



**THE DANE COUNTY  
EQUAL OPPORTUNITY COMMISSION**

**TASK FORCE ON RACIAL DISPARITIES IN THE CRIMINAL  
JUSTICE SYSTEM**

**AUGUST 24 TH, 2009 MEETING**

Present: Mlatawou, Jackson, Gaber, Vedder, Dorl, Oliver, Teuscher, Cavanaugh, Albert, O'Brien, Butler, Schmidt, Albiter, Hassel, Dillard, Heffernan, Ketcham

Facilitator: Benavides

Staff: Knox, Clark

**Announcements:**

Gaber announces two new MPD initiatives: 1. MPD will commit to helping children in the community read. They will work with Centro Hispano and Madison Area Urban League. 2. Develop a GED Boot camp for those 17-25 year olds without a high school diploma.

**Co-Chair Update:**

1. Need assistance putting together the "appendices section" Looking for volunteers.

- 2. Need "proofing team" to proof final document. Clark volunteers to be a part of team. Looking for volunteers.

**Timeline:**

**We are on a strict timeline. After a conversation with the County Executive, we need to push to complete so she can review in mid-Sept.**

|   |                          |
|---|--------------------------|
| Feedback on new introduction, public hearing section: | <b>due Thurs. Aug 27</b> |
| Pick up final draft in new format at 421 CCB on       | Tues, Sept 1             |
| Meeting regarding finalization:                       | Thur, Sept 3             |

**Recommendation Voting:**

5:00 pm: Voting Begins: Please refer to Recommendations Handout-8/5/09. Restate Oliver's motion to eliminate move, seconding for non-amended recommendations.

**Specifics regarding Recommendations:**

- 1. we assume that the recommendations in the report, if implemented, would also be funded, so that we not create any "unfunded mandates'.
- 2. acknowledge that some of what we are recommending is already being done

Abstain: 0

**3-Z-4:** Language slightly modified, see final version

Meeting adjourns at approximately 10:05 pm

## **Dane County Task Force on Racial Disparities in the Criminal Justice System: Recommendations to Improve Fairness and Public Safety**

Recommendations ONLY: EXTRACTED TO FACILITATE DISCUSSION AND VOTING  
NOTE: NUMBERS ON RECOMMENDATIONS ARE TEMPORARY AND WERE ADDED TO FACILITATE DISCUSSION. \*=some comment, (\*)=comments about format etc that are probably not controversial

### **I. Recommendations spanning the whole system.**

#### **A. A call for leadership to make reducing racial disparities in the criminal justice system a top priority for Dane County.**

**1-A-1 RECOMMENDATION:** A call to action from the leadership in Dane County to come together to acknowledge that racial disparity in the criminal justice system exists and that there is a commitment to reducing it. This would include leaders from all levels of government, law enforcement agencies, community based organizations and affiliated criminal justice organizations.

Ayes: All  
No's: 0  
Abstain: 0

#### **B. Create a Community of Opportunity**

**1-B-1 RECOMMENDATION:** Dane County should create “Communities of Opportunity” by investing in proactive neighborhood based initiatives in low-opportunity neighborhoods. Neighborhoods that are identified as having a higher crime rate than average should be offered additional resources including training for success in employment and housing, coupled with access to employment and affordable housing opportunities in the neighborhood. Schools that serve these neighborhoods should be encouraged to offer culturally relevant education. Public transportation to these areas should be expanded and improved.

Ayes: All  
No's: 0  
Abstain: 0

\* 1-B-2 **RECOMMENDATION:** Neighborhood law enforcement should partner with entities in the community to foster a supportive and safe environment for all. Citizens of the neighborhood along with neighborhood law enforcement should work together to create and implement necessary training, programs, opportunities, and community-

building events as supported by the city and county. Having police assigned to and partnering in low-opportunity neighborhoods would:

- Provide a sense of safety and security for residents to participate.
- Provide officers with the knowledge of existing resources that would serve as a legitimate source of referrals in lieu of arrests.
- Provide opportunity for positive engagement and relationships to take place between police and residents culminating in cross-cultural education; improved communication; and a vested mutual interest in neighborhood and resident success.

