

Work Group #1 Recommendations for Recruitment and Retention

I. Develop and Disseminate “Best Practices in Recruitment and Retention” Specific to NC

Problem Statement

For law enforcement to be effective guardians of public safety, they must have the public confidence. Many people in our communities, Black and Brown people in particular, do not trust law enforcement. They believe, based on a long history of police violence, that law enforcement is a tool of racial oppression and systematic violence. This is obviously not the case for all or even most individual law enforcement officers. But, it is apparent that the people that make up the system are essential to reforming it.

President Obama’s Task Force on 21st Century Policing stated, in Recommendation 1.8, that “[l]aw enforcement agencies should strive to create a workforce that contains a broad range of diversity including race, gender, language, life experience, and cultural background to improve understanding and effectiveness in dealing with all communities.” This means not only hiring law enforcement officers who reflect the communities they serve, but also ensuring diversity through the ranks of any law enforcement agency. As of July 16, 2020, the North Carolina Department of Justice’s Criminal Justice Standards Division reports that 15,597 certified officers are white, 2406 are African American, 255 are Latino, 425 make up a combination of other races and 768 did not report their race. The U.S. Census Bureau reports that, as of 2019, 22% of North Carolina’s population was Black or African American and almost 10% was Hispanic or Latino. If making a strict numbers comparison, North Carolina has roughly half the number of minority officers it needs. This statistic, however, is only one part of the calculation. While expanding the demographic diversity of our police agencies we must also focus on seeking and developing guardian officers who have the emotional intelligence to interact with communities in a productive way, regardless of race. This requires officers who can comprehend their differences and understand how to work with people across racial and cultural lines.

In order to achieve the above, agencies must have thoughtful and proactive recruitment policies and procedures. As Dr. Patrick Oliver states in his article *Creating a Multicultural Law Enforcement Agency: An Intentional Priority*, “[v]aluing diversity does not mean placing unqualified minority applicants in jobs; it merely recognizes that it might require proactive recruitment and selection to discover the many qualified minority potential applicants who exist.”

Value-Oriented Future State

North Carolina’s Law Enforcement Agencies should be reflective of the communities they serve, upward throughout the ranks. All law enforcement should be guardian officers with high emotional intelligence that will work to build trust with communities of color.

Solution

Creating a “best practices” document for recruitment and retention will help all agencies—large and small—understand how to achieve diversity, increase cultural awareness, and ensure that officers have emotional intelligence in order to better 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:

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- **The creation of a state-wide program to assist smaller agencies with recruiting.**
- **It is a best practice that each agency should conduct a job task analysis and develop standardized knowledge, skills, and abilities for the job.** The following traits should be considered for validation 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 these four domains:**
 - 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 North Carolina Justice Academy to fashion training specific to recruitment and the desired skill sets. Drafters will work with both of North Carolina's Standards Commissions to determine whether it is appropriate to include recruitment requirements in the North Carolina Administrative Code. For example, 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.**

- **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 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 for the best practices document.**
- **Agencies should prioritize having a diverse command staff.**

Issue Area

Recruitment and Retention

Implementation Strategy

Implementation of this Recommendation will require the following steps:

1. Selection of a group to draft the “best practices” document for recruitment and retention. This group should consist of at least one person familiar with the North Carolina Administrative Code and the work of both Standards Commissions and law enforcement representatives to include Chiefs and Sheriffs.
2. Changes to the NCAC will be required. Drafters will need to create specific proposals to send to each Commission for implementation. In order to amend the NCAC the Commissions will have to vote to adopt the requested changes.
3. Trainings for recruitment and retention will need to be developed with the assistance of the North Carolina Justice Academy.
4. Local agencies will be required to change their policies in order to become accredited under the new State Accreditation procedures. Drafters should work with the Standards Commissions’ working group to ensure these requirements are part of the accreditation.
5. Small agencies may not have the resources to accomplish these changes. Drafters should consider suggesting legislative funding for these programs or other possible funding sources like grants.
6. Seek legislative solutions to salary and hours issues that create barriers to entry in the profession.

II. **Expand CJ Fellows Program to all 100 Counties**

Problem Statement

The Criminal Justice Fellows Program began in 2019 as a way to recruit exceptional candidates into the law enforcement field. The program makes loans to individuals for completion of an Applied Associated Degree in Criminal Justice at a North Carolina Community College, which are forgiven if the individual spends four years in a qualifying law enforcement job. This award, however, can only be given to individuals from counties in North Carolina with a population of less than 125,000, or a county designated as a development tier one area pursuant to G.S. 143B-437.08, or both—80 counties in total. This means that students from North Carolina's 20 largest counties are ineligible to apply for this relief and thus it systematically excludes North Carolina's more urban populations. Students from all counties in North Carolina should be able to be considered for this funding.

Value-Oriented Future State

Students from all 100 North Carolina Counties will be eligible for the program.

Solution

Recommend that the legislature delete the reference to "eligible county" in N.C. Gen. Stat. § 17C-20(5) and make every county 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.

Issue Area

Recruitment and Retention

Implementation Strategy

Implementation of this Recommendation will require the Task Force to send this recommendation to the legislature and for groups with an interest in this legislation to lobby their appropriate legislator.

III. **Data must be collected to ensure that law enforcement agencies are prioritizing diverse recruitment.**

Problem Statement

Currently there is no requirement that either Standards Commission collect demographic data regarding those individuals who are certified justice officers in North Carolina. Similarly, no requirement exists for any agency to retain this demographic information. We do have some statistics collected by the North Carolina Education and Training Standards Commission regarding the race and gender of applicants, but this data is non-mandatory. Thus, in 2020, 662 officers did not report their race and 606 did not report their gender. The Sheriffs' Education and Training Standards Commission does not have accurate data to report because the number of officers who did not fill out these fields was even greater than that of CJ Standards. Additionally, none of this data is disaggregated to the local level because agencies do not report it. Because we do not have adequate data about those entering and exiting the profession and specific agencies, it is difficult to analyze the progress towards diversity in North Carolina.

Value-Oriented Future State

Demographic data will be collected by both Commissions and all agencies so that we can have an accurate picture of the diversity within the profession and within each agency.

Solution

Each Commission should collect demographic data for those entering Basic Law Enforcement Training (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 their employees and report that data annually to the Standards Commission that certifies their employees. This information, in de-identified form, will be publicly available.

