



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: Senate Government Operations Committee

From: Brynn Hare, Legislative Counsel
Erik FitzPatrick, Legislative Counsel

Date: June 11, 2020

Subject: Recent legislation addressing racial inequity and use of force by law enforcement officers in Vermont

This memo summarizes the recent legislation passed by the General Assembly that addresses racial inequities and the use of force by law enforcement officers in Vermont.

In 2017, Act No. 54 (H.308), an act relating to the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel, became law. Act 54 established a Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel within the Office of the Attorney General, comprising 13 members, including five members appointed by the Attorney General to represent the interests of communities of color, the Executive Director of Criminal Justice Training Council, the Attorney General, the Defender General, the Executive Director of the State's Attorneys and Sheriffs, the Chief Superior Judge, the Commissioner of Corrections, the Commissioner of Public Safety, and the Commissioner for Children and Families. Though the bill sunsets the Advisory Panel in July of 2020, S.234, which recently passed the Senate, repeals the sunset entirely so that the Panel will continue to exist permanently.

The Act requires the Panel to consult with the Vermont Police Association, the Vermont Human Rights Commission, the Vermont chapter of the American Civil Liberties Union, the Sheriff's Association, the Association of Chiefs of Police, and others in carrying out its duties. The responsibilities of the Panel include reviewing and providing recommendations to address systemic racial disparities in statewide systems of criminal and juvenile justice; continually reviewing the traffic stop data required by 20 V.S.A. § 2366 to monitor progress towards a fair and impartial system of law enforcement; providing recommendations to the Criminal Justice Training Council and the Vermont Bar Association on trainings for law enforcement, judges, correctional officers, and attorneys to address implicit bias; providing recommendations to the Council on a model training and policy on the use of force in policing; educating and engaging with communities, businesses, educational institutions, State and local governments, and the general public about the nature and scope of racial discrimination and on State progress toward racial justice; and monitoring progress on recommendations

from 2016 report of the Attorney General's Working Group on Law Enforcement Community Interactions.

The panel receives regular reports from the Criminal Justice Training Council on the adoption and implementation of the Panel's recommended implicit bias trainings for law enforcement, judges, correctional officers, and attorneys, the incorporation of implicit bias training into the requirements of minimum training standards for law enforcement, and the implementation of the statutorily required trainings for law enforcement.

The Panel is also responsible for regularly reporting to the General Assembly on recommendations to address systemic implicit bias, including how to institute a public complaint process to address perceived implicit bias across all systems of State government; how and whether to prohibit racial profiling; and whether to expand law enforcement race-based data collection to include data on nontraffic stops by law enforcement.

Act 54 also required the Attorney General and Human Rights Commission (along with interested stakeholders) to develop a strategy to address racial disparities within the State systems of education, labor and employment, access to housing and health care, and economic development.

Act 54 also addressed Vermont's model fair and impartial policing policy. It required the Criminal Justice Training Council, in consultation with stakeholders, to update the model policy to provide one cohesive policy for law enforcement to adopt by January 1, 2018, to be reviewed and updated by the Council biannually, and required law enforcement to adopt a fair and impartial policing policy that included, at a minimum, each component of the Council's model policy by March 1, 2018. Finally, the Act required the Council and the Attorney General to review the law enforcement policies to ensure they comply with the model policy and to work with law enforcement to correct any noncompliant policies. If a law enforcement agency does not adopt a policy that meets each component of the model policy, it is deemed to have adopted the model policy.

In 2018, Act No. 9 (S.5), an act relating to racial equity in State government, became law. Act 9 created a five-year position of Executive Director of Racial Equity within the Executive Branch to advise the Governor on strategies for remediating systemic racial disparities. This position is tasked with identifying and working to eradicate systemic racism within State government. The Act also created the Racial Equity Advisory Panel to work with the Executive Director of Racial Equity to implement reforms and advise the Director to ensure ongoing compliance with reforms.

S.338, an act relating to justice reinvestment, is a bill moving through the legislative process during this 2020 legislative session. One section of the bill requires the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel, the executive Director of Racial Equity, the Chief Superior Judge, the Attorney General, the Defender General, the Department of Corrections, and the Executive Director of the Department of State's Attorneys and Sheriffs to work with the Crime Research Group (CRG) to identify existing data and gaps in data related to demographic factors and sentencing outcomes, as well as what additional data resources and staffing

would be necessary to fill these gaps in data and information, and report back on their findings by October 1, 2020.

It also directs the Vermont Sentencing Commission to consider relevant findings and recommendations developed by the stakeholder group and consider whether changes to Vermont's sentencing structure are appropriate, and also consider issuing nonbinding guidance for offenses for which there are racial and geographic disparities in sentencing. The Commission is also directed to report to the standing committees with the results of its work by February, 2021.

With respect to the use of force by law enforcement, the Legislature expanded the disciplinary authority of the Criminal Justice Training Council over law enforcement officers in Act 56 of 2017. Act 56 broadened the definition of unprofessional law enforcement conduct to include both biased enforcement and excessive use of force, second offense. Note that the Senate Government Operations Committee recently voted out a bill to broaden the definition even further to include first offenses of excessive use of force. Act 56 also expanded the authority of the Council to impose sanctions for unprofessional law enforcement conduct. Previously the Council had only been allowed to decertify an officer for committing a felony or failing to comply with annual training, but Act 56 permits the Council to suspend or revoke an officer's license for a broad range of unprofessional conduct.

The Legislature has also regulated law enforcement use of electronic control devices, commonly known as tasers. In Act 180 of 2013, the Law Enforcement Advisory Board (LEAB) was required to establish statewide policies concerning the use and calibration of these devices. The act specified a number of provisions that must be included in the LEAB policy, including the standard for when an electronic control device may be used. All law enforcement agencies and officers were required to adopt the policy, and all officers who carry the devices were required to receive training. In addition, all officers, regardless of whether they carry an electronic control device or not, were required to receive more general training concerning mental health issues. Finally, Act 180 required that all uses of electronic control devices be reported to the Criminal Justice Training Council, which must in turn report that information to the General Assembly every year.