[[Blanchard: replace "create" with "continue" or "expand" to acknowledge present programs. Also: extreme decentralization has a tradeoff with specialization.]] [[O'Brien: Document does not recognize the extent to which this is already going on in Madison. Look at 8/2/09 Wisconsin State Journal article on Community Policing. It is important to give entities credit for what they are already doing.][Vedder: Recognition that we have JFF (Joining forces for Families) in some of poorer neighborhoods, but it needs to do further than now as well as increasing JFF offices in areas without that need one. Also, very importantly, note that county Human services staff have indicated a cut in preventive services for 2010 since they are unmandated funds. We cannot do this – we need more services.]

Ayes: All: with the understanding of minor language change

No's: 0

Abstain: 0

### C. Data collection.

**\*1-C-1 RECOMMENDATION: Assessment of racial/ethnic equality or inequality in the treatment of accused offenders should be built into the routine processes of Dane County criminal justice agencies.**

- (a) Each agency should consult appropriate resources on best practices for data collection and reporting for that type of agency as well as consult with other Dane County agencies to permit better integration of information across different data systems. All agencies should have data systems in place that permit them to manage their work flow and track their treatment of accused offenders. All agencies should record information about accused offenders' race/ethnicity to permit assessment of possible racial/ethnic disparity in treatment.
- (b) Leadership teams in each agency should work with appropriate in-house technical staff and external advisors to prepare standard reports on racial patterns in the treatment of accused offenders. The first report should be released within six month to provide a baseline. Annual reports should be released thereafter to provide a basis for monitoring progress.

[[Blanchard: Need to reference need for adequate resources.]] [[Mahoney: Need to identify source of funding. Dane Count IT no longer provides dedicated staff to individual agencies. Need to articulate a funding source for dedicated IT staff. ]] [[Oliver Suggested response: add c) "The Dane County budget should provide sufficient staff resources for this effort. Dane County agencies should collaborate to eliminate duplication of effort and develop efficient ways of accomplishing this goal. One-time

funding for start-up costs for new systems should be provided by the County or solicited from external funders."]

Ayes: All  
No's: 0  
Abstain: 0

**\*1-C-2 RECOMMENDATION:** In accord with the recommendations of the Governor's Commission and concerns expressed by many in public hearings, all Dane County agencies should collect and report separate data on Hispanics and should distinguish Hispanics from non-Hispanic whites. [Hoskins Pp 6-7 Rec should focus on people of color, not just Hispanic. African-American population excluded in that section of the report. I think in fairness to the African-American population a bullet point should be included with information from the governor's task force or else eliminate the Hispanic bullet point.] [Oliver: Arrest data already includes White, Black, American Indian, Asian but lumps Hispanics with White. If concern remains, can add at the end of the sentence "while continuing to collect and report data on African-Americans, Native American Indians, and Asians."]

Ayes: All  
No's: 0  
Abstain: 0

**\*1-C-3 RECOMMENDATION:** Dane County agencies with full-time IT staff should cooperate with each other and with IT staff from other agencies in the state, the Office of Justice Assistance, and technical advisors from universities, private or nonprofit foundations, or agencies in other states. The goal will be to create standardized data collection and analysis protocols and report formats to facilitate the ongoing assessment of sources of racial disparities in the criminal justice system, and progress toward reducing disparities at every step in the system. Dane County agencies in collaboration with the Office of Justice Assistance should seek federal or foundation grants if needed to support this development work. [[Mahoney: County agencies do not have dedicated IT staff, need to specify funding]]

amend to state: criminal justice partners defined as: Courts, All Police Agencies, DA Office, Public Defenders, Probation/Parole, Clerk of Courts

Ayes: All  
No's: 0  
Abstain: 0

## **D. Clear statements of policy and practice**

\*[Hoskins: We do not only need policies but recommendations to the real cause of the problem in order to truly rectify the issue. The problems and recommendations in this draft is not the initial focus of the task force issues that was agreed upon by the group.] [Oliver: Clarify whether Hoskins wants to drop this whole section or to be sure there are other more specific recommendations.]

