



Mark Hughes, ED, Justice For All: Act 54 Testimony
Senate Government Operations Committee (revised)
January 30, 2018

I am Mark Hughes, Executive Director of Justice For All; a Vermont based racial justice organization. JFA is the anchor organization of the Racial Justice Reform Coalition, the 32 Organization Coalition from which Act 54 originated. Collectively, we represent the voices of tens of thousands of Vermonters. I am retired army officer and an ordained minister. I am also the co-chair of the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel. I serve on the Board of Directors of Rights and Democracy and I one of the Tri-chairs of Vermont Poor People's Campaign: A National Call For Moral Revival.

Last year the Racial Justice Reform Coalition put forward H.492 in the House. The bill was for the formation of a Racial Justice Reform Oversight Board with the responsibility of conducting management and oversight of the implementation of racial justice reform **across the State, including within the criminal justice system**. These responsibilities included compliance oversight of the Fair and Impartial Policing Policy, Race Traffic Stop Data Collection and Training (20 V.S.A. § 2366 and § 2358). Other responsibilities that were initially sought in this legislation included providing a number of recommendations to the Criminal Justice Training Council and the Vermont Bar Association surrounding on data collection, model training and policy for law enforcement, prosecutors, public defenders, judges, and correctional officers to recognize and address implicit bias and conduct statewide oversight on adoption and implementation and advising the Criminal Justice Training Council model training and policy on the use of force in policing.

The bill further mandated the Panel to educate and inform businesses, educational institutions, State and local governments, and the general public about the nature and scope of racial discrimination and the systemic and institutionalized nature of race-based bias and advise and consult with the Executive and Legislative Branches of State government on the assessment of racial impact of policies and legislation.

H.492 required that Board report to the General Assembly, and provide as a part of that report recommendations on:

- 1) methods of oversight and professional regulation of the criminal justice system, including a statewide program for civilian oversight of law enforcement;
- 2) processes and methodologies to achieve an independent prosecutorial body for investigating and prosecuting law enforcement misconduct;
- 3) instituting a public complaint process to address misconduct in the criminal justice system;
- 4) expanding jurisdiction of the Board to address institutionalized racism in education, health services access, employment, and housing policy;



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- 5) prohibiting racial profiling, including any associated penalties;
- 6) requiring law enforcement to expand its race data collection practices
- 7) amending the constitution to remove slavery

H.492, mandated Appropriate Use of Force Training, called for immediate adoption and prescribed an update process for the Fair and Impartial Policing Policy and gave the Board responsibility for management of the centralized race data repository.

H.492 was transformed into Act 54, which created the Racial Disparities in the Criminal and Juvenile System Advisory Panel. The Panel is charged to **review and provide recommendations** to address systemic racial disparities in statewide systems of criminal and juvenile justice. This includes continually reviewing the data collected pursuant to 20 V.S.A. and **providing recommendations** to the Criminal Justice Training Council and the Vermont Bar Association, on data collection and model trainings and policies for law enforcement, judges, correctional officers, and attorneys, including prosecutors and public defenders.

Act 54 calls for the Panel to provide various recommendations, one of which is to the Criminal Justice Training Council on race data collection and model training and policy on de-escalation and the use of force in the criminal and juvenile justice system. The bill also gives the Panel a charge of **educating and engaging** with communities, businesses, educational institutions, State and local governments, and the general public about the nature and scope of racial discrimination in the criminal and juvenile justice system and **monitoring progress** on the recommendations from the 2016 report of the Attorney General's Working Group on Law Enforcement Community Interactions. The **reporting requirements to the General Assembly include** providing recommendations to address systemic implicit bias in Vermont's criminal and juvenile justice system. Specifically, the Panel was given the charge of **providing recommendations** on how to institute a public complaint process to address perceived implicit bias across all systems of State government; whether and how to prohibit racial profiling, including implementing any associated penalties; and whether to expand law enforcement race data collection practices to include data on non-traffic stops by law enforcement.

Finally, Act 54 calls for the CJTC to report [to the panel] progress on implementation of panel recommendations on data collection, policy and training and incorporation of implicit bias into basic training; requires the Attorney General and the Human Rights Commission to jointly report to the Justice Oversight Committee on a systemic racism mitigation strategy for housing, employment, education, health



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services and economic development; extends the implementation deadline and creates a systematic update process for the Fair and impartial Policing Policy.¹

Let's be clear, H.492 was crafted to create an organization with the authority to manage and oversee of the implementation of racial justice reform **across the State, including within the criminal justice system**). **H.308** established a panel to review and provide recommendations to address systemic racial disparities in statewide systems of criminal and juvenile justice; calls for the Attorney General and HRC Director to provide recommendations in other systems and extends the deadline and provides updates on the Fair and Impartial policing Policy. In our analysis, H.308 directly addresses five of 20 twenty original intents of H.492.

The Panel

Christine Longmore is the Chair and I serve as the Co-chair of the Panel. The Panel has had several meetings and recently requested an extension. I am currently seated on the Data and racial profiling committees.

The Racial Justice Reform Coalition submitted a letter of concern to the Attorney General and Legislature surrounding delegation of authority of panel members and the implementation of the Fair and Impartial Policing Policy. The only response to our concerns voiced about delegation was an explanation of the "letter of the law" from the President Pro Tempe. In response to our concerns about what we viewed as a CJTC statute infraction in changing the policy unilaterally (November 21st) in response to the US Attorney General's threats to withdraw funding, we have been in discussions with the Pro Tempe and there seems to be no resolution in sight. The Racial Justice Reform Coalition has also made a recommendation to the Panel that they would consider recommending the adoption of S.281.

