Fair and Impartial Policing in Vermont:

Problems and Solutions

Implicit Bias and Systemic Racism in Vermont

Vermont currently leads the nation with 1 out of 14 adult black males incarcerated.[1] Recent data from traffic stops across the state's 69 law enforcement agencies shows that after being stopped black drivers are four times more likely to be searched than white drivers even though white drivers are more likely to be found with contraband.[2]

These are concrete examples of the impacts of **implicit bias** and **systemic racism** within the criminal justice system in Vermont.

Implicit bias refers to those beliefs that we are not aware of, but impact our decision-making and judgment, regardless of our conscious beliefs and intentions. The presence and importance of implicit bias has been acknowledged in the fields of psychology as well as law.[3]

> *"The science of implicit cognition suggests that actors do not always have conscious, intentional control over the processes of social perception, impression formation, and judgment that motivate their actions."*[3]

Implicit bias is a part of *systemic racism*, wherein "discrimination reflects and perpetuates the age-old racist frame with its associated array of antiblack attitudes, images, and emotions."[4] The explicit racist policies of slavery and Jim Crow laws created the structural impoverishment of African-American people while simultaneously creating an abundance of dehumanizing images and narratives about them. In the 80s, these images and narratives were used to affect public support for the "War on Drugs"[5] while law enforcement agencies met their required progress benchmarks by ramping up "policing and arrest in already disadvantaged neighborhoods, which are disproportionately poor and black. The predictable outcome… is a rise in black arrests and incarceration."[6] The "War on Drugs" drew upon existing racist biases and disenfranchisement to enact new forms of disenfranchisement through incarceration, and new biases around black criminality, which are seen here in Vermont.

[1] Nellis, A. (2016). *The color of justice: race and ethnic disparity in state prisons*. The Sentencing Project.

[2] Seguino, S., & Brooks, N. (2017). *Driving while black and brown in Vermont*. iv.

[3] Greenwald, A. G., & Krieger, L. H. (2006). Implicit bias: Scientific foundations. *California Law Review*, *94*(4), 945-967.

[4] Feagin, J. R. (2014). *Racist America: Roots, current realities, and future reparations*. Routledge. 145.

[5] Alexander, M. (2012). *The new Jim Crow: Mass incarceration in the age of colorblindness*. The New Press. 5.

[6] Bobo, L. D., & Thompson, V. (2006). Unfair by design: The war on drugs, race, and the legitimacy of the criminal justice system. *social research*, 445-472.

Fair and Impartial Policing

While the cycle of systemic racism and implicit bias is difficult to interrupt, Fair and Impartial Policing (FIP) efforts have been shown to be effective in increasing awareness of implicit bias.[7] There are four components Fair and Impartial Policing:

1. Fair and Impartial Policing Policy

FIP policy clarifies the "circumstances in which officers can consider personal characteristics when making law enforcement decisions"[8] in interactions with suspects, witnesses, victims, and the public in order to stop biased policing and assure that all decisions are based on facts, reasonable suspicion, probable cause and other legal standards.

2. Fair and Impartial Policing Training

FIP training strives to make law enforcement officers aware of the impact that implicit bias has upon their decision-making, as well as the social and historical

> *"While training cannot easily undo the implicit associations that took a lifetime to develop, the social psychologists have shown that, with information and motivation, people can implement controlled (unbiased) behavioral responses that override automatic (biased) associations."*[9]

factors that contribute to their implicit biases.[9]

3. Data Collection

Collecting multiple points of data points on law enforcement interaction is necessary to track the effectiveness of FIP training and policy in decreasing racial disparities and is necessary in creating a culture of accountability in fact-based policing.

In every law enforcement interaction there are a series of decision-points where an officer uses discretion. The outcomes of these decisions need to be systematically collected to track impartiality. Stephanie Seguino and Nancy Brooks' recent report on traffic stops in Vermont, for example, uses data on stops, citations and arrests, searches, and search outcomes for example to provide a complete analysis.[10]

4. Civilian Oversight of Law Enforcement

Civilian oversight mechanisms often focus on the agencies' response to complaints against the police. There are, however, a range of ways that civilian oversight mechanisms can be proactive in developing transparency, organizational checks and balances, coalitions between law enforcement and community and greater public trust in law enforcement.[11]

[7] Richardson, L. G., (2015). Police Racial Violence: Lessons from Social Psychology. *Fordham Law Review*, *83*(6), 2961-2976.
[8] Vermont Criminal Justice Training Council. (2016) *Model Fair and Impartial Policing Policy.* http://vcjtc.vermont.gov/content/model-fair-and-impartial-policing-policy

[9] Fridell, L. (n.d.). Fair and Impartial Policing. Retrieved February 28, 2017, http://www.fairimpartcialpolicing.com/
[10] Seguino, S., & Brooks, N. (2017). *Driving while black and brown in Vermont.*
[11] Miller, J., & Merrick, C. (2002). *Civilian oversight of policing: Lessons from the literature.* Vera Institute of Justice.

Moving Toward Bias-Free Policing in Vermont:

The following list highlights reports, policies, and legislative actions that have been undertaken in Vermont in the last ten years to move toward Fair and Impartial Policing in the State:

2008 – **Racial Profiling in VT**. The Vermont Advisory Committee to the US Commission on Civil Rights made the recommendations that Vermont should:

- Collect traffic stop data
- Develop a model bias-free policing policy
- Require anti-bias policing training
- Put video cameras in patrol vehicles
- Develop police-community partnerships
- Consider legislation prohibiting racial profiling[12]

2012 – Act 134, H.535, An act related to racial disparities in the Vermont criminal justice system. This law required he adoption of bias-free policing policies in all law enforcement agencies anti-bias training, and the uniform collection of traffic stop race data

2014 – Act 193, S.184, This law established the process and timeline for the Criminal Justice Training Council (VCJTC) to design and adopt a model fair and impartial policing policy and mandated the collection of traffic stop data by all law enforcement agencies

2016 – Act 147, This law establishes deadlines for completion of fair and impartial policing training and mandates in-service training in odd years. It also mandates the creation of a model fair and impartial policing policy and establishes a timeframe for the completion of its implementation and adoption.

2017 – H.492. There is *currently* a bill in the Vermont House that would establish a Racial Justice Oversight Board with representation from across the criminal justice system as well as diverse impacted communities, to manage racial justice reform across the State. This body would:

- Oversee compliance with fair and impartial policing policy and training requirements (in consultation with the VCJTC),

- Provide recommendations for on model training and policy for law enforcement, prosecutors, public defenders, judges and corrections officers to recognize and address implicit bias
- Provide recommendations on model training and policy on use of force in policing

 This bill creates the mechanism needed for to address racial disparities in the criminal justice system across the state.

Please *get involved* to support this bill!

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[12] Vermont Advisory Committee to the U.S. Commission on Civil Rights. (2008). *Racial Profiling in Vermont.*

Get involved to support H.492

Follow the progress of **H.492**:
https://racialjusticereformomnibusbillvt.wordpress.com

Sign the petition that calls for the adoption of this bill. Your signature alerts all members of the legislature:
https://www.change.org/p/establish-a-the-racial-justice-oversight-board-in-vermont-adopt-h492

Call the Sergeant at Arms and leave a message for your legislative delegation and/or the House Judiciary expressing your support for H492: 802-828-2228. You can also send an email: jmiller@leg.state.vt.us

Send a message to the House Judiciary Committee expressing your support for H492. This address will inform all 11 members: vermont-house-judiciary@googlegroups.com

Join Justice For All: http://justiceforallvt.org and attend their educational programing in your area.