

Minority Over-Representation Subcommittee Colorado Commission on Criminal and Juvenile Justice

Minutes

February 4, 2:00PM-4:00PM
700 Kipling, 4th Floor Conference room

ATTENDEES:

Anna Lopez/Division of Criminal Justice

Regi Huerter/ Denver Crime Prevention & Control Commission

Shelley Siman/Division of Criminal Justice (formerly Denver Crime Prevention and Control Commission)

Michael Dougherty/Attorney General's office

Stan Hilkey/Department of Public Safety

Sherry Stwalley/Judicial Branch

Claire Walker/Judicial Branch

Jessica Zender/Judicial Branch

STAFF

Paul Herman/CCJJ consultant

Germaine Miera/Division of Criminal Justice

Kim English/Division of Criminal Justice

Peg Flick/Division of Criminal Justice

ABSENT

Alaurice Tafoya-Modi/Private Defense Attorney

Heather Wells/Department of Corrections

Evelyn Leslie/Treatment Provider

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Stan welcomed the group and previewed the agenda. He stated that the group is reconvening to close the loop on some unfinished business.</p>
--	--

<p>Issue/Topic: Recommendation Review MOR #4, 5, 6, 7</p>	<p style="text-align: center;">Discussion:</p> <p>Paul led the group through the seven original MOR recommendations from 2011. He reviewed the current status of each one and revisited the unfinished business of recommendations MOR#1, MOR#2 and MOR#3 and discussed how to present the group’s conclusions to the CCJJ.</p> <p><u>DISCUSSION POINTS</u></p> <ul style="list-style-type: none"> • Paul first reviewed all of the MOR recommendations #4 through #7 that are considered ‘completed’ in one sense or another. • He stressed that it would be ideal for the group to wrap up next steps on MOR recommendations #1-#3 today, and be able to present those conclusions to the CCJJ next week, see if the commissioners have further work for the MOR Subcommittee or see if the CCJJ wants the MOR group to discontinue or go on hiatus. <p>MOR #4</p> <ul style="list-style-type: none"> • MOR #4 reads “Develop a mechanism requiring specific review of proposed justice legislation to determine impact on minority over-representation – also known as a Minority Impact Statement”. • Recommendation MOR #4 was (to date) the only one of the 7 recommendations that was legislative in nature. • A handful of other states have passed similar legislation including Connecticut, Oregon and Iowa. • It is assumed that Colorado’s minority impact statement (SB13-229) is actually not being executed as it was intended. • Legislative Council is starting to ask for more demographic information on bills so there’s a possibility they’re gearing up to do this more often. • Apparently two legislators are going to write a letter to Leg. Council telling them they need to actually do this more (include impact statements in criminal justice legislation). • The problem is that Leg. Council would get that data from the Judicial Branch, and Judicial’s data does not accurately capture ‘Hispanics’. Therefore the impact statements will be inaccurate whether they’re used or not. <p>MOR #5</p> <ul style="list-style-type: none"> • MOR #5 reads “Develop and maintain a disproportionate minority representation website that includes local, state and national data and link to educational resources”. • The CCJJ’s MOR page was completed soon after the recommendation
--	---

	<p>was made.</p> <p>MOR #6</p> <ul style="list-style-type: none"> • MOR #6 reads “The Commission to develop and implement a Commission-specific mentoring program for minority juveniles and young adults who are interested in working in the criminal justice system”. • MOR #6 was for the Commission but also generally encouraged other agencies create minority specific mentoring programs as well. <p>MOR #7</p> <ul style="list-style-type: none"> • MOR #7 reads “Minority Impact analysis on all Commission and Task Force recommendations. • This impact analysis was implemented and continues to be implemented with current analysis and recommendations on all CCJJ legislative recommendations.
--	--