Issue Area

Recruitment and Retention

Implementation Strategy

Implementation of this Recommendation will require the following steps:

1. Consider whether it is necessary to request new legislation to mandate this reporting or whether it can be accomplished through NCAC revisions.
 2. Recommend revision of NCAC to Standards Commissions to include the collection of this data.
 - a. Possibly consider including it in 12 NCAC 09B .0202 Responsibilities of the School Director. Section (b)(10) currently requires School Directors to report certain data related to the individuals who enroll in and complete BLET to the CJ Standards Commission. It would not be difficult to add a demographic data section here.
 - b. Determine where demographic reporting requirements for agencies should be in the NCAC
- IV. **The Standards Commissions should work together to ensure consistency between their Administrative Code provisions.**

Problem Statement

The Criminal Justice Education and Training Standards Commission certifies all police officers and corrections officers, while the Sheriffs' Standards Commission certifies all deputies and detention officers. The NCAC provisions governing minimum standards for justice officers are not identical. CJ's provisions appear in 12 NCAC 09B and 09G, while Sheriffs' appear in 12 NCAC 10B. It is crucial that every justice officer is held to the same high standards. This requires ensuring that the applicable code provisions are consistent and when they are revised, revisions occur in each applicable portion of the code. This revision should occur in conjunction with the creation of the best practices document in recommendation I.

Value-Oriented Future State

All justice officers will satisfy the same criteria with respect to minimum standards of employment and the decertification process, all requirements for data collection will be the same for both Commissions.

Solution

The two Commissions should coordinate with each other and with this Task Force to ensure consistency between the two codes and that any additional recommendations made by the Task Force are considered for implementation in all applicable code sections.

Issue Area

Recruitment and Retention

Implementation Strategy

Implementation of this Recommendation will require the following steps:

1. Recommend creation of a joint working group made up of Sheriffs' Standards and CJ Standards Commission members to review both codes and suggest code revisions to the applicable Commission to ensure consistency.
2. Task Force members should work with the above group to ensure that Task Force recommendations made to the Commissions are considered for inclusion in each applicable code provision.

- V. **Support the creation of a state accreditation program already underway by the Standards Commissions.**

Problem Statement

Accreditation and credentialing are an important part of policing. The Commission on Accreditation for Law Enforcement Agencies (CALEA) is considered the “gold standard” in accreditation and requires participating agencies to adhere to strict standards and best practices. Many smaller agencies feel, however, that they are unable to participate in CALEA accreditation because of the cost (both start-up and recurring) as well as the inability to implement certain requirements with so few staff members. The State accreditation process would allow smaller agencies to receive accreditation short of CALEA and larger agencies to be certified by both.

Value-Oriented Future State

A state accreditation agency will be created that will allow smaller agencies to receive credentialing while holding them to state-wide standards of practice in law enforcement. Larger agencies will also participate in order to hold accreditation specific to North Carolina.

Solution

Support the ongoing work of the committee to create the North Carolina Law Enforcement Accreditation (NCLEA) program. 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 and 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 Law Enforcement Accreditation 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 on how and by when all accredited law enforcement agencies are responsible for demonstrating adherence to new statutory standards.
- The NCLEA Committee should regularly review of the efficacy of the accreditation program’s standards on best practices related to racial bias in policing. This review should consider the following reports:
 - Task Force on Racial Equity in Criminal Justice
 - Governor’s Crime Commission

Recommend legislation to ensure that the new state accreditation program has the proper staffing and overhead costs for assessment, technology and administrative needs, including the possibility of no cost or sliding scale fee structure.

Issue Area

Recruitment and Retention

Implementation Strategy

Implementation of this Recommendation will require the following steps:

1. Work with Commissions on a joint recommendation to the legislature for funding of the state accreditation program.
2. Work with Commissions to make sure Task Force recommendations are submitted to the Commissions to consider during the accreditation process.

- VI. **Seek legislation to require police departments of a certain size to create a diversity task force within the agency to foster and monitor recruitment, training and retention of a racially diverse police force that reflects the population served. Suggest that municipalities also create a diversity task force to incorporate throughout the local government.**

Problem Statement

As mentioned in Recommendation I, in many cases North Carolina law enforcement agencies are not as diverse as the communities that they serve. This often leads to miscommunication, distrust, and even violence. Prioritizing diversity in every aspect of policing is necessary to rebuild trust and ensure commitment to the policies of 21st Century Policing. Recognizing that this is difficult for small agencies, this recommendation is tailored to larger agencies.

Value-Oriented Future State

Every law enforcement agency will have designated employees who will ensure diversity throughout the agency. Larger agencies will be mandated to do so, but smaller agencies are also encouraged to do so. Task Forces will use models from police agencies in North Carolina who are already taking this approach (i.e. Durham Police Department).

Solution

Draft legislation to require the creation of diversity task forces in agencies larger than 25 employees. Encourage smaller agencies to adopt these same best practices to the extent they can.

Issue Area

Recruitment and Retention

Implementation Strategy

Implementation of this Recommendation will require the following steps:

1. Gather information about existing diversity task forces in police agencies across North Carolina.
2. Draft a diversity task force white paper as a guide for agencies seeking to implement the legislation when it passes.
3. Seek input from the North Carolina League of Municipalities regarding the viability of recommending diversity task forces in all local governments.
4. Draft legislation to require agencies larger than 25 to create a diversity task force.
5. Draft a recommendation that all municipalities create a diversity task force that will work throughout local government.
6. Work with smaller agencies to help them follow these best practices to the extent they can.

Work Group #1 Recommendations for Law Enforcement Training

I. Work with the North Carolina Justice Academy to re-vamp Basic Law Enforcement Training (BLET) and other training to ensure that certain topics are adequately addressed.

Problem Statement

The current version of North Carolina's BLET program does not adequately address topics such as emotional intelligence and problem solving. It spans only 640 hours and is more lecture-based than experiential. The Justice Academy is working on completely overhauling the program to include foundational topics such as problem solving and communication skills, which will be carried throughout the remainder of the training. This re-boot has included adding 16 hours to the already-existing 8-hour block on interacting with individuals with mental health issues and disabilities, and additions in other areas bringing it closer to 700 hours. In studying the public response to current events and in hearing from other experts in the field of training, Working Group #1 has determined that there are several other aspects of training – both in BLET and beyond—that should be included by the Justice Academy. The members of the Task Force need to work to support the Justice Academy's efforts and suggest certain research-based changes to curriculum.

Value-Oriented Future State

BLET programs and all other trainings will focus significantly on skills to help officers develop emotional intelligence and participate in hands-on learning to practice and hone the skills necessary to become guardian officers.

Solution

The Task Force will continue its relationship with the Justice Academy and make suggestions for changes to curriculum, for BLET as well as all other aspects of training. The Task Force will recommend the creation of a new position at the Justice Academy to help focus on incorporating these ideas in existing trainings and creating new ones.

Issue Area

Training

Implementation Strategy

Implementation of this Recommendation will require the following steps:

1. Make suggestions to the Justice Academy about revisions to the new version of BLET while it is still undergoing review. These recommendations will include, but are not limited to, the following:
 - a. Ensuring that NC's BLET program is sufficient to cover all needed topics, regardless of the number of hours currently allotted.
 - b. Ensure that each block of instruction considers ethical issues as appropriate.
 - c. Ensure the BLET includes at least one block of racial equity training for new recruits.

