

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

**Working Group #1**

**Meeting #6**

Date: 15 October 2020

Time: 10:00 AM EST

Chairperson: Mayor Mitch Colvin

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

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

**Members not in Attendance:** Ingram, John (Sheriffs’ Commission Meeting)

**Special Guest:** Johnson, Steve

# Welcome and Approval of Minutes

*Mayor Colvin*: Called the meeting to order and welcomes Justice Anita Earls and Attorney General Josh Stein to the meeting.

# Review of Recommendations Regarding Civilian Review Boards

*Dismukes*: Leslie informs the working group that she has drafted the recommendations based on what she believes will help the working group get started. The working group focuses on the recommended solutions and what questions the working groups should consider. A large majority of the recommendation involves reviving the public records laws. The working group needs to determine what the scope of the revisions will have.

# Discussion for Recommendation No. 1

*Colvin*: Asks whether the recommendation would cover all jurisdictions, municipalities, and counties, and would this recommendation include smaller communities that may not have the ability to have a civilian review board.

*DIsmukes:* Responds by recalling that the working group previously discussed whether there should be one statewide board to control oversight throughout the state, or if civilian oversight board should be created at the local level. The working group seemed to have consensus that civilian oversight boards should be created at the local level. The question for civilian oversight boards at the local level becomes (1) will those boards be able to gain access to the information they need, and (2) should those boards be considered “officials” under the statutory language listed in the recommendation. Another question becomes whether civilian oversight boards should register at the state level. This question concerns the accountability of the citizen members of these boards getting personnel files, but not being explicitly covered by the current statutory language.

*Chief Davis*: Agrees that civilian oversight boards should be established at the local level. Chief Davis says this because she has observed a number of civilian oversight boards taking a lot of time to understand policies and procedures that are unique to that particular jurisdiction. Doing this on a state level would be very complicated. Chief Davis reaches out to a member of the Durham Civilian Review Board to see what information the Board has had access to in the past.

*Colvin:* Asks the question of what type of state consequence is in place for bad actions of officers, not necessarily in a criminal sense.

*Dismukes*: Responds to the question by stating that there are sheriff’s standards and “CJ” standards in place. There is a probable cause process when there is a complaint made that there is violation of the minimum standards of certification. It goes to the probable cause group for the agency. If the group find probable cause that a violation has occurred, then it is released. IF the officer or law enforcement agent does not agree with that finding, they have the option to contest that in the finding in the office of administrative hearings. That contested matter is heard by an OH judge, who renders a decision. That decision goes back to the probable cause commission for a final agency decision. That final agency decision can be appealed to both the Superior Court and the Court of Appeals.

*Colvin:* Responds by asking what the role of the Civilian Oversight Board, in light of the process at the state level, would be.

*Chief Davis*: Civilian Oversight Boards are essentially designed to allow people the opportunity to speak, if they feel an investigation was a fair investigation, and to examine the case. The Board will then determine whether or not they concur with the ruling, and may make recommendations to the agency as to what should happen with the police officer under investigation.

*Colvin:* Right now, Mayor Colvin understands that the Review Boards are limited in what they can actually do. This leads to the question of who the Boards actually function, particularly if the Board reviews a file and finds a “bad actor,” if they refer it up to a more neutral entity.

*Chief Davis*: Currently, this is not what happens, but Chief Davis believes it is a viable option for the working group to look into. Certain instances do already go up to the state level, depending on egregiousness the offense States that he may be worth the working group’s time to look into the utilization of the state level entities already in place, and expanding their scope of review.

*Ingram*: Brings up two questions: What is the real reason behind developing a civilian review board and is it because the community does not trust the people in charge of the particular law enforcement department. If that is the case, then that is the problem that needs to be dealt with. The second question addresses identifying where the breakdown in the chain from the community to the law enforcement departments is. Refers to the process at his own department, how it has always been a “open door” policy, and how that transparency has proven to be successful without having a civilian oversight board.