- **1-D-1 RECOMMENDATION:** Strongly encourage all Dane County law enforcement agencies to follow this report's recommendations in an effort to achieve consistency and sustainability in addressing racial disparity. Present law enforcement related recommendations at the Dane County Chiefs' Association

meeting, and ask the chiefs to adopt the recommendations and create written policies based upon them within their own organizations. [Blanchard: rec does not seem to follow from text.] [ Rec Contains a reference to "this report's recommendations" but the report mentioned in the small group report was removed from the section. Need to find the relevant antecedent.]

- **Amend to contain all criminal justice partners vs. Law Enforcement**

Ayes: All

No's: 0

Abstain: 0

- **1-D-2 RECOMMENDATION: The District Attorney and Public Defender should each establish written policies that will make the plea bargaining process more transparent and regularized in order to avoid unconscious bias.** Such policies will guide assistant district attorneys to make charging decisions, and offer plea deals and diversion programs to defendants in a more uniform, consistent manner; and public defenders to consistently explain to clients the real consequences of decisions such as waiving a preliminary hearing or accepting a plea offer, and to insist on seeing the police report before being asked by prosecutors to engage in plea negotiations. [Blanchard concerns about confusing plea bargaining with charging and implying that PDs commit malpractice in mis-advising clients. Proposes alternate language: "**The District Attorney and the Public Defender should commit to paper the most relevant factors to consider in making critical decisions in their jobs.** On the prosecution side, this should include decisions to charge or decline offenses as crimes or as ordinances, decisions to amend or dismiss counts or entire cases, decisions to make various types of settlement offers, and decisions informing sentencing recommendations. On the defense side, this should include advice to clients about ways to position cases to maximum advantage with prosecutors and courts, waiving critical rights, deciding to cooperate with police, accepting various types of plea offers, taking a case to trial, and various modes and approaches to sentencing hearings. While there is no set of written protocols or guidelines that can capture the infinite variety of combinations of offense, offender, victim, and context, such written factors should help avoid the effects of unconscious bias and provide reassurance to the community that the same rules apply to all citizens."

Amend to include Blanchard's suggested language. Voting only on the Prosecutor part –leave Public Defender for possible rewrite.

Ayes: 13

No's: 0

Abstain: 1 (O'Brien)

- **1-D-3 RECOMMENDATION: DOC in Dane County should write policies to guide its officer's application of DOC Rule 1, to ensure that the broad sweep of the rule does not result in re-incarceration for problems or issues that do not involve law violations or risks to public safety. [Cavanaugh: comments on page 7 apply here, i.e. DOC already has written policies]**

Change in written policy versus policy written specifically around Rule1. Task Force decides to set this recommendation aside for further analysis.

### **E. Cultural competence, training and representation.**

\*NOTE: Without criticizing the content of the recommendations, Heffernan has proposed reorganizing them. Oliver suggests we treat that as a writing issue that we don't need to vote on.

**(\* 1-E-1 RECOMMENDATION: Continue and expand efforts to increase the representation of people of color, both as legal and support staff, in the District Attorney's office, the court, the Public Defender's office, law enforcement agencies, and the DOC. Take other steps to increase the cultural competence and cultural sensitivity for existing staff.** Agencies' efforts should include intentional and affirmative outreach to underrepresented groups to increase the pool of applicants, and leaders should emphasize the importance of having a diverse workforce. [Butler: cultural competence is a different point from representation. Or say that cultural competence should be a requirement for all new hires, regardless of race or ethnicity.] [Heffernan: Combine with 1-E-6, combined to read: "**All leadership In the criminal justice system implement a vision that places a high value on diversity and emphasizes it as a priority in hiring practices and training programs. Continue and expand efforts to increase the representation of people of color, both as legal and support staff, in the District Attorney's office, the court, the Public Defender's office, law enforcement agencies, and the DOC. Take other steps to increase the cultural competence and cultural sensitivity for existing staff.**"]