- d. Ensure that all blocks focus on creating emotional intelligence in officers, including practical applications, to help create guardian officers.
 - e. Create more opportunities for hands-on learning surrounding communication skills and team building.
 - f. Consider interactions with communities during training.
 - g. Focus on scenario-based training in order to learn problem solving.
2. Recommend to the legislature that staff be added 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.

II. **Recommend changes to current Mandatory In-Service Training topics and requirements.**

Problem Statement

Currently, 24 hours of Mandatory In-Service Training (MIST) is required in North Carolina pursuant to 12 NCAC 09E .0105. The current rule requires that a certain number of these credits are mandated, and that the remainder of topics are chosen by the agency head. The number of both types of credits are set every year by rule-making within the CJ Commission. These hours are a floor, not a ceiling. N.C. Gen. Stat. § 17C-6(a)(14) requires, by law, that certain topics are covered, including domestic violence and juvenile justice. N.C. Gen Stat. § 114-12.1(a) requires juvenile minority sensitivity training to be completed every year. The Joint MIST Committee determines the frequency of other topics.

The specific trainings to address these issues, as well as the other MIST topics, are chosen by a joint committee made up of members of the Standards Commissions, two officers, two deputies, and two representatives of the Community Colleges. Trainings are recommended to the CJ Commission for rule making and adoption, and then become a part of the North Carolina Administrative Code at 12 NCAC 09E .0105. Currently, these topics change every year and thus require rules revision by the Commissions, which is a lengthy process and often does not provide the flexibility to account for emerging issues. The Commissions have voted to recommend legislation to allow the Commissions to choose the particular MIST courses every year without having to go through the rulemaking process. This should streamline the ability to decide on and deliver MIST topics.

Almost all of the MIST curriculum is delivered online. The exception is the practical portion of firearms training. The MIST Committee is currently in the process of determining what MIST topics will be delivered online, in person, or a combination of both. Experts in the field of law enforcement training have provided the Task Force with extensive information about the need for repetition of certain types of training every year in order for it to be effective. Additionally, many of the soft skills trainings are not given at all after an officer graduates from BLET. It is crucial that officers be given an opportunity to refresh these skills every year in order to ensure that they practice them in the field.

Value-Oriented Future State

Officers will receive training every year that incorporates important interpersonal skills and mental health awareness so that these skills are always front of mind when working in the field.

Solution

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.

Issue Area

Training

Implementation Strategy

The Task Force realizes that it is difficult to make all topics mandatory every year, but recognizes that, based on input from experts in the field, certain skills must be refreshed every year so that officers do not lose them. Other topics are important enough to be mandatory, but the frequency of delivery may vary, like how the State Bar requires certain periodic trainings for lawyers. The Joint IST Committee, composed of experienced law enforcement officers, should have the flexibility to choose the exact trainings to fulfill the topic areas.

Implementation of this Recommendation will require the following steps:

1. The Task Force will recommend to Joint IST Committee that the mandatory IST include certain topics, some to be given every year and some to be given periodically, based on research and input from experts in the field of criminal justice training. The topics include:
 - a. Ethics (every year)
 - b. Mental health for officers (every year)
 - c. Community interactions (ex: CIT training, dealing with persons who have mental health issues or disabilities, communications skills) (Frequency to be determined)
 - d. Implicit Bias and Racial Equity training (ex: TRUUTH) (Frequency to be determined)
 - e. Use of Force Training (ex: revised SCAT, De-escalation training, Verbal Judo) (Frequency to be determined)
 - f. Duty to intervene training (every year)
2. The Task Force will draft legislation, in consultation with the Joint IST Committee, to amend N.C. Gen. Stat. § 17C-6(a)(14) to make certain topics mandatory by statute.
3. The Task Force will draft recommendations to the Standards Commissions that certain topics be included every year in 12 NCAC 09E .0105.
4. The Task Force will work to accomplish Training Recommendation V in conjunction with this one, in order to ensure that the outcomes of certain training are adequately measured and studied for effectiveness.

III. Law Enforcement Agencies should conduct internal training every year to ensure that officers understand the consequences of policy violations.

Problem Statement

Ensuring that officers have a guardian mindset is crucial to 21st century policing. This can only be truly accomplished at the agency level. Each agency must determine its culture and enforce that culture by creating policies and procedures and ensuring that its employees are aware of the consequences of a violation. This cannot be accomplished through traditional training.

Experts in the field of law enforcement training have told us that research suggests that one-time, one-size-fits-all training will not lead to lasting cultural change within a law enforcement agency. See RTI Letter to TREC, September 8, 2020. Further, in order to effectuate lasting cultural change, training received from outside sources must be imbedded in the policy and procedure of an agency and each agency must follow up with its own training regarding the consequences of violation of policy. While the studies have shown that this may not change the attitudes of existing officers, it does increase respectful behaviors and reduce of use-of-force incidents. See Chicago's QIP study.

While we are working to ensure that the types of individuals we recruit into law enforcement are those with high emotional intelligence and a guardian mindset, we must also train and re-train our existing police forces along these same lines.

Value-Oriented Future State

All agencies will have a culture that prioritizes emotional intelligence, respectful community interactions, and good mental health. Agencies will formalize these priorities through policy and procedure and train their employees regarding the consequences of violation of policy.

Solution

Work with individual agencies to ensure that they have such policies in place and are completing this additional training with their employees.

Issue Area

Training

Implementation Strategy

Implementation of this Recommendation will require the following steps:

1. Survey LEAs to determine what types of policy/procedures they have in place to address cultural issues.

2. Work with the NCLEA Committee to ensure that this type of policy/procedure and training is embedded in the state accreditation standards.
3. Determine whether it is appropriate to require a certain amount of in-house training on top of BLET, like the current SHP requirements, to learn agency-specific policy.

IV. Study the how the physical and mental wellness of officers affects their ability to perform job duties and make recommendations accordingly.

Problem Statement

It has been suggested that there may be some correlation between an officer's physical fitness and their mental abilities on the job. This sometimes comes into play when an officer is considering whether or not to use force. There is little research, but some studies suggest that there are certain "mental fitness" issues that relate to the psychological disorders caused physical stressors that are common among law enforcement officers who do not lead physically fit lifestyles. As we study use of force and de-escalation, it is important to learn more about this potential correlation.

Value-Oriented Future State

All law enforcement officers will be in good physical and mental shape in order to deal with the extreme stressors caused by the profession.

Solution

Conduct research on this topic and implement requirements as necessary.

