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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.

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

19 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 (62 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.~~

*Sec. 1. LEGISLATIVE FINDINGS*

*The general assembly finds that:*

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

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

*(3) A 2003 study by the Vermont Center for Justice Research (“the Center”), Exploring the Dynamics of Race and Crime Using Vermont NIBRS Data by Bill Clements, using arrest data from 1993–2000, found that African-Americans experienced a significantly higher arrest rate than whites.*

Asians, or Native Americans. In that study, regression analysis suggested that as a result of race, African-American males were 1.5 times and African-American females were 2.6 times more likely to be arrested than their white counterparts.

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

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

(A) the initial investigation by law enforcement;

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

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

(D) the prosecutor's bail recommendation;

(E) the judge's bail decision;

(F) the plea negotiation process;

(G) the defendant's decision whether to exercise the right to a trial

by jury;

(H) the prosecutor's sentencing recommendation;

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

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

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

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

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

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

(9) The supreme court of Vermont, pursuant to its constitutional responsibilities, has adopted a Code of Conduct and Employee Discipline

governing all employees of the judiciary, providing that behavior based on bias will not be condoned or tolerated.

(10) The office of the state court administrator, through its comprehensive judicial education program for judicial officers and its educational programs for court managers and court staff, regularly conducts and supports programs focused on diversity issues, implicit bias, cultural awareness, and the requirements of the relevant codes of conduct.

(11) The Uncommon Alliance of Chittenden County, which included members of the communities of color as well as representatives of the police departments of Burlington, South Burlington, Winooski, the University of Vermont, and Vermont civil rights organizations, is commended for its work, in particular, opening dialogue and initiating the voluntary collection and analysis of roadside-stop race data for the first time by law enforcement agencies in Vermont.

(12) The Vermont state police are further commended for extending the voluntary collection and analysis of roadside-stop race data statewide.

**Sec. 2. STUDY; APPROPRIATION**

(a) Research regarding sentencing practices routinely concludes that two variables drive sentencing decisions—the seriousness of the offense and the defendant’s risk to reoffend. The Vermont Center for Justice Research (“the Center”) shall examine the effect of these and other variables, including the

race of the defendant on sentencing decisions in Vermont for a five-year period. The Center shall use data from the Federal Bureau of Investigation Interstate Identification Index, department of motor vehicles, Vermont criminal information center, department of corrections, and the Vermont courts to explain if the disparities are based on legal or nonlegal factors. The Center's research shall focus on the following:

(1) How do the sentences of people of particular census categories, in the aggregate and by national incident-based reporting system race data fields (NIBRS), which currently include white, black, Asian, Native American or Alaskan Native, and Hispanic, compare to the sentences of white defendants with respect to sentence type, length of sentence, and level of restriction?

(2) How does the actual time spent by people of particular census categories, in the aggregate and by NIBRS race data fields under department of corrections' supervision (and the degree of restriction) compare to the time spent by (and the degree of restriction of) white defendants?

(3) If disparate sentencing patterns or disparate service patterns exist for people of particular census categories, in the aggregate and by NIBRS race data fields, what variables included in the study design explain the disparity?

(b) On or before December 15, 2012, results of the study shall be reported to the house and senate committees on judiciary, the court administrator, and

to each organization or entity represented on the governor's criminal justice cabinet.

(c) The general assembly appropriates \$20,000.00 to the Vermont Center for Justice Research to support this data collection, analysis, and report.

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

§ 2366. LAW ENFORCEMENT AGENCIES; BIAS-FREE

POLICING POLICY; RACE DATA COLLECTION

(a) No later than January 1, 2013, every state, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers shall adopt a bias-free policing policy. The policy shall contain the essential elements of such a policy as determined by the Law Enforcement Advisory Board after its review of the current Vermont State Police Policy and the most current model policy issued by the office of the attorney general.

(b) The policy shall encourage ongoing bias-free law enforcement training for state, local, county, and municipal law enforcement agencies.

(c) State, local, county, and municipal law enforcement agencies that employ one or more certified law enforcement officers are encouraged to work with the Vermont association of chiefs of police to extend the collection of roadside-stop race data uniformly throughout state law enforcement agencies, with the goal of obtaining uniform roadside-stop race data for analysis.

*Sec. 4. 20 V.S.A. § 2358 is amended to read:*

*§ 2358. MINIMUM TRAINING STANDARDS*

\* \* \*

*(e) The council shall include, as part of the criteria for all minimum training standards under this section, anti-bias training approved by the Vermont criminal justice training council.*

*Sec. 5. 24 V.S.A. § 1939 is amended as follows:*

*§ 1939. LAW ENFORCEMENT ADVISORY BOARD*

\* \* \*

*(e) The board shall examine how individuals make complaints to law enforcement and suggest, on or before December 15, 2012, to the senate and house committees on judiciary what procedures should exist to file a complaint with law enforcement and the human rights commission.*

*Sec. 6. CRIMINAL JUSTICE AGENCIES; BIAS-FREE CRIMINAL  
JUSTICE POLICY*

*The general assembly encourages all criminal justice entities through their professional rules of conduct to ensure that all actions taken are done in a manner that is free of bias.*