Amend to include: CJ Partners

Aye's: All

No's: 0

Abstain: 0

**(\* 1-E-2 RECOMMENDATION: Madison Police Department has succeeded in hiring a police force that is representative of the community it serves. MPD should share as best practice its methodology for recruiting and retaining highly qualified officers of color with all other Dane County law enforcement agencies.** For example, the Sun Prairie Police Chief attended a public hearing and spoke about his desire to learn best practices in order to hire more minority police officers that reflect the increasingly diverse community that his department serves. [Heffernan: Delete "For example . . ." to end]

[Heffernan: put 1-E-10 here, then the next problem "There are inconsistent methods . . . "]

Aye's: All

No's: 0

Abstain: 0

**1-E-3 RECOMMENDATION: Encourage all Dane County law enforcement agencies to provide high-quality training to prevent racial bias in policing on an annual basis. Such training should include cross-cultural conflict resolution strategies. Provide funding to bring the National Institute of Crime Prevention's training back to Dane**

County every year, and expand it to include more Dane County law enforcement agencies. [Butler: Why not all CJ professionals, not just LE?]

Amend to CJ Partners and include, "such as" in example.

Aye's: All

No's: 0

Abstain: 0

**\*1-E-4 RECOMMENDATION: To measure the effectiveness of training initiatives we recommend using the Intercultural Development Inventory (IDI) as a pre- and post-test.**

The IDI is a statistically reliable, cross-culturally valid measure of intercultural competence adapted from the Developmental Model of Intercultural Sensitivity and has been used with Law Enforcement around the country. **(citation needed)** [Oliver: I understand this is a commercial product that entails hiring qualified test administrators. Should we recommend a specific product?]

Amend to CJ Partners and include, "such as" in example.

Aye's: All

No's: 0

Abstain: 0

**1-E-5 RECOMMENDATION: Dane County should increase the level and proportion of funding to smaller community-based organizations staffed primarily by people of color and working specifically with people of color to prevent entry or re-entry into the criminal justice system.** Increased weight in the funding decision process should be given to the fit between the ethnic/racial mix of the people providing services and the ethnic/racial mix of the people requiring services, to the capacity of an organization to provide culturally-appropriate services, and to past records of success in providing services. [NOTE: References to specific organizations deleted, no disagreement about doing this. No other criticisms received]

Amend with language rewrite surrounding Dane County-more specific

Ayes: 12

No's: 1 (O'Brien)

Abstain: 1 (Albert)

**(\*) 1-E-6 RECOMMENDATION: All leadership in the criminal justice system implement a vision that places a high value on diversity and emphasizes it as a priority in hiring practices and training programs. (Clerk of Courts, Judges, District Attorney, Police Department, Sheriff Department, Corrections, Public Defender) [Heffernan: move up and combine with 1-E-1 as above] [Gaber: Police Departments should be plural, not singular]**

Aye's: All

No's: 0

Abstain: 0

**1-E-7 RECOMMENDATION: Create an ongoing forum for dialogue on issues around race and culture among staff and members of the community to build bridges and break down barriers of misunderstanding.**

**1-E-8 RECOMMENDATION: Collaborate with organizations that work with people of color and invite their participation on decisions that will substantially impact their constituents.**

1-E-7 and 1-E-8 combined vote on current/rewrite to be more specific.

Aye's: 13

No's: 0

Abstain: 1 (Blanchard)

1-E-9 RECOMMENDATION: Encourage staff to learn more than one language. Create incentives for those willing to take classes in becoming bilingual. [Heffernan, move to section with other language issues] [Mahoney: Sheriff's Office has in the past attempted to create "incentives" for learning a second language and staff becoming bilingual. Previous ideas were denied due to lack of funding. Need to identify funding sources.]

Amend: staff of CJ partners, funding language, languages representative of the community.