Issue Area

Training

Implementation Strategy

Implementation of this Recommendation will require the following steps:

1. Employ the assistance of outside research agencies to determine the exact correlation between an officer's physical fitness and their mental health on the job and which physical fitness requirements are appropriate to assess an officer's physical fitness.
2. Consider requesting that the Commissions adopt changes to the NCAC to require certain physical and mental wellness standards in addition to that required for BLET, if warranted based on study conducted.
3. Consider how to encourage or require agencies to provide incentives to officers to maintain good physical fitness, which will lead to better mental health results, including but not limited to:
 - a. Time during the work day to work out
 - b. Annual bonus for passing the POPAT
 - c. Ensure peer support programming is readily available

V. Training programs must be studied and measured to ensure desired outcomes and guard against unintended consequences.

Problem Statement

The Task Force has consulted with experts in the field of police training and have learned that there is very little research to show the effectiveness of certain types of trainings, to include implicit bias training for police, de-escalation training, and racial equity training. Given the current state of race relations in our nation and our state, however, it is imperative that we move forward to try to address these issues through police training. In order to ensure that there are no unintended consequences and that we are achieving the desired outcome, however, we must study the effectiveness of this training every year. Our current training providers do not have staff trained to conduct this type of extensive study. It is necessary to partner with outside agencies to be able to set goals for training, measure those goals, and adjust trainings to ensure the desired outcomes.

Value-Oriented Future State

The North Carolina Justice Academy will develop trainings surrounding implicit bias, racial equity, and de-escalation that can be studied and adjusted to ensure desired outcomes.

Solution

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

Issue Area

Training

Implementation Strategy

Implementation of this Recommendation will require the following steps:

1. Seek legislative funding to hire additional staff at the Justice Academy to focus on the development of training in implicit bias, racial equity, and de-escalation. Fund consultants who are trained to measure outcomes and help us adjust trainings to achieve desired outcomes.
2. Contract with consultants who are specially trained to develop and implement training.

3. Set timetables for measurable outcomes and reports back to the Task Force on effectiveness.

USE-OF-FORCE RECOMMENDATIONS

1. Problem Statement

The unwarranted use of force by law enforcement agents against persons, and in particular against persons of color, harms both the individual subject to the use of force and the community to which that person belongs. It also harms the community at-large. When a use of force is unjustified, and even sometimes when it is justified, it erodes trust in law enforcement and contributes to the deterioration of the relationship between law enforcement and those they work to serve. In particular, there have been high-profile instances nationwide and in North Carolina where the use of force against persons of color, persons with intellectual or developmental disabilities, persons in crisis, and others have highlighted that individuals in those communities are often harmed rather than helped by interacting with police.¹ Task Force members have identified the problem as one of philosophy, not just policy. Too often, force is used where it may be lawful, but is unnecessary. This causes feelings of hurt, anger, and frustration within communities who interact with law enforcement, and contributes to the feeling that law enforcement is not working to serve the people with whom they interact.

While particular instances of use of force lead to the problems noted above, data on the use of force is very limited. Geoffrey Alpert, a criminology professor at the University of South Carolina and expert on police use-of-force, reports that efforts to collect use-of-force data nationally have floundered for the past 30 years.² As of May 2020, only 40% of police departments nationwide were participating in the 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.³

North Carolina does not collect data on uses of force in a state repository. 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 provide or employ a uniform definition for what constitutes a use of force. In addition to preventing consistent expectations on the part of the public for safe interactions with police, the lack of a uniform definition of the use of force prevents residents from being confident that use of force incidents are reported and investigated sufficiently across the state. The lack of detailed information about the use of force frustrates comparisons between agencies in the state, prevents the

¹ Danielle Battaglia and Dan Kane, *He was arrested for assault. 3 days later, he was dead. What happened is still secret.*, THE NEWS & OBSERVER (Jul. 9, 2020, 1:34 PM), <https://www.newsobserver.com/news/state/north-carolina/article243629472.html>; Alex Shabad, *DA: CMPD officers linked to Harold Easter's death will not be charged criminally*, WCNC (Sept. 21, 2020, 7:11 PM), <https://www.wcnc.com/article/news/local/charlotte-police-officers-not-charged-death-harold-easter-in-custody/275-f055dda0-38f0-4c7f-b347-628196843ce4>; Christine Hauser, *North Carolina Officer Will Not Be Charged After Slamming Teenager to the Ground*, NYTIMES (Mar. 8, 2017), <https://www.nytimes.com/2017/03/08/us/north-carolina-officer-student-video.html>; Jonathan M. Katz, *No Retrial for North Carolina Officer Who Killed Unarmed Man*, NYTIMES (Aug. 28, 2015), <https://www.nytimes.com/2015/08/29/us/jonathan-ferrell-police-shooting.html>; Caroline Curran, *City settles with chase suspect injured by police K-9*, PORT CITY DAILY (Feb. 17, 2015), <https://portcitydaily.com/local-news/2015/02/17/city-settles-with-chase-suspect-injured-by-police-k-9/>.

² Vera Bergengruen, *'We Continue to Spin in Circles.' Inside the Decades-Long Effort to Create a National Police Use-of-Force Database*, TIME (Jun. 30, 2020, 5:05 PM), <http://www.time.com/5861953/police-reform-use-of-force-database>.

³ *Id.*

identification of best practices and problem areas, 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.⁴

Professor Seth Stoughton, also of the University of South Carolina, reported to the Task Force that during the period from 2015 through 2018, the state of North Carolina had 0.252 deadly police shootings per 100,000 residents. While this number was below the national average for the same period of time, it reflects that we can still do much to prevent adverse interactions between police officers and the public.

Of course, without a consistent policy regulating the use of force, a consistent definition of what constitutes the use of force, or consistent reporting of use-of-force incidents, we cannot address any racial disparities in use-of-force incidents across the state. While we cannot know for certain what the data would reveal if they existed, anecdotal evidence and the very real lack of trust between communities of color and law enforcement in this state confirm that excessive use of force is a problem which impacts racial equity in North Carolina.

2. Value-Oriented Future State

Upon identifying a problem, the Task Force will examine how the process in question should look in a more equal and just society, void of racially disparate outcomes. Centering around the values or outcomes we aim to achieve will help us to ensure we hold ourselves accountable to that goal when we begin the solution development, implementation, and evaluation.

Through its recommendations, the Task Force seeks to achieve a state of affairs in which the use of force is consistently defined and regulated throughout the state of North Carolina. In an ideal future state, there is trust between law enforcement agencies and communities of color, police officers use force only when it is both necessary and legal, and law enforcement agencies collect and report comprehensive data on the use of force so that progress can be monitored transparently.

With detailed, consistent reporting throughout the state, state agencies will be able to track and compare use-of-force information between North Carolina jurisdictions to identify best practices, problem areas, and solutions to problems as they arise. 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.”⁵

3. Solution

The Task Force makes the following recommendations:

1. **Data Collection:** 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:

⁴ Lucille Sherman,

⁵ 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).