*Colvin:* Believes that the point of contention is that when there is an incident involving city police, that incident is investigated internally. Coupled with that is the fact that state laws prohibit disclosure of how the investigation is going. The community views this process as untrustworthy because you essentially have police policing themselves, and the public is not able to get any information regarding the investigation.

*Ingram*: Understands the statements made by Mayor Colvin, but thinks this is reflective of the entity poor performance when it comes to building community trust. Because of this concern, Sheriff Ingram does not see how the Civilian Review Board will solve the problem of trustworthiness when the problem actually stems from the leadership and the lack of communal relations with the department.

*Colvin:* Has a question for Sheriff Ingram: Would the current law, as is, how are problems with officers investigated and how much of the investigation can be conveyed to the public.

*Ingram*: In a non-criminal investigation, such as a policy matter or citation, the internal affairs investigates. Most of the time, the occurrences are on video, and the department simply allows them to view the video at the agency. After that video is reviewed, they can have conversations with the complainant to help understand the totality of the circumstances behind the actions taken by the officer. Sheriff Ingram does not see how adding another entity to this process will add to the transparency of the law enforcement department.

*Dismukes*: Responds by stating that the thing that it outside the control of the working groups and Task Force is the fact that the communities are going to start civilian review boards either way. With that said, the working group could set certain parameters for the boards and determining the types of information that could be made available to the Board. Dismukes then walks through the four recommendations related to Civilian Oversight Boards.

*Colvin:* Recommends that the working group go through each civilian review board recommendation to gain consensus on each one before putting them forward to the general Task Force.

*J. Earls*: Two points: (1) The discussion so far seems to highlight that it may be useful to say a little bit more in the “need for” the recommendation section. Because there are members of the community and the Task Force who truly believe in the need for civilian oversight boards for the sake of establishing the a connection between the community and their respective law enforcement entities. (2) The E.O. establishing this Task Force does not require consensus for recommendations; there may be concurring and dissenting views set forth.

*Dismukes:* Reiterates that the “Need” section is not the problem statement for the final product and is only there for the purpose of working through the meeting today.

*Chief Davis*: Received information from the coordinator for the civilian review board in Durham County, saying that the oversight board does not have access to investigative files. But the city attorney assigned to the oversight board reveals and is provided materials to share with the board about particular incidents to articulate potential policies and laws that have been allegedly violated. Believes that the process for the civilian oversight board has been successful, transparent, and beneficial to the city and city leadership. Part of that success is because members of the civilian oversight board have to go through the citizen’s police academy.

*Ingram*: Asks J. Earls about judicial standards, and whether there is a way to look up when a judge is being investigated for alleged violations. In the process of investigating judges, the information revealed is not made available to the public. Proposes an idea that there be a website for anyone to look up decertified officers. Also fears the jeopardization of those public officials’ relationships with innocent civilians. Ingram does not want to make it sound like he is against civilian review boards, but thinks that it should be optional for cities and municipalities to decide whether or not a civilian review board is what is needed in their area.

*Chief Davis*: Adds that this conversation about civilian review boards being able to investigate is going on around the country. Believes that the working group/Task Force should help with drafting the scope of the recommendation for some of the reasons the Sheriff Ingram put forth.

*Dismukes*: Clarifies that there is a difference between a public record and an oversight board committee. Any statutory changes would have to make it clear that the information given to review boards is not made public record.

*Colvin*: Gets consensus on Recommendations 1, 2, and 3.

*Ingram*: Agrees with the Recommendation #2. There is an edit put in place, at this time, to change the language of “seeking” to “who do seek,” in order to accommodate the concerns of the working group.

*Colvin*: Moves on to Recommendation #4, and things to be considered by the working group. Particularly, defining the scope of the owners given to the civilian review board. (Should they have subpoena power? Should their recommendations be made to the state level or their local District Attorney?)

