

Joint Legislative Justice Oversight Committee

Racial Disparities in the Criminal and Juvenile Justice System Advisory
Panel Testimony

September 24, 2019, 2:00, Room 10

Mark Hughes

Good morning Mr. Chairman and members of the House Judiciary
Committee.

My name is Mark Hughes and I am a resident of Burlington and have resided in Vermont form the past ten years. I am a retired army officer and a lifetime member of the Veteran of Foreign War and a member of the Will Miller Chapter of Veterans For Peace. I am also the Executive Director of Justice For All and the current interim Coordinator for the Racial Justice Alliance. I am a Commissioner of the Burlington Police Department. Additionally, I am the architect of Act 54 (2017), Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel and Act 9 (2018), Executive Director and Racial Equity Panel. It is as a result of Justice For All, the Racial Justice Reform Coalition, and the commitment of countless Vermonters and the tireless hours of the legislature these laws exist.

Thank for taking my testimony,

After two years of community outreach and engagement, collaboration and relationship building with public officials and countless hours of deep analysis, Justice For All created a comprehensive plan to address systemic racism in Vermont.

We then built a coalition to assist in moving a legislative agenda and in 2017 the Racial Justice Reform Coalition put forward the bill H.492, which would ultimately become Act 54, 2017. The bill called 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. Oversight of statewide implementation of the Fair and Impartial Policing Policy, Race Traffic

Stop Data Collection and Training (20 V.S.A. § 2366 and § 2358) were amongst the responsibilities that we envisioned the board possessing. 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 data collection, model training and policy for law enforcement, prosecutors, public defenders, judges, and correctional 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.

I want to stress that 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 the 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;
- 5) prohibiting racial profiling, including any associated penalties;**
- 6) requiring law enforcement to expand its race data collection practices
- 7) amending the constitution to ensure that it clearly communicates that slavery is prohibited**

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**.

Act 54 is the result of H.492. Act 54 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.

Act 54 also 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 and extended the implementation deadline and created a systematic update process for the Fair and impartial Policing Policy.

Let's be clear, H.492 was crafted to create an organization with the authority to manage and oversee the implementation of racial justice reform **across the State, including within the criminal justice system**). **ACT 54** 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, Act 54 **directly addresses five of 20 twenty original intents of H.492.**

MOST IMPORTANTLY, Act 54 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 services and economic development.

In December of 2017, the Vermont Attorney General and the Executive Director of the Human Rights Commission released a report entitled Attorney General and Human Rights Commission Task Force on Act 54, Racial Disparities in State Systems Report and Recommendations. The report cited systemic racism to be at the root of racial disparities across all systems of state government. Some of the quotes from the report follow:

“Disproportionate number of black people in our prisons”

“Equality remains elusive to many people of color in Vermont”

“White people continue to control virtually every power structure in the country, including federal, state and local governments and their agencies, corporations, businesses, schools, etc...”

“In 2012 white people had eight times the wealth of black people; by 2013 the rate was 13 times”

“The status quo is unacceptable. Nothing short of a comprehensive and data-driven approach will alter the landscape for Vermonters of color and indigenous Vermonters”

“...[Vermont] must undertake a system wide analysis of the ways in which state government actively or passively contributes to these disparities, collect data to determine our baseline, and set goals for reducing those disparities across all agencies and areas of service”

“People of Color have waited far too long for the equality we promise in word but not deed. It is time to remedy that wrong”

Given the gravity of this report, the Attorney General and Human Rights Commission Executive Director should conduct follow up with state agencies and communities across the state to determine progress if any, revise strategy as appropriate and determine next steps in this process. The hard work of dismantling systemic racism requires much more than the completion of a report. Statewide efforts to address this four century-old, entrenched societal cancer must be deliberate and sustained.