Issue/Topic:	Discussion:
<p>Recommendation MOR #1, 2, 3</p> <p style="text-align: center;">Action</p> <p>Stan to check in with POST on MOR #1 and MOR #2</p> <p>Paul and staff to pull together recommendation verbiage for MOR#1, #2 and #3 and distribute draft recommendations to this group for feedback before the CCJJ meeting on February 13th.</p>	<p>Paul led a discussion with the group about MOR recommendations #1, 2 and 3 and how these have yet to be implemented for a variety of problematic reasons.</p> <p><u>DISCUSSION POINTS</u></p> <p>MOR #3</p> <ul style="list-style-type: none"> • MOR #3 reads “State and local justice agencies to collect race AND ethnicity information on the populations they serve”. • There are many ongoing issues around this recommendation and the MOR Subcommittee has yet to come to a ‘fix’ for how to proceed to actually solve this problem. • At the last MOR meeting (December 2012) the group asked the then Chair, Jim Davis, to check in with CBI about mandating that all law enforcement agencies collect NIBRS data, and that race and ethnicity be mandatorily collected. • The history of the problem is about being able to separate ‘Hispanic’ from the five racial designations and their definitions. For example, in those five categories ‘Hispanic’ falls under the ‘White’ category. • This is an ongoing problem because when Hispanics fall into white/Hispanic, the data being tracked is inaccurate when it comes to the percentage of the whole as well as comparisons. • When this group discussed whether CBI could mandate a field for ethnicity data collection, the group also considered mandating that practice legislatively. • CBI responded with their assessment of the problem and a copy of that response (email) was distributed to the group. • In a nutshell, the NIBRS data reporting issue runs into some key policy issues in regard to comparison data. Some police departments, law enforcement and other municipalities and counties are

concerned about going from UCR data tracking to NIBRS because it would be vastly different from the current data tracking methods, and different from how many jurisdictions already collect UCR.

- CBI recommended against mandating this for a variety of reasons.
- The truth is there are no penalties and no ‘hammer’ behind doing something statutorily.
- Peg Flick walked the group through a recent analysis and snapshot of just one of the issues regarding race and ethnicity data collection in Colorado.
- Peg explained that anytime the ORS does analysis for the CCJJ that includes race, there is always an included caveat from Judicial that in their data they have a single race field that combines race and ethnicity.
- Peg explained that the “race” field captured in court records in the Judicial Branch’s ICON system data does not distinguish between race and ethnicity (particularly “White” and “Hispanic”). As a result, the ability to accurately interpret this data is limited. To examine the extent to which the “Hispanic” ethnicity is undercounted in court filings, race data from **filings** was compared to race and ethnicity data from **arrests**. She further explained that one would expect to see roughly the same proportion of Hispanics in arrests and in filings.
- Peg conducted this analysis to try to determine the magnitude of the difference.
- The proportion of the Colorado population identified as Hispanic in CY 2013 was 21% according to the US Census Bureau. In arrest data, both race and ethnicity are captured. In CY 2013 the arrestee was of Hispanic origin in 21% of arrests for theft. However, in ICON data only 7% of filings with theft charges in CY 2013 involved Hispanic offenders.
- She explained that the comparison illustrates that having a single filed for race/ethnicity, as is the case in ICON, results in the undercounting of the Hispanic ethnicity in court records.
- She further explained that this simply demonstrates something we already knew, which is that Judicial does not report ethnicity data.
- This significantly impacts any fiscal note on racial data.
- Sherry Stwalley added that another part of the problem is that Judicial’s data doesn’t include Denver data.
- CBI states that 100% of agencies are reporting NIBRS data, however, sometimes an agency will fall behind in reporting due to issues like staff turnover, etc.
- Also, there could be glitches in reporting if, for example, a jurisdiction is transferring from one vendor to another. Mesa had this problem at one point.

	<ul style="list-style-type: none"> • Jessica Zender asked if NIBRS was an all or nothing reporting mechanism. Stan answered that NIBRS is actually a federal program and that there’s different pieces to the data when an incident happens including arrest, victim info, etc. If it’s an FBI category crime it is to be reported. • Any event that an incident report is created on is supposed to auto-populate into NIBRS. • Sherry asked what the analysis would look like with Denver out of all the data and whether that would make a difference. What about misdemeanor vs. felony? • The problem with Judicial’s data tracking is that there’s just one field. If it comes over as white from law enforcement then it’s entered as white with Judicial. • If data comes to Judicial but it has specifically been marked and changed to ‘Hispanic’ then judicial enters it as Hispanic. • Judicial is entirely dependent on the information provided by law enforcement and that’s where a lot of discrepancy lies. • It would be a major database change for Judicial to add an ethnicity field (along with race) to their system. • While Judicial is creating a new case management system, they’re not changing the fields. • Judicial accepts what they receive from law enforcement. But there is no field in Judicial’s system for ethnicity • Another problem is that electronic case filing comes from fingerprint cards, which is where Judicial gets its data. • Regi states that Denver’s Sheriff’s department collects both race and ethnicity data. • If this group really considers a recommendation should it be around capturing ethnicity? It really is about law enforcement asking the question. • Law enforcement has to have the info because they report it in NIBRS. • Another big problems is that there is no field for ethnicity on a fingerprint card. Fingerprint cards only contain a field for race, and that’s how most of the data is collected (through fingerprint cards). • Data that comes into NIBRS comes from RMS systems. • Judicial gets its information from law enforcement via fingerprint cards or Live Scan. NIBRS data only goes to the Feds. • Therefore, even if judicial adds a field to their database nothing will change, unless the Live Scan (fingerprint card system) changes to collect ethnicity. • If someone writes ‘H’ on a physical fingerprint card then judicial would report it. But most of the fingerprint cards are electronic.
--	---