The Act 54 Report

At the heart of the Act 54 Report, is the theme to "reduce racial disparities by changing the underlying culture of our state with regard to race". The three ways in which it is suggested that this be done are to "teach children from an integrated curriculum that fairly represents both the contributions of People of Color; educate state employees about implicit bias, White Privilege, White Fragility and White Supremacy; and increase the representation of People of Color in the state and school labor forces by focusing on recruitment, hiring and retention...". All of this is important but misses the point of how one goes about addressing a 400-year-old problem (systemic racism) taking into consideration its systemic nature.



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In acknowledging systemic racism, it is important that we make the same thing that drives it the center of the discussion. Money. With only 20 thousand dollars (Act 134, 2012) spent seeking to address this in State history, we can do better. Since it was the exploitation of black and brown bodies that built this nation and it's economy and it is sustained on the backs of black, brown and poor people, to not be willing to make bold and radical financial steps to address this issue will simply elongate if not perpetuate our challenges.

It is my feeling that if the argument to ensure that that black and brown people are provided equity and equal opportunity comes down to our ability to attract people to this State, we will have done nothing to honestly change the culture in regards to race. Immigration, policing, corrections and even our Human rights commission are all bound and dependent on funding that causes them to work against the best interest of black and brown people. I'm sure that it insults most people of color to think that the driving reason that people of color would be afforded our God given civil liberties would be to provide Vermont an economic advantage. This mentality is as old as the days are long. Once again black and brown bodies are considered in terms of our ability to produce profitability. When Stephen Jacob (who would later become a Vermont Supreme Court Justice amongst many other roles) purchased his slave Dinah in 1783. It took until 1801 for the town to protest. When she became blind and "infirm" Jacob discarded her, leaving the town to care for her. It was only after the town was forced to take financial responsibility for her did anyone have a concern about her disposition and then only because of she served as a "financial burden" to the town.

Secondly, we must be serious about our solutions to the extent that we not once again try to comport systemic racism, America's original sin into some existing framework, relegating it to the status of yet another vertical challenge as opposed to the true horizontal plague that it represents. Because of the very nature of our challenge, it is important that our approach be one that is centralized to enable oversight across all the things to ensure a standardized approach and economies of scale. This will also enable a consultative approach and better facilitate tight data integration, aggregation and correlation.

At the meeting on the 28th of September with the Assistant Attorney General and the HRC Director, one of the breakout sessions that included about five of the 33 participants was called Horizontal. I am submitting the notes that member (Kate Farley) submitted one month before the report was released. I do so because there seems to no trace of it in the Act 54 report. I feel that the absence of this input (that Representative Morris, myself, Kate Farley, James Lyle and at least two other



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participants in our group provided) leaves the report lacking in recommendations of proven mitigation methods of data collection, policy, and training.

The report in a discussion on education states “Students of color are disproportionately subject to school exclusion. First raised in the 2015 report, *Kicked Out! Unfair and Unequal Discipline in Vermont’s Public Schools*, the statistics have since been replicated by the Agency of Education in a subsequent report in school exclusion”. Our research indicates that the Vermont Advisory Commission to the United States on Civil Rights produced the report, *Racial Harassment in Vermont Schools* in 1999. There was a follow-up report provided in 2003, indicating no progress.

My final observations on the report are that the recommendations generally fall short of suggestions that have material systemic impacts. It should be noted that though the Governor has a role to play (particularly in the area of his appointments) excessive reliance on the Executive involvement would add to the systemic nature of the problem.

The Policy

The Attorney General’s Office does not provide oversight to Vermont police; they are an equal member on the VCJTC and only serve in an advisory capacity.

The Fair and impartial Policing Policy is the last component of Act 54. First Title 20 2366 not only covers the policy but data collection as well. In opening this statute this year, it is my hope that we address the state of all of the data collected by 79 agencies. It is buried on the Crime Research Group web site, defying the essence of the statute that it would be made publicly available. If one does locate it, it will require an above novice skill set to make any use of it. There is neither comparison nor trending functionality. This data serves no useful purpose but to satisfy the requirements that law enforcement collected and made in publicly available. Hopefully this will be taken into consideration in deliberations on S.281.

The policy has been kicked down the road for far too long. Earlier, I heard it stated by the VCJTC ED and the chair that we should once again delay the implementation of the policy. From Act 134, (2012) to Act 193 (2014), to Act 147 (2016) and Act 54 (last year), I have yet to see the policy fully implemented and to continue to chase this almost feels like it is only serving a distraction from getting other work done, like addressing the rest of the criminal justice system. H.492 asked for it’s immediate adoption. With The AG’s Guidance and language in S.79 and Act 54



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nullifying it if it defied federal statute, it should have been a done conversation. Sadly, after all of the work that has gone into getting this policy that was designed for protected category civil liberty protection, no one seems willing to hold the CJTC accountable for unilaterally changing it. It calls into question Article 5 of the Constitution, the Constitution itself and entire system. Perhaps the question should be who is overseeing the police? Why isn't anyone talking about the fact that Vermont spends over 600M / year on "so called" public safety; that the SPAC Chair is an attorney that defends police; that the VCJTC is moving legislation that adds LE (though they are already seated) and removing civilians; that other legislation is elevating the DPS Commissioner to Agency status? The criminal justice system has always ben used to "manage" and economically exploit black, brown and poor bodies. We can't have a conversation about systemic racism without this discussion. Act 54 was a step in the right direction and we have a long ways to go.

Thank you for your time and considering my testimony.

Mark Hughes, ED
Justice For All