



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
**CRIMINAL JUSTICE COUNCIL**  
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## DELAWARE JUSTICE REINVESTMENT TASK FORCE

Buena Vista State Conference Center  
661 South du Pont Highway  
New Castle DE 19720  
Monday, January 23<sup>rd</sup>, 2012  
2:00 PM

### AGENDA

- I. Approval of December Minutes
- II. Data Analysis Update
- III. Discussion of Proposals for Sentenced Population
- IV. Public Comment

## DELAWARE JUSTICE REINVESTMENT TASK FORCE MEETING MINUTES FOR DECEMBER 19<sup>TH</sup>, 2011

The Delaware Justice Reinvestment Task Force met at 10AM on Monday, December 19<sup>th</sup> at Delaware State Police Troop Two. Task Force Chair Lt. Governor Matt Denn opened the meeting at 10AM. Task Force members in attendance included: Lisa Borin Ogden representing VCAP, State Representative Greg Lavelle, State Senator Liane Sorenson, Chief Deputy Attorney General Charles Butler representing the Department of Justice, Public Defender Brendan O'Neill, Commissioner Carl Danberg of the Department of Correction, President Judge James Vaughn Jr. of Superior Court, Chief Magistrate Alan Davis, State Senator Patricia Blevins, Chief Judge Smalls of the Court of Common Pleas, Colonel Robert Coupe of the Delaware State Police, State Representative Melanie George, R.L. Hughes representing the Department of Safety and Homeland Security, and Jay Lynch of I-Adapt. Also attending were consultants Julie James, Dr. Suzie Agha, and Rebecca Tublitz, all of the Vera Institute of Justice; Drew Fennell, Executive Director of the Criminal Justice Council; Kathleen Jennings of the Department of Justice; Kathleen MacRae of the ACLU-Delaware; Charles Madden of the HOPE Commission; Jeff Mordock of the Delaware Law Weekly; Joanna Champney of the Delaware Center for Justice; Dan O'Connell of the University of Delaware; Emily Cunningham of the Lt. Governor's Office; Raina Allen of the Lt. Governor's Office; Deborah Craig of the Department of Correction; Jissell Martinez of the Office of Management and Budget; Pam Price of the State House of Representatives; Chris Kervick of CJC; Chuck Pugh of CJC; Valarie Tickle of CJC; Maureen Monagle of CJC; Tom MacLeish of CJC; Philisa Weidlein-Crist of SAC; Charles Huenke of SAC; Julia Cahill of SAC; Brian Burritt of SAC; Barbara Hicklin of SAC; Richard Harris of SAC; Spencer Price of SAC; Brandon Burritt of SAC; and Ken Dryden representing himself. The meeting was staffed by Ron Keen.

The meeting opened with the approval of the Minutes from the November meeting, and then Dr. Suzi Agha introduced a data analysis update. A slide was introduced that showed the sentenced offender population admissions, releases, and stock totals for 2010 for Sentac levels I-III, IV, and V.

Dr. Agha went on to present more detailed information regarding 2010 admissions. Regarding Level I-III admissions, the "lead charge" for 24% of the admissions was a felony, and for 55% it was a misdemeanor. The "lead charge" information was missing for 21% of the admissions. Of the Level I-III admissions 12% were for Obstruction, and of that total, 81% were violation of probation charges. It was noted that the data does not permit detail about whether the admissions associated with VOPs were for new charges or technical violations. The largest category of lead charge was traffic (15%). A drug charge was the lead offense in 12% of the admissions and an assault charge was the lead offense in 11% of the admissions. 10% of level I – III admissions included VOP as a lead charge. A violent felony is included in the charges of 15% of the admissions. A sex offense is included in 1% of the admissions.. It was also noted that DELJIS uses a formula based on the crime class and type, then the NIBRS code to determine the lead

charge. Senator Sorenson asked why 21% of the lead charge data is missing. Dr. Agha replied that some may be “missing” due to difficulty in matching DOC and DELJIS data and that in some instances, the data is just missing.

Of the Level IV admissions for 2010, 34% were for felonies, 45% were for misdemeanors. For 21% of the admissions, the data is missing. For Level V admissions, 26% were for felonies, and 52% were for misdemeanors. Data are missing for 22% of the admissions.