	<ul style="list-style-type: none"> • The majority of courts use Live Scan. • Some agencies have a Live Scan machine but no money to update software. • Live Scan is in more places now than it's ever been. • Could this data be established once the court gets involved? No, a judge can't ask ethnicity, a DA can't ask either. • Is there a possibility for someone to have to enter their ethnicity data when they report to court? No, that would be tricky when it comes to public perception about asking at trial. • Would it be logical to collect this info in probation? No, not everyone goes to probation. • The more natural point of data collection is at the law enforcement interaction. • However that's difficult too because it would be hard to do this during field contact for the obvious reasons of asking ethnicity when being on the street. • If this information is important, you have to be able to collect it, and there's the question of at what point is the most effective point to collect it? • LE seems obvious, but there could be inherent problems. • Nobody wants to do this, but if it's important it needs to be decided. • Locals would need to change their system, CBI would need to change its system, and Judicial has to change their system. • It's astounding that this is such a problem. We're able to put body cameras on officers, download every interaction, and transmit that to every police department at the end of every shift – yet we can't collect data on one data element. • There's an E-filing project rolling out by November 2016, and all DA's will have to be on an E-filing system. This may provide an opportunity for some sort of impact on RMS systems. E-filing might be an opportunity for this group to push this. • E-Discovery will happen from the police to DA's, and then it's E-Filing from the DA's to the courts. Is this the logical place to get this put through? • Who is managing e filing and e-discovery? CDAC is managing the RFP for E-Discovery. The AG's office is involved too. • What about the mechanics for that? The mechanics are to get one system to talk to another through both "E" systems. If the RMS systems don't have the data point than E-Discovery wont' solve the problem. • Is E-Discovery and E-Filing the target? Or is the target the RMS system with NIBRS? • If all agencies are using NIBRS we need to get that data, this is the
--	--

starting point.

- The ‘ask’ and the population of the field occurs at law enforcement.
- Even if 100% of agencies using NIBRS, how many are asking race AND ethnicity?
- Should we recommend as a group that all law enforcement capture race and ethnicity and report it through their systems to NIBRS? *(Although this was part of the conversation – as discussed after the meeting, law enforcement already reports this information to NIBRS).* That’s lofty and CML and CCI will come out against it. But don’t we want to aim high?
- If our mission is to figure out how to do that – it should be our recommendation. We could know this is hard to get but that’s the recommendation.
- The transmission of data from the arrest to the DA and then the courts – THAT’S the problem.
- In terms of filings to Judicial, it’s not about the NIBRS data.
- NIBRS data only goes to the Feds. Judicial can only take what DA’s give them. Its two separate systems.
- Ideally the statewide policy would be that when law enforcement fingerprints anybody, on the fingerprint card would be the choice of H for Hispanic or L for Latino. If that could be mandated on the card then Judicial could figure it out.
- If the person claims White/Hispanic, then Hispanic would be recorded. Ethnicity would always override race.
- But we would also have to decide HOW the information is recorded. Would it be self-report? What about someone who claims Black/Hispanic? What would we do with that?
- Law enforcement is going to say they don’t want to get into the business is labeling.
- The best data collection practice is self-report. There’s lots of opposition to filling in a field based on somebody else’s observation.
- Stan – in this regard we want this to be done right in NIBRS and right in Judicial.
- Should we work on statutory language saying all agencies must report to NIBRS and all must report race and ethnicity?
- The group would need a solid case behind why we’re making the recommendation.
- It’s already in statute that agencies are supposed to report the data; the problem is there’s no “stick” if you don’t report.
- In NIBRS race and ethnicity are separate and required fields, so we’re good to go there.
- But on the Judicial side, there’s only one field and on fingerprint cards there’s only a race field. This is the problem.