- a. Every use of force be reported, with “use of force” defined as any physical force, with or without a weapon, beyond that necessary to handcuff a compliant subject.
 - b. 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.
 - c. 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.
 - d. The data shall be made publicly available and searchable to the extent compatible with personnel privacy laws.
2. "Suicide by Cop":
 - a. G.S. 15A-401(d)(2) should be revised to 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.
 - b. Law enforcement agencies should revise their use of force policies to 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.
 3. Law enforcement agencies should revise their use of force policies to require an officer to alert his or her supervisor any time the officer points a gun at someone.
 4. Law enforcement agencies should revise their use of force policies to ban hog-tying subjects (defined as connecting a subject’s hand and foot restraints behind the subject’s back) and transporting them face down in a vehicle.
 5. Law enforcement agencies should adopt policies requiring all officers to have first aid kits and to call EMS and/or render immediate reasonable medical assistance to anyone in police custody who is injured or who complains of an injury.
 6. Law enforcement agencies should establish an early intervention system to identify and correct officers who use excessive force. This system should:
 - a. Identify officers who receive two or more citizen complaints of any kind in a single month;
 - b. 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; and
 - c. 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.

SCHOOL RESOURCE OFFICERS

1. Problem Statement

School resource officers (SROs) are law enforcement officers who are assigned to one or more public schools to assist with school security, safety, emergency preparedness, emergency response, or any other responsibility assigned by their agency.¹ The existence of SROs demonstrates our collective commitment to cultivating a safe school environment, as school systems are the hearts of our communities. However, it has become clear that SROs work best when strong, deliberate policies and guidance are in place that support and reinforce good citizenship in students and avoid creating an over-policed environment within our schools.

This is of particular concern for Black students in North Carolina. “During the 2018/19 school year, Black students were 48% of school-based delinquency complaints, yet represented only 25% of the State’s public school enrollment.”² At present, data do not exist to directly tie disproportionate disciplinary outcomes for students of color to the placement of SROs but it is clear that discipline within schools has real world consequences. In 2018, “44% or 10,453 of Juvenile offenses and complaints were school-based.”³ When broken down by race, 46% or 4,780 were complaints on Black youth and 39% or 4,033 were complaints on White youth⁴ These statistics are supported by some students’ experiences. In April 2019, The Youth Justice Project held a Town Hall where some students identified instances of feeling targeted or harmed by their SRO, while other students expressed that they had not experienced or observed issues with their SRO.⁵

Given what is known about the over-representation of students of color impacted by the school disciplinary process compared to white students, it is critical that communities proactively examine and define the role and preparation of SROs to minimize the use of harsh disciplinary tactics against Black and Brown students. In 2017, “ten Black youths were incarcerated for every one white youth incarcerated in NC.”⁶ Properly trained and deployed SROs can be part of the solution to break the devastating school-to-prison pipeline that exists for students across North Carolina.

Some of this reflection has already begun. In 2017, the North Carolina Center for Safer Schools conducted an anonymous survey of SROs. When SROs were asked to submit suggestions on how to improve their role statewide, the top two answers were more or improved training, and improvements in SRO attitude or behavior.⁷ While this past legislative session gains were made in requiring all SROs to receive specialized training through the Justice Academy, opportunities for improved training remain, including training on cultural competency, mental health, and related matters – for SROs and other

Commented [SE1]: Task Force vs. North Carolina? The state?

¹ North Carolina Justice Academy, “School Resource Officer Training,” 4.

² North Carolina Department of Public Instruction, “2018 North Carolina School Resource Officer Survey,” 26-30.

³ North Carolina Department of Public Safety Division of Adult Correction and Juvenile Justice, “Juvenile Justice 2018 Annual Report,” 11-12.

⁴ North Carolina Department of Public Safety Division of Adult Correction and Juvenile Justice, “Juvenile Justice 2018 Annual Report,” 11-12.

⁵ Youth Justice Project, “Recommendations on School Policing,” 2.

⁶ Southern Coalition for Social Justice, “Recommendations Reducing Student Criminalization at the State and Local Level,” 1.

⁷ North Carolina Department of Public Instruction, “2018 North Carolina School Resource Officer Survey,” 25.

school personnel. Furthermore, while the Center for Safer Schools' survey provided valuable data regarding SROs' beliefs, systematic data collection regarding SROs' performance and their role in juvenile court referrals is lacking.

In all areas of policing, the key to ensuring public safety for all is a strong, connected relationship between the community and law enforcement. It is therefore imperative that we codify policies and regulations to ensure students' first relationship with law enforcement in the form of SROs is a healthy one, based on mutual respect and public safety above all else. This is of particular urgency for students of color, who are systemically susceptible to falling into the school-to-prison pipeline. The Working Group heard repeatedly that SRO enforcement actions should focus on serious criminal behavior, not enforcing school policies – and that this expectation needs to be made clear to school staff and codified in the agreements between schools and law enforcement agencies.

Finally, a lack of funding presents a barrier to providing students with proper behavioral treatment that could diminish the need to rely on SROs. Law enforcement agencies strive to keep the ratio of officers to citizens at about 1:1000. However, with turnover and the rise in student populations, this ratio is next to impossible to maintain. Ideally, one SRO would be assigned to one school, however in reality one SRO may be assigned to four or five schools.⁸ For school systems to improve safety without excessive reliance on SROs, they need to employ adequate numbers school psychologists, social workers, health professionals, and more school counselors. In these instances, there is also an ideal ratio for student to professional. Nonetheless, this is also next to impossible to maintain as student populations rise and funding sources become scarce.⁹

2. Value-Oriented Future State

Our communities are united in a mission to create a safer school environment for all students. School systems and law enforcement agencies share the responsibility in creating such an environment for all students no matter the color of their skin. SROs are able to focus on ensuring student safety and security while classroom discipline and school policy enforcement are handled by school personnel.

3. Solutions

1. Training for Schools and SROs: The Department of Public Instruction, in consultation with the Justice Academy, should develop and deliver training for all public school employees and SROs regarding the role and proper use of SROs.
2. Data Collection: The Department of Public Instruction, in collaboration with the Department of Public Safety and local law enforcement agencies, shall collect data regarding exclusionary discipline in schools and school-based referrals to the juvenile courts. The data shall be published online at least annually and shall be searchable by school, by district, by student race, sex/gender, disability status, economic status, and grade, and by SRO involvement, all to the extent compatible with applicable confidentiality requirements.

⁸ North Carolina Department of Public Instruction, "2018 North Carolina School Resource Officer Survey," 25.

⁹ Southern Coalition for Social Justice, "Recommendations Reducing Student Criminalization at the State and Local Level," 4.

3. Alternatives for Addressing Behavioral Concerns: 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.
4. More School Justice Partnerships (SJP)s with Stronger MOUs: School Justice Partnerships are a proven approach for reducing students' juvenile court involvement. Communities should continue to develop these collaborations and should work to implement strong 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.
5. 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.
6. Support Task Force on Safer Schools State Action Plan: The recommendations in the State Action Plan for School Safety should be implemented.
7. There should be funding for all school personnel to complete mental health, first aid, cultural competence/diversity/inclusion, and developmental disability training.