*Chief Davis*: Believes that it would be best for the recommendations are made to the state level. This would allow for a neutral and detached entity to make judgments on whether or not that neutral entity concurs with the judgment of the civilian review board.

*Ingram*: Sheriff Ingram is concerned about getting the state involved in policy violations. State involvement makes sense in criminal misconduct investigations but believes it may be a bit excessive regarding policy violations.

*Colvin*: Asks a question about what the State actually investigates in the criminal sense, and how are those investigations not also policy violations.

*Ingram*: Responds that, along with policy violations, the State reviews the criminal violation itself as well. Believes that the State entity these concerns should make it up to is Training and Standards Commission.

*Chief Davis*: Concurs with Sheriff Ingram. Also adds that the Training and Standards Commission would needs to be properly staffed.

*Ingram*: Agrees with Chief Davis. Adds that it is crucial that the recommendations include language regarding the funding of the new positions in the Training and Standards Commission. Ingram also what the statutory language to be clear.

*AG Stein*: Says that in addition to the Training and Standards Commission, recommendations should also be made to the local agency itself.

*Chief Davis*: Agrees with AG Stein. Believes that the first step should be take place at the local agency level. If the civilian review board is not satisfied with that outcome the recommendation can be sent to the Training and Standards Commission.

*Colvin*: Asks the Working Group if there is consensus on the four recommendations concerning civilian review boards.

*Dismukes*: Added the question of should the recommendations be made to District Attorneys as well.

*Colvin*: Colvin is concerns about the reality of having a group of civilians, who are not professionally trained, making determinations about whether or not something is a crime, it could complicate things. Believes that we should keep the way criminal violations are being handled now in place.

*Ingram*: Agrees with Mayor Colvin. Also agrees with AG Stein’s comments regarding the first step in making recommendations be between the civilian review board and the local agency. Also wants to confirm that the Training and Standards Commission recommendation is contingent on funding being given to that Commission.

*AG Stein*: Thinks that it is appropriate that the Task Force address the issue of civilian review boards being able to see the evidence that is not public record, but that their seeing it does not make it a public

*Dismukes*: Refers to the Recommendation 1.4(a), and the discussion regarding the direct and specific statutory language that will be drafted for each recommendation.

*Ingram*: Do we, as a working group, what to make sure that access is granted, that no copies be made of that evidence.

*Colvin*: Agree with Sheriff Ingram and proposes that the access to information be treated as it would be in executive closed sessions.

*Dismukes:* States that the working group can address that issue under Section 1.4(d) of this recommendation. The working group could make a more concrete recommendation that says the documents will be made available for reviewing but will not be made available for copying the documents. Everyone seems to agree with this language.

*Ingram*: Strongly recommends that there be punitive measures put in place for anyone that releases the information contained in documents being reviewed.

*Dismukes*: States that there is already a provision in the statues that takes punitive measures.

*Colvin*: Calls a consensus vote on Recommendation No.1, and it passes unanimously.

# Review of Recommendation #2

*Dismukes*: Has made one change since the document was last distributed to the working group regarding recommendation subsection 2 of this recommendation. This recommendation would dovetail the recommendation regarding data collection on use of force that WG #2 is focused on, and then ultimately combined with that recommendation. A few things to take into consideration are: (1) collecting demographic data from officers involved in enumerated areas of officer interactions; (2) avoiding duplicate work by taking into account current NIBRS requirements, taking into consideration the inability of smaller agencies to comply with NIBRS; and (3) making the reporting mandatory.

# Discussion of Recommendation #2 regarding Data Collection

*Chief Davis*: Relating to traffic stops, data collection in this area would be easy. In most areas, there would not be a huge burden on the agencies because most of what is listed in the recommendation is already captured, at least in Durham County.

*Dismukes*: Asks Chief Davis about the scope of the information the capture, regarding demographics. Meaning, does the data include the officers and the person who has been detained or stopped.