Aye's: All

No's: 0

Abstain: 0

(\*) 1-E-10 RECOMMENDATION: Create a goal to be used as a guideline to increase diversity within an agency by a certain date. [Heffernan: move to follow 1-E-2] Mlatawou moves to remove this recommendation

Ayes: 10

No's: 3

Abstain: 1

1-E-11 RECOMMENDATION: Dane County law enforcement should receive training on any new programs that are developed to offer alternatives to arrest. This training must include information regarding police discretion, an understanding of when they can access alternatives to arrest; and a thorough explanation of the different options available to them. It is essential that such alternatives to arrest are presented as preferred methods by law enforcement leadership, rather than equal to traditional ticketing and arrest procedures. [Heffernan: Move to later section] [Blanchard: Objects to last sentence, "it is essential": TF does not have data to show that current arrest procedures are defective] [Mahoney: Include funding sources. Funding beyond bringing trainers into the area. Funding must include replacement factor for all staff.]

Aye's: All

No's: 0

Abstain: 0

## F. Better complaint resolution options.

\*[NOTE: This is entirely rewritten to reflect TF discussions]

\*NEW 1-F-1 RECOMMENDATION: Improve and standardize the citizen complaint process for all Dane County law enforcement agencies and other criminal justice agencies, including the DA's office, Public Defender's office, the Court, and Dane County Probation & Parole (DOC) – by creating county-wide complaint resolution guidelines. Such guidelines should include a two-way communication between the citizen and the agency as an informal alternative dispute resolution process, and require agencies to provide complainants with a response summary report, summarizing the agency's investigation and findings, rather than a short form letter informing citizens that their complaint was not sustained. This will allow for a more responsive positive dialogue, and provide more assurance to the complainant that a thorough investigation was conducted, and that regardless of the final decision, both the complainant and the person/agency complained against have had a chance to

tell their story. The complaint response summary report should include, but not be limited to, the following:

- Summary of specific allegation(s) being made by the complainant.
- Summary of agency findings related to specific allegations including the source(s) of such findings (i.e. witness statements, documentation, video, etc.) as appropriate.
- Summary of determination made by agency based on findings, citing relevant agency policy and procedures.
- Allow a mechanism for some verbal feedback by the complainant about the complaint summary to an agency representative.
- Inform complainant of the external complaint processes available to them.]

**\*[THE FOLLOWING IS NEW EXPLANATORY TEXT]** While Madison's 1998 Task Force on Race Relations recommended hiring a criminal justice Ombudsman to act as a clearinghouse for all questions and complaints by Dane County residents regarding any aspect of the criminal justice system, this recommendation was never implemented due to budgetary constraints.<sup>1</sup>

Currently, when residents are not satisfied by the agency's response to their complaint, their next option is to file a complaint with the Police and Fire Commission. However, this formal process can be very intimidating and overwhelming for many people, especially since complainants must go public with their complaint, and are forced to hire an attorney in order to have any chance to succeed against the greater authority of the criminal justice agency, who is represented by counsel.

**\*NEW 1-F-2 RECOMMENDATION: The Dane County Board should appoint a group of citizens and criminal justice system representatives to review best practices in reviewing complaints, including the emerging best practice of the Police Auditor -- a permanent external citizen oversight agency that has the authority to audit, monitor, and inspect any aspect of police operations.**<sup>2</sup> Like the criminal justice ombudsman, a police auditor would provide independent oversight and investigation of complaint, while instilling confidence in the complaint process through objective review of police/criminal justice agency misconduct investigations and outreach to the community. An independent police auditor is a growing practice around the country that promotes police accountability and strengthens the relationship between police departments and the communities they serve.

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<sup>1</sup> According to Madison Police Chief Noble Wray, who served on the 1998 Task Force and also chairs the Governor's Oversight Committee that is currently implementing the recommendations of the 2008 Governor's Commission on Reducing Racial Disparities, the ombudsman recommendation was the only recommendation to come out of the Task Force on Race Relations that was **not** implemented – not for lack of agreement that it would improve the complaint process, but for mainly financial reasons.