Reimagining Public Safety

1. Problem Statement

Law enforcement officers today are called upon to address a huge array of social problems. 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 a homeless person begging or going through trash cans. Some of these calls may involve criminal behavior, but the root of the problem is crisis, not criminality. Responding to individuals in crisis is not the core purpose of law enforcement, and officers receive limited training on dealing with individuals in crisis.

Interactions between law enforcement officers and individuals in crisis may end badly. The death of Daniel Prude at the hands of the police in Rochester, New York, is one example. Even when no one is injured, the outcomes of these interactions may be unhelpful. Because police are trained to identify violations of the criminal law, and to address those violations through arrests, interactions between police and individuals in crisis often result in the jailing of individuals who would be better addressed through 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. Nearly 15% of men and 30% of women booked into jails have a serious mental health condition.”

This is 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 African Americans constitute 40% of the homeless population despite being only 13% of the population overall. Furthermore, lower-income and individuals of color may have less access to appropriate mental health treatment, increasing the chances that they will reach a mental health crisis to which law enforcement is called.

2. Value-Oriented Future State

Communities should respond to individuals in crisis by focusing more on addressing the underlying problem in order to facilitate a reduction in policing the symptoms. These responses should be tailored and compassionate, while still recognizing that individuals 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.

Although this recommendation focuses on the nature of the public safety response to individuals in crisis, the ideal future state also includes addressing related issues such as the elimination of local criminal ordinances regarding begging and funding for services that provide alternatives to arrest.

3. Solutions

1. Communities should adopt strategies for responding to calls for service that involve mental illness, autism, intellectual disabilities, substance abuse, homelessness, and other non-emergency situations.

These strategies should emphasize that law enforcement is not the best fit for every type of call for emergency services and instead we should focus on providing needed services and support. Approaches communities should consider include:

- a. Co-responder units pairing crisis-trained officers with social workers or other professionals;
- b. Models such as CAHOOTS (Eugene, Oregon) and STARS (Denver, Colorado) that provide for the dispatch of non-law-enforcement personnel to appropriate calls;
- c. At a minimum, the dispatching of officers with crisis intervention training, but ideally officers who specialize in crisis intervention.

2. Crisis intervention training should be made a part of the curriculum for Basic Law Enforcement Training and should be provided to all current law enforcement officers.

Pre-arrest Diversion

1. Problem Statement

Arrest and prosecution is not always the appropriate response to unlawful behavior. Individuals may engage in such behavior due to addiction, mental illness, poverty, lack of opportunity, and youthful lack of judgment. Particularly when the harm to the community is slight and the accused's record is not extensive, arrest and prosecution should not be the default response.

Arresting and prosecuting people for bad choices made under these circumstances may have negative consequences for the individuals themselves and for society at large. Criminal justice involvement can be self-perpetuating. Individuals with criminal records are less likely to be able to secure legitimate employment, and individuals who spend time in jail or prison may learn antisocial behaviors from their peers. Research shows that the employment consequences of a criminal record may be especially pronounced for Black people. Professor Deborah Prager found that “[i]n addition to the strong independent effects of race and criminal record, evidence suggests that the combination of the two may intensify the negative effects: [B]lack [formally justice-involved applicants] are one-third as likely to be called [back for a job interview] as black applicants without a criminal record,” an effect substantially larger than for white applicants.

Law enforcement officers are aware of the negative impacts that come from arrest and already use their discretion in deciding which crimes to prioritize and whether to charge a suspect or issue a warning when a crime is found. However, this discretion may be exercised without clear standards to ensure that it is being used in appropriate and equitable ways. Furthermore, when an officer does exercise his or her discretion not to charge an individual with a crime, the officer may have nothing to offer the individual other than encouragement to “stay out of trouble.”

In some jurisdictions, communities have developed structured diversion programs. These programs allow officers to decline to arrest individuals who have committed crimes, and instead refer the individuals to a program that offers counseling, support, drug treatment, job training, and other services. These programs have shown promising results, but because many of them were created in response to the opioid epidemic, and because whites are disproportionately likely to use opioids, they tend to serve white clients, exacerbating racial disparities in criminal justice involvement.

2. Value-Oriented Future State

In an ideal just world, communities would use the sequential intercept model,¹ which details how individuals with mental health and substance use disorders come into contact with and move through the criminal justice system, to limit the number of people involved in the criminal justice system to those for whom such involvement is truly necessary. Pre-arrest diversion programs would be used as an early opportunity to filter

¹ The sequential interception model details how individuals with mental and substance use disorders come into contact with and move through the criminal justice system. Although the sequential intercept model was developed for mental health and has been adapted for substance use disorder, we believe it is a useful framework for diversion opportunities for all justice-involved people.

individuals out of the system. Such programs would be racially equitable and reimagine the role of police in the community and would give them the perspective, training, tools, and partnerships they need to divert people with addiction or other behavioral problems away from the criminal justice system and into more appropriate interventions. This would produce better outcomes for everyone – the individual, society, law enforcement, and for the criminal justice system.

Pre-arrest 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.

3. Solution

1. 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 diversion programs throughout the state. The state should encourage and support these programs through appropriated and/or grant funding. Diversion efforts should build on current examples such as LEAD (Law Enforcement Assisted Diversion), the COORE program in Orange County, North Carolina, and the HOPE Initiative in Nashville, North Carolina. Recognizing that many of these programs have not historically benefited people of color, but that 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; and
 - 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.²
 - Ensuring that these programs are provided at no cost to the participant.

[NOTE: Law enforcement diversion for non-substance use and mental health issues can be addressed as a part of WG’s investigations recommendations and WG’s 3’s pre-and post-arrest diversion recommendation, which currently reads: “Encourage law enforcement and prosecutors to use diversion practices in lieu of criminal charges whenever possible, including for individuals facing felony charges. Wherever possible, do not exclude people because of their criminal history and consider the impact of collateral consequences of a criminal record during charging decisions. If a case should be dismissed outright, prosecutors should not route to diversion instead. Diversion programs should be of no cost to those who are indigent, and programs and treatment offered should be evidence-based.”]

² Allison Robertson (Duke University) and Melissia Larson (NC Harm Reduction Coalition), “Pre-arrest diversion and the movement for racial justice,” unpublished opinion editorial, July 2020 (available upon request).