*Chief Davis*: Currently, Durham County only captures the demographic information for officers in the category of use of force. There would have to be new policies instated at the agency to capture that same information in other categories of police interaction. Poses a question about the context in which this data would be offered to the public. For example, what kind of message is being sent when the majority of your officers are of one race? – This concern derives from the fact that there may be more white officers issuing traffic tickets than any other race, but that could be due to the fact that there are more white officers in law enforcement than officers of color. Chief Davis wants to know how the working group can put the data collected into that context, when offered to the public.

*Dismukes*: Asks Chief Davis if she has any thoughts on how exactly her concerns could be addressed in the recommendation language.

*Ingram*: Believes that data collection of officer demographics could present more questions than answers or the public. Sheriff Ingram is also concerned about what is reported to NIBRS, because particularly in his department, there is more data collected than is required by NIBRS. This recommendation would have to be done separately because it may be difficult to get NIBRS to capture this amount of information.

*Dismukes*: Proposes that the SBI 122 (Traffic Stop Report) could be modified to include the data collection proposes by the working group; Sheriff Ingram agrees with this, as long as the recommendation does not go any further. Dismukes responds that the conversations had with the SBI in preparation for this meeting seemed to indicate that the center is considering all these issues in data collection in aggregation. Mayor Colvin rejoins, after changing devices, and Ms. Dismukes fills Colvin in on the discussion that has ensued.

*Chief Davis*: Adds that in Durham County, the department began to collect the data regarding the disposition of the stop, which tells a much more comprehensive story about the traffic stops. This context gives clarity to the data and mitigates thoughts of targeted stops and concerns of that nature. Overall, Chief Davis believes it is wholly important that the data be put in the broadest context reasonably possible.

*Colvin*: Agrees with Chief Davis. Asks a question regarding what, from a professional law enforcement perspective, is missing that allows agencies to monitor racial profiling by officers.

*Chief Davis*: Internally, in Durham County, the data is captured per officer as it relates to their traffic stops. There is also a threshold, meaning if an officer has stopped a certain number of vehicles in a particular area or of a particular demographic, it will trigger some questioning of potential reasons for that pattern. Believes individual departments should be responsible for monitoring these types of discrepancies, and perhaps this should be included in the recommendation.

*Ingram*: Agrees with Chief Davis. Believes that this recommendation will help law enforcement agencies monitor racial profiling within the agency, and any other racial discrepancies occurring in the agency.

*Colvin*: Agrees with both Chief Davis and Sheriff Ingram.

*Dismukes*: Asks the question of whether this is a change to current data collection or a recommendation for the working group to put forth. Chief Davis responds that she believes that it is a recommendation. The next thing the that needs to be discussed on this topic is whether the working group wants to make data collection mandatory and include any other penalties for noncompliance.

*Colvin*: Would like to know how this relates to the accreditation of noncomplying agencies, and whether there is an impact on accreditation.

*Chief Davis*: Accreditation is impacted. There are guidelines through CALEA regarding data collection and setting guidelines for police departments to identify communities that are “overpoliced” or disparate treatment in certain communities. Chief Davis mentions that the state is working on an accreditation process, which will encompass some of these data collection initiatives.

*Ingram*: Has access to a booklet of the proposed accreditation process of North Carolina. Sheriff Ingram can look through it to see if there is anything that encourages compliance, as it would be helpful in discussions with the working group.

*Chief Davis*: Would like to know if the penalties for failure to comply are penalties related to the accreditation process.

*Dismukes*: Is not sure, as she is not well-versed in the particulars regarding penalties that could be levied against agencies for noncompliance.

*Ingram:* Believes that the language, as is, is too broad.

*Dismukes*: Changes recommendation language from “failure to comply” to “agencies who fail to comply.”

*Colvin*: Calls a vote for the recommendation. Recommendation passes unanimously.