Breaking the available data down a bit further, 36% of the Level IV admissions and 27% of the Level V admissions are for obstruction. Violation of probation charges make up 95% of the obstruction admissions at Level IV and Level V. Violation of probation was the lead charge in 34% of the Level IV admissions and 23% of the Level V admissions. Violent felonies were the lead charge in 24% of Level IV admissions and 15% of Level V admissions. The average length of stay for Level IV admissions (with data available) was 452 days for felonies and 196 days for misdemeanors. The average length of stay for Level V admissions (with data available) was 476 days for felonies and 134 days for misdemeanors.

Julie James introduced the following proposals of the Vera Institute regarding community supervision: She explained that the recommendations are based on a qualitative assessment of Delaware’s community supervision practices.

1. Measure outcomes related to risk reduction.
2. Assess offenders for risk, needs, and abilities prior to assigning supervision level.
3. Coordinate with courts to tailor supervision.
4. Increase community treatment and programming capacity to meet offender needs.
5. Use identified needs and strengths to develop case plans.
6. Support staff to include more positive reinforcements.
7. Increase availability of intermediate sanctions.

Ms. James indicated that the recommendations were not likely to decrease bed allocations in the short term. Rather they should be considered elements of a long-term strategy. Ms. James explained that recommendation #2 was to complete the LSI-R either prior to sentencing or prior to assigning a level of probation supervision. President Judge Vaughn expressed concern regarding the possible impact of having the LSI-R completed prior to sentencing, indicating that cases come before court with a negotiated plea that often includes a sentence recommendation. Brendan O’Neill added that the efficient processing of cases depends on the prosecution and the defense being able to rely on the judge following the recommendation in the plea agreement. Carl Danberg, while indicating that it would cause administrative issues for his staff, offered to have DOC staff complete the LSI-R as part of the negotiated plea process. He added that an option could be to sentence offenders to probation and to let DOC determine the level of supervision. Charles Butler

expressed concern regarding completing the LSI-R at that point of the process, indicating that the prosecution and the defense value predictability of the negotiated sentence.

Brendan O'Neill stated that the current process is necessary to handle the high volume of cases. He added that any changes to the process should not negatively impact the efficiency of the current system. Representative George asked if judges have an opportunity to view an offender's LSI-R results when sentencing on a violation of probation. Chief Judge Smalls answered no and suggested that judges have an electronic link to the LSI-R. Carl Danberg indicated that the LSI-R could be provided to the courts but that the LSI-R measures risk at a given point in time and that the scores change over time.

President Judge Vaughn suggested that the presumptive sentence for a violation of probation is to increase the SENTAC level of supervision by one level. He added that a way to decrease Level IV and Level V sentences for violation of probation is to start more sentences at Level II instead of Level III. Carl Danberg said that Delaware sentences a higher proportion of offenders to Level III than most jurisdictions.

Representative George said that she understands that offender actions need to have consequences but suggested that perhaps judges need to have more options available. Chief Judge Smalls suggested that following wording be added to the end of recommendation #7: "and document their use by probation officers." Carl Danberg indicated that because ankle bracelet units that allow home confinements are leased, there isn't a maximum number of units available. He added that Delaware does not currently permit the use of home confinement as a sanction, although a judge can sentence someone directly to home confinement. He also said that new ideas for intermediate sanctions would be welcome. Representative George suggested that recommendation #7 be amended to read "increase variety and availability of intermediate sanctions."

Chief Magistrate Davis suggested that recommendation #2 "drives" the rest of the recommendations. Brendan O'Neill asked if accommodating a risk assessment or the LSI-R into the case processing system would affect the efficiency of processing a high volume of cases. President Judge Vaughn indicated that performing the LSI-R prior to sentencing would defer sentencing and would necessitate an additional calendar.

Carl Danberg indicated that the recommendations as a group are generally in line with DOC goals. Speaking to the third recommendation, Julie James conveyed that, in supervising probationers, DOC staff tend to rely on special conditions set by the sentencing court, rather than on the results of the assessment. Assessments should be used to craft supervision plans. She added that generally the fewer the conditions, the higher the likelihood of success on probation.

In the context of discussion about reductions to spending, Julie James further indicated that the greatest impact on corrections spending would come from reducing admissions and shortening sentences. Carl Danberg added that every "intake" has costs associated

with it; therefore reducing admissions would result in cost savings. He also added that “significant” savings could result if prison beds remain vacant over time as staffing adjustments could be made.

Senator Blevins suggested that the root causes of crime, specifically substance abuse” should be considered. She added that substance abuse treatment could result in offenders being diverted away from the criminal justice system permanently. She raised the idea of converting prison beds to treatment beds. Julie James indicated that Senator Blevins’ comment was in line with recommendation #4.

