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H.535

Introduced by Representatives Wizowaty of Burlington, Buxton of Tunbridge,
French of Shrewsbury, Johnson of South Hero, Lippert of
Hinesburg, McCullough of Williston, O’Sullivan of Burlington,
Pearson of Burlington, Peltz of Woodbury, Spengler of
Colchester and Yantachka of Charlotte

Referred to Committee on

Date:

Subject: Racial disparities in the criminal justice system; bias-free policing
policies

Statement of purpose: This bill proposes to fund a study to determine whether
extrajudicial factors contribute to existing racial disparities observed in
Vermont’s criminal justice system and whether there is disparate treatment of
persons on the basis of race, color, or national origin by various components of
the Vermont criminal justice system. The bill further proposes that each and
every law enforcement agency in Vermont adopt no later than January 1, 2013
a bias-free policing policy.

An act relating to racial disparities in the Vermont criminal justice system

It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. LEGISLATIVE FINDINGS

2 The general assembly finds that:

3 (1) In 2010, the United States Census counted a total Vermont
4 population of 625,741, of which 95.3 percent were white, 1.0 percent
5 African-American, 1.5 percent Hispanic/Latino, 1.3 percent Asian, 0.4 percent
6 American Indian, 0.3 percent other and 1.7 percent reporting that they were of
7 two or more undisclosed races.

8 (2) The Vermont Department of Corrections (DOC) reported in its *Facts*
9 and *Figures: FY2010* that by November 2010, African-Americans made up
10 10.3 percent of Vermont inmates—more than ten times the rate that African
11 Americans appear in the general population of Vermont. In the same report,
12 DOC reported that on June 1, 2001, 5.1 percent of Vermont inmates were
13 identified as African-American. DOC data show that the percentage of
14 African-Americans incarcerated in Vermont has been steadily increasing since
15 1993, far surpassing the growth rate for any other racial group.

16 (3) A 2003 study by the Vermont Center for Justice Research (“the
17 Center”), *Exploring the Dynamics of Race and Crime Using Vermont NIBRS*
18 *Data* by Bill Clements, using arrest data from 1993–2000, found that
19 African-Americans experienced a significantly higher arrest rate (69 percent)
20 than whites (57 percent), Asians (53 percent) or Native Americans (62
21 percent). In that study, regression analysis suggested that as a result of race,

1 African-American males were 1.5 times and African-American females were
2 2.6 times more likely to be arrested than their white counterparts.

3 (4) A 2007 Center study, *Felony Sentencing in Vermont: 2001–2006* by
4 Robin Adler, found that nonwhite felony defendants were more likely to be
5 sentenced to incarceration than white defendants even after controlling for all
6 other variables.

7 (5) Discretionary decision-making by a variety of criminal justice
8 professionals may result in racial disparities in criminal justice systems. In
9 every step of the criminal justice process, persons exercise discretion,
10 including:

11 (A) the initial investigation by law enforcement;

12 (B) the decision to lodge or release on citation;

13 (C) the decision by prosecutors to file a particular charge;

14 (D) the prosecutor's bail recommendation;

15 (E) the judge's bail decision;

16 (F) the plea negotiation process;

17 (G) the defendant's decision whether to exercise the right to a trial by
18 jury;

19 (H) the prosecutor's sentencing recommendation;

20 (I) the judge's sentencing decision as to a jail or probationary
21 sentence;

1 (J) the department of corrections' programming decision, supervision
2 practices, and its recommendation to release on parole; and

3 (K) the parole board's decision whether to grant parole.

4 (6) Vermont has become, and will continue to become, more racially
5 diverse.

6 (7) Tolerance and concern for all people regardless of race, color, or
7 national origin has long been part of the legacy of Vermont, the first state to
8 outlaw slavery and a leader in prohibiting discrimination in public
9 accommodation, employment, banking and insurance, education, and housing.

10 (8) It is critically important that officials from all three branches of
11 government have access to the data and the analysis of that data to be able to
12 knowledgeably investigate and assess the extent of racial and ethnic disparities
13 in Vermont's criminal justice system. This assessment is necessary to identify
14 practices of criminal justice professionals that have a disparate impact on racial
15 and ethnic minorities, so that remedies can be fashioned to address such
16 practices promptly and effectively.

17 Sec. 2. APPROPRIATION

18 (a) The Vermont Center for Justice Research shall examine issues
19 surrounding the effect of race on sentencing practices in Vermont, with a
20 particular focus on the following:

1 (1) How do the sentences of African-American defendants compare to
2 the sentences of white defendants with respect to sentence type, length of
3 sentence, and level of restriction?

4 (2) How does the actual time spent by African-American defendants
5 under DOC supervision (and the degree of restriction) compare to the time
6 spent by (and the degree of restriction of) white defendants?

7 (3) If disparate sentencing patterns and/or disparate service patterns
8 exist for African-Americans, what variables included in the study design
9 explain the disparity?

10 (b) Results of the study shall be reported to the house and senate
11 committees on judiciary by January 15, 2013.

12 (c) The general assembly appropriates \$40,000.00 to the Vermont Center
13 for Justice Research to support this data collection, analysis, and report.

14 Sec. 3. 20 V.S.A. § 2366 is added to read:

15 § 2366. LAW ENFORCEMENT AGENCIES TO ADOPT A BIAS FREE

16 POLICING POLICY

17 No later than January 1, 2013, every state, local, and municipal law
18 enforcement agency that employs one or more certified law enforcement
19 officers shall adopt a bias-free policing policy. Said policy shall contain all of
20 the essential elements of such a policy as determined by the Law Enforcement

- 1 Advisory Board after its review of the current Vermont State Policy and the
- 2 model policy issued by the office of the attorney general.