# Review of Recommendation #3

*Dismukes*: Prefaces the conversation by stating that the group has previously talked about the fact that it is not required under the Sheriff’s Standards Rules, but it is for CJ. An extensive advisory group from the Criminal Justice Standards Commission was conducted and the recommendation quotes their findings. With that said, the question is whether the working group wants to make any suggestions to the Planning and Standards Committee as they consider the findings of the Criminal Justice Standards Commission.

# Discussion of Recommendation #3 regarding Psychological Evaluations

*Colvin*: Mayor Colvin is concerned with whether the working group making a recommendation that incorporates these findings would impede the work of CJ Standards Commission.

*Dismukes*: Responds to May Colvin that it would not impede. The working group would be recommending that CJ continue to look at the issue of psychological evaluations. Proposes that the working group potentially table the recommendation until more members of the working group are able to weigh in.

*Colvin:* Mayor Colvin is in favor of tabling the recommendation. Asks both Chief Davis and Sheriff Ingram what their thoughts are on tabling the recommendation.

*Chief Davis*: Agrees that the recommendation should be table. Also believes that the working group should have a person with a human resources background, especially for existing officers, where agencies are making recommendations more periodically (e.g., every two years). Raises the question of what to do in a situation where you have an officer with a spotless record, but after their bi-annual evaluation, it is determined that the officer is no longer suited for police work. Also raises the question of whether a municipality would be willing to go through potential employment litigation based on the recommendations by agency psychologists.

*Ingram*: Believes that it is something that we need to implement for pre-employment, and the ability to do post-employment when an officer experiences a traumatic event. However, disagrees with the notion of arbitrarily having required psychological evaluations because of costs, the potential problematic outcomes of requiring officers to do psychological evaluations. Also states that, ultimately, there are things built in, such as early warning systems, that would help monitor and decide whether or not to put someone through a psychological evaluation.

*Colvin*: Is in favor of tabling the recommendation and would also like to hear about the programs that departments have in place to help identify when they need to pay more attention to particular officers.

*Chief Davis*: Motions to table Recommendation #3 regarding Psychological Evaluations.

*Ingram*: Seconds the motion.

*Colvin*: Calls the vote for all of those in favor, against, or abstaining. Vote passes unanimously to table Recommendation #3.

# Review of Recommendation #4

*Dismukes*: This recommendation involves investigation and prosecution of Officer Involved Use of Force Incidents. There has been a good amount of feedback from both the Task Force and the public stating that there should be a standardized entity who investigates use of force incidents. This recommendation is centered around that feedback, would require that the SBI be designated to investigate all use of force investigations. These investigations would include (1) officer-involved shootings regardless of if the shooting results in death, (2) other use of force incidents which result in death, (3) sexual assaults by law enforcement officers, and (4) all officer involved in-custody deaths. If the SBI is involved in any of the aforementioned investigations, there would need to be an agency to investigate the SBI. The recommendation says that could be an out-of-state equivalent to the SBI, such as SLED in South Carolina. This recommendation, to be truly implemented, would require budgetary increases to the SBI I order for them to be handle these investigation, and it would be left to the SBI to generate the calculations that would need to be supported to ensure there are enough people employed to handle these cases. Currently, the SBI investigates on a “as requested” basis. The recommendation does not take that power away. Instead the recommendation mandates that when an incident falls within the categories mentioned above, that the SBI is the entity that would need to do the investigation.

 The second part of the recommendation is, on the prosecution side, who is going to handle those cases at the statewide level. With that said, the recommendation would require the enactment of a statute the requires the appoint of a special prosecutor to handle those cases. That would either be member from the Attorney General’s staff, an ADA from a neighboring prosecutorial district, or an attorney from the conference of District Attorneys. There would need to be an increase in budget for this recommendation as well.

# Discussion for Recommendation #4 regarding Investigation and

# Prosecution of Officer-Involved Use of Force Incidents

*Ingram*: Does not agree with the first sentence of the recommendation which reads as the following: “Enact a statute requiring the [SBI] be designated to investigate all OIUFI in which local law enforcement officers or officers form another state agency are involved.” Sheriff Ingram is concerned with the scope of that sentence.

