Event Review Committee (SER Committee), housed within the NCDOJ's Standards Divisions.

(2) Structure

The Sentinel Event Review Committee shall consist of up to seven members who reflect the diversity of ethnic, gender, law enforcement, and geographic communities of North Carolina to the extent possible. The day-to-day management and operation of the SER Committee shall be conducted by a Unit Head. Governmental representatives' appointments will expire at the expiration or resignation of the appointing office's term or the member's term, whichever comes first.

(3) Composition

a. Sentinel Event Review Committee

Four of the seven prospective committee members shall be selected from the North Carolina Sheriffs' Education and Training Standards Commission and the North Carolina Criminal

Justice Education and Training Standards Commission. The chair of each commission will appoint two representatives from their respective commission for a two-year appointment

The remaining three committee members will be selected by the Attorney General. The three members will meet the following criteria:

- One member of a criminal justice reform organization
- One member of a racial justice organization
- One member of the legal profession from a three-person slate provided by the North Carolina Advocates for Justice (NCAJ), North Carolina Black Lawyers Association (NCBLA), and the North Carolina Bar Association (NCBA).
- Of the above, one member should be a justice-involved person.

The Professional Staff will be responsible for creating a list of candidates for the nominating committee to choose from in each category.

Professional staff will consist of one unit head and two support staff (“professional staff”). The unit head shall be nominated and appointed by the Attorney General. Funds from the General Assembly or other sources should be allocated to fund this staff.

b. Sentinel Event Review Collaboration Groups

For each individual sentinel event review, the SER Committee should confer with the local community and relevant experts on its review. This coordination should include, at a minimum, individuals from the following categories:

- Local law enforcement, including the leader of the involved agency
- Court system actors from the jurisdiction in question, including the judiciary, the public defender’s office/local criminal defense attorney, and the district attorney/prosecutor’s office
- Local elected officials and state elected officials from the jurisdiction
- Community advocacy organizations
- Social services/mental health organizations
- Research organizations specializing in policing reform

c. Responsibilities

(1) Definition of Sentinel Events in the Criminal Justice System. Negative outcomes to be considered sentinel events are hereby defined as:

- Use of force² by a law enforcement officer against a member of the public that results in serious bodily injury or death.
- Sexual assault or rape by a law enforcement officer against a member of the public.

The SER Committee will consider annually the addition of other negative outcomes for consideration for the sentinel event review process, including excessive use of force.

(2) Selection of Sentinel Event Reviews. The Professional Staff shall prepare a slate of site options for the SER Committee to consider. In deciding whether to conduct a SER, the SER Committee should consider the seriousness of the event, the availability of evidence on which to base a review, the openness of key stakeholders, and the expected likelihood of learning valuable lessons from the SER. Sites will be selected by the SER Committee upon a simple majority vote of the present Committee members. SER Committee shall select no fewer than one site for a sentinel event review every calendar year.

In addition to the occurrence of a sentinel event as described in (a), SER Committee may also consider sites in which a law enforcement agency head directly requests a sentinel event review.

(3) Timing of Sentinel Event Review. Reviews should begin after the conclusion of criminal and civil proceedings. If the General Assembly resolves issues related how or whether SER statements and conclusions can be used in civil or criminal proceedings, then reviews may begin earlier.

(4) Selection of Sentinel Event Review Collaboration Groups. Within four weeks of the selection of a site, the Professional Staff shall present to the SER Committee a draft composition of the groups with which the Sentinel Event Review Committee should consult.

(5) Meeting Schedule. The SER Committee will meet quarterly. During the course of a sentinel event review, the Committee will meet at least monthly.

(6) Sentinel Event Review. The SER Committee will first establish a process by which they analyze the sentinel event and the system in which it occurred. Each sentinel event review will be unique to the site; however, all site teams should at least consider the following methods of analysis:

- Literature review of previous sentinel event reviews, both in North Carolina and nationwide.
- Group exercise to establish a shared understanding of and language related to the sentinel event.
- Creation of shared vision of the final sentinel event review report.
- Examination of policies and procedures currently in place in a non-blaming, constructive manner.
- Exploration of the community and cultural systems that contribute to or undermine public safety.
- Exploration of the facts of the specific event.

(7) Reports. The SER Committee will produce and make public within one year of its first meeting a report outlining the review process and lessons learned.

On an annual basis, the SER Committee will file and make public a written report on the status and progress of its activities. The SER Committee's Annual Report shall include at least the following elements:

- Summary of sentinel event reviews conducted throughout the calendar year.
- Lessons learned for specific standards by which law enforcement agencies are analyzed throughout the course of sentinel event reviews.
- Desired outcomes of future sentinel event reviews.
- Proposed changes to commission rule.
- Proposed legislative fixes.

The SER Committee will send a copy of the report to all appropriate agencies, including at a minimum the Governor, the Attorney General, the North Carolina Legislature, the North Carolina Sheriffs' Education and Training Standards Commission, and the North Carolina Criminal Justice Education and Training Standards Commission.