Task Force Recommendation on local ordinance sunset provision

1. **Problem Statement:** Under state law, counties, cities, towns, and metropolitan sewerage districts have authority to create crimes through local ordinances. The most charged offenses based on ordinance violations include several that criminalize poverty, such as begging for money and failure to provide proof of fare pay. People of color are disproportionately represented in poverty and homelessness in North Carolina, so the impact of these ordinances on racial inequity deserves careful consideration by local policymakers. In addition to frequently charged offenses, there are also a host of outdated and obscure local ordinances that nevertheless can ensnare citizens in the criminal justice system and create life long criminal records for conduct that is better addressed outside the criminal justice system.
2. **Value-Oriented Future State:** Local ordinance crimes are used sparingly, and only where needed to improve public safety. Social support is provided to individuals experiencing poverty and homelessness and preventable involvement with the criminal justice system is avoided.
3. **Solution:** Legislation providing a sunset provision for all local ordinance crimes that criminalize poverty or behavior in public places, e.g., disturbing the peace, begging, and public urination, and establishing 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 NCGS Chapter 166A. Local governments should undertake a review of their local ordinance crimes at least once every ten years.
4. **Issue Area:** Court-Based Interventions to End Discriminatory Criminalization, overcriminalization
5. **Implementation Strategy:** state legislation

Task Force Recommendation on diversion practices

1. **Problem Statement:** 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.
2. **Value-Oriented Future State:** Criminal justice system interventions are designed to serve the purposes of rehabilitation and public safety, and individuals are afforded second chances.
3. **Solution:** Encourage law enforcement and prosecutors to work together to create diversion programs and expand access where appropriate. Wherever possible, do not exclude people because of their criminal history and consider the impact of collateral consequences of a criminal record during charging decisions. If a case should be dismissed outright, prosecutors should not route to diversion instead. We should fund and establish recovery courts and other programs to facilitate diversion. These programs should be of no cost to those who are indigent, and programs and treatment offered should be evidence-based.
4. **Issue Area:** Court-Based Interventions to End Discriminatory Criminalization, charging practices

Task Force Recommendation on citation in lieu of arrest

1. **Problem Statement:** In 2018, 87.8 percent of misdemeanor¹ cases statewide were initiated by citation (as opposed to warrantless arrest). Statewide the summons is used only in a minority of misdemeanor cases. However, significant variability across counties exists. There is also reason to believe that there is racial disparity in which people accused of crimes receive citation vs. arrest.² Arrests for low-risk individuals impose significant legal and financial burdens on presumptively innocent people and strain police and court resources.

An arrest also “triggers an initial appearance and imposition of conditions of pretrial release.”³ Because of racial disparities in pretrial detention, unnecessary arrest disproportionately impacts Black and Brown people accused of crimes.

2. **Value-Oriented Future State:** In an ideal state, law enforcement practices should be tied to the risk posed by the suspect, and also guard against the risk that discretion will be exercised in a way that leads to inequitable racial outcomes. Policies for the use of officer discretion should promote use of efficient and equitable practices that reduce the harm that can come from interaction with the criminal justice system, even at its earliest stages. This contributes to a criminal justice system free from racially disparate outcomes.
3. **Solution:** 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.
4. **Issue Area:** Court-Based Interventions to End Discriminatory Criminalization, pre-trial release and bail practices
5. **Implementation Strategy:** Direct law enforcement to issue citations in lieu of arrest whenever possible for highest-charged misdemeanor incidents by agency policy, as well as enact a statutory preference for citation for certain charges. Law enforcement agencies should create policies to ensure officer discretion is exercised fairly, as well as require training on explicit and implicit bias as it relates to discretion.
6. **Monitoring and Evaluation:** Track and report demographic data related to the use of citations.

¹ where the highest charged crime was a misdemeanor.

² <https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Citation%20Final%20Report%202016.pdf> (“In this instance, an officer’s implicit or explicit bias based on race, ethnicity, gender, or socioeconomic factors may impact the decision to cite versus arrest.”)

³ <https://nccriminallaw.sog.unc.edu/10723-2/>

Task Force Recommendations on Juvenile Justice

1. Problem Statement

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% of the youth population ages 6-17 in North Carolina but accounted in FY 19-20 for:

- 71% of complaints received
- 80% of commitments to Youth Development Centers

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 6. In FY20, youth under the age of 12 comprise approximately 6% (n=1,724) of all juvenile complaints. Of those, 60% are school based.

2. Solution

- Raise the minimum age of juvenile court jurisdiction to 12 years of age.
- Before a school-based petition initiated by a School Resource Officer (SRO) can be accepted for filing in juvenile court, a school administrator or school social worker must also sign the petition.
- 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. The spirit of that work remains undone. 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.

RACIAL EQUITY IN JURIES

1. Problem Statement

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...”¹ 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 US Supreme Court held in 1880 that the Equal Protection Clause prohibits race-based exclusion from jury service.² 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.³ 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.”⁴

Flowers, decided more than forty years after Batson, demonstrates that the covert traditions and practices of discriminatory exclusion are persistent and requires vigilance to root out. The research studies conducted under the Racial Justice Act, and the litigation that followed, demonstrates that the ruling in Batson has been ineffective in stopping discrimination in jury selection in North Carolina.⁵

Continuing covert practices designed to underrepresent or exclude “people of color from juries has seriously undermined the credibility and reliability of the criminal justice system, and there is an urgent need to eliminate this practice.”⁶

Underrepresentation of communities of color from the makeup of jury panels degrades public trust in the criminal justice system.

¹ U.S. Const. amend. VI.

² See Strauder v. West Virginia, 100 U.S. 303 (1880).

³ See 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’s discussing Michigan State University researchers study and conclusions under the Racial Justice Act)

⁴ Batson v. Kentucky, 476 U.S. 79 (1986).

⁵ See 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); The Jury Sunshine Project: Jury Selection Data As A Political Issue, The Jury Sunshine Project (2018); Thirty Years of Disappointment: North Carolina’s Remarkable Appellate Batson Record, UNC School of Law (2016); The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina, UNC School of Law (2010).

⁶ Illegal Racial Discrimination in Jury Selection, Equal Justice Initiative (2010)

2. Value-Oriented Future State

It should be a goal of our courts to ensure that the racial makeup of any jury venire or panel bears a fair and reasonable relationship to the racial diversity of the community from which the venire is chosen.

Implementation of recommendations will ensure jury pools reflect their communities, strengthen the Batson standard, prevent bias from influencing jury decision-making, and collect juror data to monitor racial disparities in North Carolina's jury system.