*Dismukes*: Clarifies that the SBI would be only be called for the enumerated reasons in the recommendation.

*Ingram*: Agrees with that completely but proposes that the first sentence be re-drafted in order to narrow the scope specifically to the enumerated incidents.

*Chief Davis*: Proposes that the language be changes to say, “The following use of force incidents.”

*Chief Davis*: Raises the issue of budget increases.

*Dismukes*: Responds that when this recommendation was ran through the general counsel office of the SBI, and this concern was raised there as well.

*Colvin*: Calls for a motion to move the recommendation to the Task Force. Sheriff Ingram and Chief Davis motion and second. The vote passes unanimously.

# Review of Recommendation #5

*Dismukes*: The main difference between the statute as is and the “track changes” that Ms. Dismukes has added is subsection one deals with the “knock-and-announce” rule, and also if you knock and announce when can you go in after a delay in response, or no response at all. The change to the original statute would be to change “officer’s reasonable belief” to “has probable cause to believe.”

 Regarding subsection two, commonly referred to as the “no-knock provision,” the original statue reads “the officer has probable cause to believe that the giving of notice would endanger the life or safety of any person.” Even though most agencies already get prior approval for no-knock warrants, it is not statutorily required. The statutory language should be amended to include the language “and has received previous approval by a judge.”

 Proposal for a subsection three, which would add in a definition for what an “unreasonable delay” in, as it would be used in subsection one.

 Question for consideration – Should WG 1 also modify state law to allow local jurisdictions to ban the use of no-knock warrants completely?

# Discussion of Recommendation #5 regarding Statutory changes to

# no-knock warrant provisions

*Ingram*: Thinks we should be very strict with regards to no-knock warrants, because there are situations, like a hostage situation, where knocking would substantially increase the risk of injury of a person. Sheriff Ingram is worried about the language of the statute being overbroad.

*Chief Davis*: The additional language in subsection two which says, “and has received previous approval by a judge” keeps the officer from being able to react to unforeseeable or exigent circumstances.

*AG Stein*: In reference to Breonna Taylor, AG Stein would like to know how we prevent a similar situation from happening?

*Chief Davis*: Responds that subsection two, as currently worded, allows for an officer to prevent a similar situation, if followed correctly. As Sheriff Ingram stated, Chief Davis is concerned about the situation when an innocent person is harmed because an officer is unable to make that split-second decision.

*Dismukes*: Synthesizes the concerns down to what seems to be a desire to balance be explicit about when no-knock warrants are and are not applicable to a situation, and the ability of an officer to react in the moment. Proposes that this could be fixed by adding to the beginning of subsection two, “No-knock warrants are disallowed, except when,” as opposed to the current change at the end of subsection two.

*Ingram*: Would like to know if there is any data as to how many issues North Carolina has had with the statute, as currently written regarding no-knock warrants.

*Dismukes*: In her anecdotal research, there is anything that comes to mind regarding any data in that area.

*Ingram*: Proposes that this recommendation be tabled, so that he and Chief Davis can reach out and try to gather more information on the subject.

*Colvin*: Mayor Colvin says that he fine with tabling the recommendation, particularly in regards the question about information regarding the application of the statute as written.

*Jasmine*

*McGhee:* Adding the point that local jurisdictions have expressed an interest in being able to modify local law regarding no-knock warrants, so it is important that this information be looked into.

*Ingram*: Motions that the recommendation be table; Chief Davis seconds.

*Colvin*: Calls a vote on tabling Recommendation #5; passes unanimously.

# Next Steps

*Dismukes*: The three recommendation that were approved in this meeting will be sent out to the general Task Force as a poll, and any changes that are made will be brought back to the working group to be made, if necessary. Next week, the tabled recommendations will be reconsidered, as well as body cameras.

Meeting Adjourned at 12:08 pm EST.

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