	<ul style="list-style-type: none"> • The ideal would be to add a “stick” on the NIBRS side and to add an ethnicity field on the fingerprint card, and an ethnicity field in Judicial. • On the Judicial side, just provide technical guidance on how to mark the race field otherwise. • What about the summons? It has one field, the race field, but could it be redesigned to collect ethnicity as well? The summons goes to the courts so Judicial would then have that data. • In terms of who needs this info and for what, we first need to answer the questions “Why do you want this anyway? What’s the rationale?” The current system does not reflect accurate information, so we need the change. • We’re at the point where we have to say if it starts with law enforcement and if it’s good public policy to collect and analyze. That’s the recommendation. The implementation is up to various agencies. You’ll get pushback no matter where you put the push point. • WE can tell the CCJJ that we’ve looked at this problem extensively from every possible angle. In the end, this is where it SHOULD be, when we think about what the policy SHOULD be, it should be determined at the point of contact via self-report. • We may err if we try to get into the minutia of ‘On this particular form we want to change this’. • We want to get into public policy, not the minutia. • The recommendation should read: Race and ethnicity should be collected at the point of contact. Or ‘shall’ be collected. • The other challenge is that we’re late in the game, we could make a recommendation, but in the meantime there are already bills being drafted about this same thing from Rep. Fields and Rep. Salazar. • One group wants to run something about data collection, which lands squarely on DCJ. There’s another group that wants to go in a different direction as far as special prosecution units. • This may already be being debated heavily. • Regi suggests this all be made more specific. It’s not just the collection, but the documentation and reporting. All of this is important. • How about this for a recommendation – law enforcement agencies in the state of Colorado to collect and report race and ethnicity, and this information to be reported through the NIBRS system. Also recommend that Judicial collect and report race and ethnicity data. • In the CCJJ recommendation be sure to state that we understand all the nuisance of the difficulty, but CCJJ still makes a policy or legislative recommendation that race and ethnicity be collected by
--	--

law enforcement and reported to NIBRS and that race and ethnicity be collected by judicial.

- We have put so much thought into this – our recommendation will reinforce the need and give people the ammo to get something done.
- At the very least making the recommendation will start the discussion.

MOR #2

- MOR #2 reads “Justice agencies to track racial and ethnic diversity of their staff and actively recruit minority candidates”.
- MOR #2 was combined with MOR #6, which has to do with mentoring. The thought after the first meeting was to combine these. There has been lots of conversation and inquiry.
- There are two parts to this; the first is the issue of criminal justice agencies tracking race and ethnicity of staff. The second part had to do with active recruiting of minorities.
- There were lots of conversations around these issues. In the end we learned that people do this in lots of different ways. This group decided two years ago not to try to legislatively mandate this.
- The next piece was the conversation about recruitment. One of the most focused conversations in regard to recruitment was the Colorado problem of requiring potential employees to be residents of Colorado. We can’t recruit from outside of the state. This is a major inhibitor in terms of being able to recruit in terms of color. Look at the census data and population in Colorado, it’s not very diverse.
- Keep in mind this affects only Executive Branch recruitment and not local law enforcement.
- The real question in bringing up #2 and #6 is that this group didn’t make any specific recommendations for action. We talked about them a lot but in the end made no specific actionable recommendation. Is this how the group wants to leave it?
- Does this group want to take another run at recruitment? The way we left it up until this point in time was to leave it. Is there a way to track progress in this area?
- Michael shares that the National Association of Law Professionals website has this info available on its website. Employers have to choose to participate. Each employer breaks out race and ethnicity of staff, at levels including management. Law students look at this to figure out who they’re applying to.
- In terms of state requirement, the Colorado state jobs website shows that we’re proud of limiting our hiring practices to Colorado Residents. But we also then extremely limit diversity coming into the

state.