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

After a six-month process of engaging with the panel and the development of the draft report, state appointees and designees protested the “process” and were reluctant to release the report. After discussion with and approval from the Assistant Attorney general the then chair and Please note the “Process and Scope portion of the document to gain context on its production. Eighteen months ago (March 2, 2018), the then chair and I, (the vice chair at the time) submitted a report entitled “Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel Report (Act 54), bearing our names. In addition to recommendations to the Vermont Criminal Justice Training Council and Bar Association, the report provided a discussion on the specific charges of the Panel as well as a segment addressed to the General Assembly with specific recommendations relating to the mission of the Panel and more:

The Process and Scope

The Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel has held six meetings in as many months. Rules of engagement were disseminated in the Panel, which adopted

generally agreed upon "Guiding Principles". The Panel developed subcommittees on Public Complaint Process, Racial Profiling and Data Collection. The Committees each had a series of meetings and reported back to the Chair. The Panel then reviewed and discussed the draft report, prior to its final release. **Upon completion of discussions and collection of data, the Chair and the Vice Chair, with concurrence of the Attorney General, created the report. A number of members of the Panel expressed "process" concerns regarding the method chosen by the Chair to produce this report.** The Chair and Vice Chair have also been accused of seeking to release a report in the interest of "advancing their own personal agendas". We will not dignify this age-old tactic of attacking the character of good people when a system of oppression feels as though it is threatened. This report is being submitted by the Chair and Vice Chair to ensure that a report on addressing the systemic racism in the criminal justice system is not meeting the agendas of those who are a part of the system, once again

The legislative recommendations in the report were as follows:

Legislative Recommendations

The following recommendations are in response to the scope and the charge of the Panel as directed by 3 V.S.A. § 168 (0(4), (5), and (6).

1. Clarify Human Rights Commission responsibility and reallocate resources towards explicit bias training.
2. Mandate that the VCJTC report progress of the AG Working Group report to the Attorney General.
3. Designate the Human Rights Commission as the primary agency responsible for fielding reports of alleged explicit bias.
4. Allocate resources to use the Community Justice Center Network as satellite locations for a facilitated complaint process.
5. Classify racial profiling as a criminal offense under Chapter 13 of the Vermont Statutes.
6. Revise 20 V.S.A. 2366 by adding a requirement to collect use of force data.

Additional legislative recommendations are provided in response to the scope and the charge of the Panel as invited by 3 V.S.A. § 168 (f) 6):

- 1 Mandate appropriations for the development and deployment of a centralized data management platform which:
 - a. Enables the management of statewide race data collection.
 - b. Provides user-friendly viewing of collected data.
 - c. Serves as a tool to enable supervision and support individual accountability.

2. Assign the management of the data platform to an agency that has systemic racism mitigation responsibility.

3. Mandate (in conjunction with stakeholders) Race Data Collection, Model Fairness and Diversity Policy and Systemic Racism Awareness Training for:
 - a. States Attorneys Offices
 - b. Judges
 - c. Juvenile Justice (DCF)
 - d. Corrections
 - e. Community Justice Center Network (CJNVT), Crime Victim Services and other Justice System contractors

4. Create an independent and funded Equity Commission to mitigate systemic racism in Vermont, immediately.

Further, a discussion on the Racial Disparities in the Criminal and Juvenile Justice System Advisory panel absent proper framing misses a much larger and justice oversight concern.

Are we placing the proper amount of time and resources into the dismantling of systemic racism? What does that look like beyond the criminal justice system?

Are we placing the proper amount of time and resources into the dismantling of systemic racism? What does that look like beyond the criminal justice system?

Our existing government structure was not designed to disentangle this apparatus from its DNA. It was designed to protect itself, selfheal and adjust. To change this requires a new thinking and a willingness to transform the fail-safes that enable the existing system to protect itself to one that autocorrects to justice for everyone, no matter what you look like; Justice in Housing and education, employment and health services access, in economic development and the justice system.

Thank you for taking the time to hear my testimony.