The question was raised if cost savings could be projected for the adoption of each recommendation. Dr. Agha replied that once there is a menu of options the cost savings of the options will be evaluated. Representative George indicated that she would like to see cost figures for violation of probation alternatives.

Lt. Governor Denn indicated that he expects a report that would add details to the recommendations.

Carl Danberg made a motion to adopt all 7 recommendations with changes heard. The motion was seconded and approved with all recommendations remaining on the list.

Lt. Governor Denn suggested that the Task Force meetings in January and February would be used for discussing sentencing recommendations, refining already adopted recommendations. The March meeting would be for pulling all the information together.

**Public comment.**

Ken Dryden offered his thought on the composition of and the efforts of the Task Force, expressing that there should be greater African-American representation.

Public Comment

**KENNETH L. DRYDEN**

**DELAWARE JUSTICE REINVESTMENT TASK FORCE**

**DATE:** December 19, 2011 10am. Delaware State Police Troop  
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**TO:** Lieutenant Governor Matthew Denn- Task Force  
Chairperson &  
Members of the Delaware Justice Reinvestment Task Force

**SUBJECT:** Executive Order Twenty-Seven  
Study of Delaware's Criminal Justice and Correctional  
System

**FROM:** Kenneth Dryden

**BUSINESS:** Justice or Injustice/Fair or Unfair

Delaware chosen by the U.S. Department of Justice to study the State's Criminal Justice and Correctional System. Governor Jack Markell signs Executive Order Twenty-Seven to establish the Delaware Justice Reinvestment Task Force.

African Americans make up over 65 percent of Delaware's prison population and those on probation. Evidence show that white men and white women make up 99 percent of the decision makers for Delaware's criminal justice system. The number of African Americans incarcerated in other states is even higher. This clearly shows that our justice system is flawed. The percentages above are based on generations of historically documented records. These validated records can be found in many halls of records (archives, historical societies, government buildings, etc.) So based on the history of African Americans

incarcerated in Delaware prisons and Delaware's criminal and correctional system decision makers, I recommend that the Delaware Reinvestment Task Force panel be expanded to include an equal number of African Americans (stakeholders) chosen by African Americans to participate in the study.

Vera Institute of Justice, Delaware Criminal Justice Council and members of the task force are working together to identify evident based strategies for state policies to reduce corrections population, reduce recidivism and spending. Vera Institute of Justice has distributed to task force members and to the public more than 200 pages of validated evidence of the practices and principals that govern the justice system in Delaware and throughout the United States. Collectively the panel has discussed what has been good correctional practice in the past and what will be the next generation of tools that work. One panel member said, "The devil is in the detail" another member states " we operate under 17<sup>th</sup> century rules". The new generation of tools being discussed for recommendations to legislators are a risk assessment tool that measures whether or not a person will reoffend and a needs assessment tool that speaks to an offenders behavior and provides one with results that improve his or her decision making leading to reductions in recidivism and better public safety.

I will answer by saying your panel of decision makers is stacked with white men and white women and one African American. There's no way to say that the actions of this group are fair when you look at the group doing the study and making the recommendations. African Americans have suffered greatly because of criminal justice practices and correctional principals. It appears that the vestige of black codes and racial segregation laws better known as Jim Crow still continue today and because we (African Americans) value equal rights for all yet see a system stacked with white men and women who treat one group of people better than the other we form an attitude that says the criminal justice system is unfair. I remind you the prisons are full with African Americans. Your assessment tools show biasness towards the one who is treated differently than the others but if your justice and criminal system were fair I am sure that your assessments would be more positive.

In closing correction is needed in the world but it has to be fair to see significant improvement. The average cost to incarcerate an adult is \$34,000 a year. The state spends on average \$250 million annually for services to help reduce crime and improve public safety.

Like anyone else African Americans want a life they can be proud of and a safe and fair environment. We recommend that the panel be expanded to include fairness.

To assure that all taxpayers money are spent wisely we recommend that the Delaware Criminal Justice Council, Vera Institute of Justice, Delaware Reinvestment Task Force and other government agency work in collaboration with African American agencies in the effort to reinvest in our criminal justice and correctional system.

I ask that these comments and recommendations be made a part of the Delaware Justice Reinvestment Task Force minutes for the December 19, 2011 meeting and a part of any recommendations that the Task Force members will recommend.

Submitted this 19<sup>th</sup> day of December, 2011  
Kenneth L. Dryden