- Michael reports that generally speaking, the DA’s were generally receptive to the tracking of staff data. The overall feeling at the time was that they would be fine with tracking this. Just a matter of how we would set that up and implement that.
- What does this group want to suggest with this, if anything?
- At this point there’s no mandated method of reporting and no way to access the collection of this info. Do agencies report out on their hiring demographics at a state level?
- The target should be statewide consistency; we don’t want to target one or two agencies.
- Could this recommendation somehow become part of the CCJJ MOR website?
- This group could make a recommendation that there is an interest in having this information and that agencies should report it somewhere. The question then is where?
- It should be the responsibility of each criminal justice agency to publish this information on their website, and if not on their website then the info should be available at anybody’s request.
- If the goal is just to get people to start tracking and reporting that’s one thing.
- The Subcommittee can always make the recommendation, because it’s a good recommendation, and then where it sticks is beyond us. The recommendation should be that agencies publish or have the information available upon request.
- POST could track through graduation of academy graduates.
- POST keeps a ‘Form 6’ on every peace officer who is hired and discharged.
- One recommendation is that “Individual agencies to collect aggregate data through POST and for agencies to know the information about the make-up of their agency”.
- Stan to engage POST and inquire about the feasibility of gathering this data.
- Another recommendation is “to collect the data, have agencies publish it or make it available, then engage with POST to see if it’s collected in aggregate for the whole state year to year”.
- Stan to check in with the AG’s office as well.

MOR #1

- MOR #1 reads “Comprehensive cultural competency training for all justice agencies and for all treatment and service organizations used by justice system agencies”.
- Summary – initial conversations about this centered on how the Commission could help criminal justice agencies in regard to cultural

competency. The discussion was around how this could be achieved, and the answer was to build a training toolkit.

- From that conversation, CCJJ agreed that it made sense to team up with Denver, and for Denver to take the lead on this since they were already in the process of working on a training/toolkit for law enforcement and others in the criminal justice system.
- Denver worked on the training piece and presented it to the CCJJ on two different occasions. The training issue has not been revisited since the last presentation to CCJJ in the summer of 2014.
- The question now is what direction to take next. Does the CCJJ feel the Denver training is at the quality level that we can support, and if so then should the CCJJ endorse the program for law enforcement and state and local criminal justice agencies?
- The curriculum is ready to go and to be used and is now available. Denver made modifications after feedback from the CCJJ feedback.
- Denver started out with more of a law enforcement oriented curriculum but then expanded that to fit a broader audience. In the end Denver bridged the two curriculums and brought some of the more hard hitting elements from the first presentation into the second presentation.
- Chief Kilpatrick in Golden has asked DPD to work with him on training his staff with the curriculum.
- Also, community corrections took a chunk of this training and has piloted some of the modules for community corrections staff training.
- The training runs 3 1/2 hours total. The modules community corrections are using run about 90 minutes.
- EPIC is also working to integrate parts of the training into coaches/case manager training at DOC.
- What are the entry points for this training? When looking at peace officers, the creators of the training thought this would fit best as an ongoing in-service training rather than an initial POST training.
- It's difficult to try to put new training curriculum into academies, it's a big fiscal issue to add more hours to academy.
- This could be an in-service training. But up until last year there was never any statutory mandate for in service except for elected sheriffs.
- There's a new mandate that peace officers need 24 hours of additional training every year. Some of those hours are around core skills like driving and shooting, but there's some wiggle room as well.
- It would be a heavy lift to add additional hours, but maybe the 3 ½ hour cultural competency curriculum could be part of the overall 24 hours. With that approach we would simply be helping to fill up the

	<p>24 hours.</p> <ul style="list-style-type: none"> • It appears a real opportunity to succeed with this recommendation is to try to tuck it into those 24 hours. • The subcommittee agreed to attempt to roll this cultural competency training piece into the 24 mandated hours. • It was suggested that instead of using the verbiage ‘cultural competency’, the goal should be to use ‘responsiveness’ and ‘communication’. • Denver frames this training in terms of ‘responsiveness’ rather than ‘competency’. • The reason is that this goes back to service and serving different cultures. • The group agrees to write a recommendation that CCJJ engage post to get this accomplished. • Does this need to go through POST? There needs to be an ongoing plan of implementation. If the Denver model is the right one, Denver should monitor and track that it gets done. • POST will likely NOT want to recreate a similar training, but they may want to take one already created and tailor it to fit the 24 hours. • Stan to outreach to post before the CCJJ meeting and recommendation presentation.
--	---

Issue/Topic:	Discussion:
Next Steps	<p><u>NEXT STEPS</u></p> <ul style="list-style-type: none"> • Stan to check in with POST on MOR #1 and MOR #2 • Paul and staff to pull together recommendation verbiage for MOR#1, #2 and #3 and distribute draft recommendations to this group for feedback before the CCJJ meeting on February 13th.

Future Meeting Dates: TBD