The Committee will provide oral progress reports to the Standards Commissions. Both commissions should consider for a vote proposed changes to Commission Rules included in the Committee's Annual Report.

APPENDIX C.

Recommendation #52. *Develop and disseminate best practices guide for recruitment and retention.*

The Task Force recommends collaboration with the North Carolina Association of Chiefs of Police and the North Carolina Sheriffs' Association to create a "best practices" document for recruitment and retention. Doing so will help all agencies — large and small — understand how to achieve diversity, increase cultural awareness, and ensure that officers have emotional intelligence necessary to serve their communities. Recognizing that not all officers are able to live in the communities they serve, agencies should prioritize educating their employees about the specific needs of their constituency. Because the needs of each agency and each community are different, this document will be scalable based on the size of the agency. The document will address, at a minimum, the following issue areas:

- The creation of a state-wide program to assist smaller agencies with recruiting.
- Each agency should conduct job task analysis and develop standardized knowledge, skills, and abilities for the job. The following traits should be considered in this process:
 - Integrity
 - Human diversity skills
 - Service orientation
 - Team compatibility
 - Oral communication skill
 - Written communication skill
 - Motivation
 - Decision-making
 - Human relations skill
 - Self-control
 - Planning and organizing skill
 - Performance driven
 - Agencies should seek to hire individuals with strong emotional intelligence, focusing on:
 - Self-awareness
 - Self-management
 - Social awareness
 - Relationship management

- Agencies should carefully consider who is doing the recruiting and ensure adequate training for the recruiters, those conducting the hiring panels, and those conducting background checks. As a part of this document, the drafters will work with the Justice Academy to fashion training specific to recruitment and the desired skill sets. -Drafters will work with both Standards Commissions to determine whether it is appropriate to include recruitment requirements in the NCAC, such as whether the code should specify the creation of internal recruitment committees for agencies over a certain size or whether there should be a standardized set of knowledge, skills and abilities for every law enforcement officer. -Drafters should work with the creators of the new State Accreditation program to make recruitment training a requirement for accreditation. The document should specify that those personnel designated to participate in the recruitment and hiring process are representative of the community they serve.
- Agency hiring practices should require, at a minimum, a comprehensive personal history statement and a 2-part psychological exam consisting of a written test and an in-person interview. The drafters will work with the Standards Commissions to ensure that the two sections of the Administrative Code are parallel in all respects as it relates to hiring and admission standards.
- Drafters should work with the Standards Commissions to reduce barriers to entry by re-considering those with minor non-violent criminal pasts and minor past drug usage in order to increase the pool of applicants of all races and reduce the collateral consequences of a criminal record.
- Drafters should work with agencies to determine if better pay and better hours would increase the population of individuals interested in law enforcement jobs.
- Agencies should seek to establish “grow your own” programs for recruiting. This process should include both those trainees who became interested in the profession because of someone they know in law enforcement and those individuals specifically recruited by the recruitment teams from high schools and colleges. -The latter should focus on recruiting individuals of diverse backgrounds, representative of the community; and with a high emotional intelligence.- Agencies should also provide mentoring opportunities and test preparation support to candidates from underrepresented backgrounds in policing.
- Agencies should conduct targeted recruiting.- Drafters should outline specific strategies for recruitment beyond the online application portals and job fairs.-This concept goes hand-in-hand with that of a specialized recruitment team.

- Drafters should consider adopting the CALEA standard for diversity in recruiting.
- Agencies should consider incentives like educational scholarships, loan forgiveness, and student loan payment assistance.
- Agencies should prioritize having a diverse command staff.

APPENDIX D.

Criminal Justice Data Collection and Reporting. RECOMMENDED RESEARCH.

If such data collection systems were implemented, the Task Force and interested stakeholders could pursue many research projects and analyses that speak directly to racial inequities in a variety of points along the criminal justice system, including but not limited to, those listed below.

Policing Policy & Practices

- Pre-arrest diversion and other alternatives to arrest
- Racial breakdown:
 - Cases referred to treatment courts and/or other diversion options, and their outcomes.
- If jail data could be matched into system tracking diversions:
 - Number and percent who end up confined during diversion participation
 - Number of people and percent diverted who are in jail post-diversion (i.e., post-program recidivism)
 - Use of force
- Racial breakdown of all manner of use of force
- Relationship between reason for stop or arrest and use of force

Court-Based Interventions to End Discriminatory Criminalization

- Pretrial release and bail practices
 - Racial breakdowns of:
 - Individuals who were released under a pretrial condition or denied pre-trial release (preventive detention)
 - Pretrial conditions: written promise to appear, unsecured appearance bond, designated custody, secured appearance bond, or house arrest

- Individuals who were held pretrial for inability to pay bail bond vs. those able to pay bail bond
- Bail bond type (secured vs. unsecured) and amounts for similar offenses for those released and those held for inability to pay
- Length of time served for those released and those not released for inability to pay bail bond

FTA and Failure to Comply (FTC) rates

- Whether pretrial release condition has an effect on charge outcome (e.g., dismissal)
- Explore differences between districts that have pretrial release programs and/or pretrial policies