3. Solution & Implementation Strategy

- **RECOMMENDATION #1 - Fair Cross Section Guarantee**

(Research Resources: [A Primer on Fair Cross Section Jurisprudence](#); [Addressing Nonsystematic Factors Contributing to the Underrepresentation of Minorities as Jurors](#); [No Records, No Rights](#))

- **RECOMMENDATION #1.1** - Expand jury list sources to ensure that more eligible individuals are included in the pool
 - Amend N.C.G.S. 9.2 to require use of sources in addition to licensed drivers and/or registered voters for jury pools, including but not limited to those holding state identification cards, receiving public assistance, applying for unemployment, newly naturalized citizens, and/or income tax filers.
 - Encourage county jury commissions to use 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.
- **RECOMMENDATION #1.2** - Update jury pool lists more frequently and correct addresses to reduce undeliverable summonses
 - Amend N.C.G.S. § 9-2(b) require master jury pool lists be prepared at least annually, rather than every two years.
 - Encourage county jury commissions to prepare master jury pool lists at least annually, rather than every two years.
 - Encourage senior regular resident superior court judges to request master jury pool lists be prepared annually, rather than every two years, as granted the authority under N.C.G.S. § 9-2(a)
- **RECOMMENDATION #1.3** - Include race data on jury lists to monitor compliance with Fair Cross Section guarantee
 - Amend N.C.G.S. 20-43.4(b) to require that the list provided to county jury commissions by the DMV Commissioner include race data
- **RECOMMENDATION #1.4** - Ensure transparency at every stage of the juror formation process – including those in which a private software company is involved

- Amend N.C.G.S. § 9-2(k) to explicitly require that counties utilizing softwares to maintain jury lists have immediate access to raw data regarding list maintenance for analysis by clerks of court, jury commissions and the public
 - Amend N.C.G.S. 20-43.4(c) to require that, with the exception of personal-identifying information, jury lists be a public record
 - **RECOMMENDATION #1.5** - Increase juror pay and consider offering childcare for jurors at the courthouse
- **RECOMMENDATION #2 - Reviving Batson's Promise**
 - **RECOMMENDATION #2.1** - Expand Batson's protection by focusing on outcomes over intent, similar to [WA General Rule 37](#), by: adopting objective observer standard, abolishing prima facie case, disallowing strikes where race could be a factor, Reconsidering Commonly Accepted "Race Neutral" Justifications, see also [CA AB3070](#), Disallowing Demeanor-Based Strikes
 - NC Supreme Court enact general rule regarding jury selection similar to Washington State
 - **RECOMMENDATION #2.2** - Enable more effective appellate review of Batson challenges by requiring consistent self-identification of race and gender and complete recordation of jury selection
 - NC Supreme Court rule requiring self-identification of race during jury voir dire and complete recordation of jury selection
 - **RECOMMENDATION #2.3** - Mandatory racial equity and implicit bias training and use of implicit bias desk cards for prosecutors and defense attorneys
 - State Bar rule requiring mandatory 1.0 CLE every 3 years for practicing attorneys re: implicit bias
- **RECOMMENDATION #3 - Addressing Juror Bias**
 - **RECOMMENDATION #3.1** - Juror Education and Instruction on Implicit Bias by using jury videos, pattern jury instructions, and a juror pledge
 - Encourage clerks of court to show jury video re: implicit bias
 - Publish Pattern Jury Instructions re: implicit bias
 - Encourage use of Juror Pledge
 - **RECOMMENDATION #3.2** - Legal education on exploring bias during voir dire
 - State Bar rule requiring mandatory 1.0 CLE every 3 years for practicing attorneys re: implicit bias
 - **RECOMMENDATION #3.3** - Legal and judicial education on proper and improper references to race at trial
 - State Bar rule requiring mandatory 1.0 CLE every 3 years for practicing attorneys re: implicit bias

- **RECOMMENDATION #4 - Better Jury Data**
 - **RECOMMENDATION #4.1** – Develop mandatory and transparent jury data collection effort regarding people receiving summons, reporting for jury duty, excused or deferred, challenged for cause, peremptorily struck, and seated on a jury
 - Enact statute mandating collection of jury data to be available as public record, with the exception of personal identifying information
 - **RECOMMENDATION #4.2** – Establish a state commission on the jury system, with an eye towards comprehensive reforms. The body would look at issues of: data collection; jury list formation and removals; race, bias, and equity; peremptory strikes; and accessibility of juror pool software

INCREASE FUNDING FOR GOVERNOR'S CLEMENCY OFFICE AND PAROLE COMMISSION

1. Problem Statement

Our prison population is disproportionately Black as a result of the racial injustices in our criminal justice system, which are direct legacies of many historical touchstones, including the shameful period of enslavement and the State's response to Reconstruction. There are individuals still in prison whose sentences far exceed the sentence that would have been imposed on them under modern-day law. There are others who may be serving unjustly long sentences who are appropriate recipients of mercy through the historic power of the governor.

Most immediately, there is a need to respond to the coronavirus pandemic's disproportionate effect on communities of color, particularly as it relates to people in prison because they live in the most congregate environments, where every aspect of their living conditions is controlled. Despite making up only 37.4% of the statewide population, people of color make up 59.7% of the current prison population.¹ If prison populations are threatened, people of color are threatened. While NCDPS has a limited early-medical release program, there are strict limits on who may be released and some high-risk individuals who are within months of being released and could be safely supervised in the community are ineligible. The Governor's Clemency Office lacks the staff and structure necessary to handle the onslaught of emergency requests for commutation that are a result of the COVID pandemic.

Likewise, OPUS data shows the class of parole-eligible individuals who were convicted and sentenced to "life" in the 1970s and 1980s is disproportionately Black. Many parole-eligible individuals would have been released years ago had they been sentenced under modern sentencing law. "Life with parole" was repealed in 1994, however, of the people serving life with parole sentences who were charged as children, a startling 79% are people of color.² Recent litigation has shown that the North Carolina 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.³

1. Value-Oriented Future State

The executive branch of state government must have the necessary resources to address race-based injustices. The Governor should have sufficient staff to timely investigate and recommend commutation of sentences in appropriate cases. People who were incarcerated with the expectation that they would be entitled to release once rehabilitated should have the opportunity for a meaningful

review of their sentence to determine if they should be released.

1. Solution

The executive branch is vested both constitutionally and by statute with the ability to address injustices that either cannot or will not be timely addressed by the other two branches of government. That is a fundamental part of the checks and balances built in to our three-part system of governance. The governor has the historic power to exercise mercy through clemency or commutation of sentences. The North Carolina Parole Commission is an executive branch agency.

- **Immediately add personnel to revamp the operations of the Governor's Clemency Office to work with DPS and the Parole Commission in order to give emergency attention to applications for clemency and commutation in two areas:**
 1. incarcerated persons at high-risk of COVID-19 complications as defined by the Center for Disease Control, including older adults⁴ and people with underlying medical conditions⁵, and pregnant women⁶; and
 2. parole-eligible incarcerated persons who would have been released years ago if they have served their minimum sentence under the Structured Sentencing Act.
- **In order to ensure meaningful review and opportunity for release for all people serving parole-eligible sentences, add at least one additional appointed Parole Commissioner and add sufficient staff – parole analysts and administrative – to engage in a meaningful and thorough review in each case.**
- **Require implicit bias and racial equity training for Commissioners and all staff.**
- **Implement a rebuttable presumption of immediate release for parole-eligible incarcerated persons who would have been released had they been prosecuted under Structured Sentencing.**
- **Require the Parole Commission to provide advance notice of a parole-eligible individual's parole hearing, as well as an opportunity to present evidence and witnesses bearing on the individual's maturity and rehabilitation, and 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.**