Charging decisions

- Racial breakdowns of:
 - Charges
 - Dismissals
 - Decreased charges
 - Length of confinement by charge
 - Method of disposition
 - Initiating process type (e.g., citations and/or summons vs. arrest)
- Relationship between initial charge and outcome, including analysis of charged vs. convicted offense and sentencing outcomes.
- Insight into the plea agreement process and its impact on outcomes
- Decriminalization or lessening of criminal penalties
 - Racial breakdowns of:
 - Confinement for low-level misdemeanors (e.g., Class 3 traffic offenses)

Advancing Racial Equity in Trials and Post-Conviction

- Criminal trials
 - Racial breakdowns of:
 - Ability or inability to pay bail bond and trial outcome
 - Duration in jail and trial outcome
 - Number of continuances per case, including the reason for the continuance and the requesting party
 - Cases appealed to appellate division, and their results on appeal
- Use and impact of fines and fees
 - Racial breakdowns of:
 - Confinement due to failure to pay fines or fees
 - Inability to pay bail bond and fines and fees
 - Amount assessed
 - Amount paid
 - Adjustments made, including amount of adjustment and reason for adjustment
 - Number and reason for waivers
 - Conversion to a civil judgment
- Probation and Post-Release Supervision
 - Racial breakdown of the post-release and probation extension decisions
 - Rate of payment of post-release supervision fines and fees

APPENDIX E.

Creation of Permanent Racial Equity Commission Structure

The Commission shall be established by legislation or executive order as an independent commission, separate from all government agencies. The legislation or order shall include a funding mechanism for the Commission.

Membership

Commissioners shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution if legislatively created, with a term limit of two three-year terms. The initial terms of Commissioners may be longer to permit staggered term limits, to the effect that three seats will be open every three years after the Commission's creation. The Commissioners shall consist of nine persons, to be predefined by their roles:

- 1 Chief of Police
- 1 Sheriff
- 1 District or Superior Court Judge
- 1 District Attorney
- 1 Public Defender
- 1 representative of a criminal justice reform organization
- 1 representative of a racial justice organization
- 1 representative of a victim advocacy organization
- 1 directly-impacted person

The Governor will appoint a Chair, and the Commission will elect a Vice-Chair, Secretary and Treasurer, all of whom will serve on the Executive Committee. The Commission shall define the duties of the Executive Committee and other Commission structures during its initial strategic planning session. Should an intra-term vacancy arise on Commission, the Governor will appoint a replacement.

The Commission may make policy recommendations at any time, upon a simple majority vote of the present Commission members, so long as at least five members are present to constitute a quorum.

The Commission shall meet a minimum of six times a year, which may be virtual.

Staffing

The Commission shall have a staff consisting of the Executive Director and such other professional, administrative, technical, and clerical personnel as may be necessary. The Executive Director shall be appointed by the Governor, subject to confirmation by the Commission's Executive Committee. All other personnel shall be hired by the Executive Director.

Duties and Responsibilities

Annual Reports

The Commission shall produce an annual report that will be made available to the public.

Racial Impact Reports

The legislation or executive order creating the Commission shall include a provision on the establishment of Racial Impact Statements as a decision-making tool. The provision shall mandate the submission of a Racial Impact Statement to be submitted to the Commission by all state agencies and commissions upon consideration of a new criminal justice-facing policy or program or upon consideration of major revisions to existing programs. The Racial Impact Statements should describe the positive and negative impacts on racial disparities of the proposed action. The Commission and its Staff shall be statutorily mandated to review and evaluate the Racial Impact Statement and vote on approval or ask for additional information on the Racial Impact Statement within four weeks. The state legislature shall be statutorily bound to consider the results of Racial Impact Statement review and votes by the Commission in all budgetary decisions and statutory changes.

Recommendations for Change

The Commission may promulgate recommendations related to racial equity in criminal justice in each annual report. The Commission shall also continue the implementation of outstanding recommendations made by TREC.

Monitoring and Evaluation

Executive Order 145 required all Task Force recommendations to include improvement metrics. This is needed to monitor and evaluate if the recommendation is in fact enacting the desired change in the racial disparate outcomes in the criminal justice system. Therefore, the Commission shall identify 1) the data points needed to monitor implementation, 2) the

source of such data points and 3) a timeline by when the public can expect an evaluation of the recommendation's efficacy.

The Commission shall partner with a research organization to conduct the monitoring and evaluation of all recommendations in the Task Force December 2020 report and consider within each Annual Report the continued need for such services. In each Annual Report, the Commission shall include information regarding the implementation status of each recommendation in the Task Force December 2020 report and data regarding the impact on racial equity of each implemented recommendation.

Racial Data in the Criminal Justice System

The Task Force December 2020 Report includes a recommendation regarding the collection, monitoring, and evaluation of specific data points to improve access to information about and responses to racial disparities in the criminal justice system. The Commission will use said recommendation to create and deploy an open-source data portal available to the public.

The Commission shall partner with a research organization to create a dashboard to provide summary statistics of the findings and allow the end users to make meaningful comparisons between identity groups.