<sup>2</sup> See Walker, Samuel, *The New World of Police Accountability*, Ch. 6, "The Auditor Model of Citizen Oversight – Police Auditors," SAGE Publications (2005).

[Mahoney: delete old recommendation. Remove language relative to "Auditor" as program does not make sense under current individual agency oversight. Better addressed through a dedicated study group.]

1-F-3 Other recommendations to improve the citizen complaint process:

1. Provide all persons stopped by the police with written information (available in English, Spanish and Hmong) regarding their individual rights, the officer's business card, and the process for filing complaints.
2. Investigation of complaints should go beyond the facts of individual cases, or whether or not there was reasonable suspicion or probable cause, and examine patterns of the officer's conduct.
3. MPD "Early Intervention Program" to track complaints will begin later this year. This automated complaint processing system will trigger intervention when certain patterns are detected. MPD is also planning to provide reports to the public about internal discipline of its officers, while protecting the anonymity of the officers involved. This should be considered by other county law enforcement agencies as well.
4. Provide complainants with a full report of the investigation and its findings, rather than a short form letter informing citizens that their complaint was not sustained.
5. Put citizen complaint forms on homepage of law enforcement agencies' websites, not buried under "Professional Standards" where most people unfamiliar with that term would not naturally look.

Procedural move to postpone voting until next meeting.

## G. More communication between criminal justice personnel and the general public.

**1-G-1 RECOMMENDATION:** Dane County Office of Equal Opportunity (or other county entity?) should collaborate with legal associations to create a community education program involving a series of classes targeted at communities of color to help people have a basic understanding of their rights. For example, programs held in neighborhoods or in collaboration with community based organizations sharing fundamental issues with residents such as arrest, traffic matters, child support, expulsions, probation, diversion programs, court procedures, jail procedures and other pertinent topics regarding the criminal justice system would be discussed in a forum that is not threatening or confrontational. This can be structured as a bridge-building opportunity to break down barriers between people of color and the criminal justice system. [Blanchard: Recommendation inconsistent with preceding problem regarding public misperception of offenders, needs rewrite. No objection to recommendation itself.] [Mahoney: Need to indicate funding source for community education program]

Aye's: All

No:0

Abstain: 0

## H. Racial impact statements

**1-H-1 RECOMMENDATION:** Law enforcement agencies, as well as all other decision makers in Dane County's criminal justice system, legislators and chief executives, should routinely provide written racial impact statements prior to implementing needed initiatives, policies or ordinances. When a particular initiative or policy is projected to increase disparities, alternatives that may be just as effective in resolving the problem should be preferred. If the agency decides that the most effective strategy would be the one with the greatest impact on racial disparity, then the agency should share this information with the affected community and stakeholders before the strategy is set in motion.

Amend language; footnote model of racial impact statements

Aye's: All

No's: 0

Abstain: 0

## I. Mental health issues.

**\* 1-I-1 RECOMMENDATION:** Law enforcement officers are the first point of contact with persons who exhibit mental or substance use conditions, and are critical in determining the situation's outcome (whether or not the person will be jailed). We recommend pre-arrest strategies that "rely heavily on helping police become knowledgeable regarding the nature of mental and substance use conditions, provide tools to de-escalate crisis situations and provide options for treatment alternatives to incarceration that are available in the community."<sup>3</sup>

\*(1) All members of Dane County law enforcement agencies should receive training about mental illness and substance abuse, to include knowledge of psychiatric disorders, de-escalation techniques, legal issues related to mental illness and substance abuse (reasonable accommodations/modifications), and empathy training from people who have mental illness and their family members.

\*(2) Establish in Dane County a 24-hour single point of entry into the mental health system, with a policy of no refusals, where officers take people exhibiting symptoms of mental illness or substance abuse. People would be placed in protective custody with no charges until they could be transferred to an appropriate treatment facility or agency such as a state hospital, medical detoxification programs, mental health centers, rehabilitation programs or social service agencies.

[Mahoney: (1) (2) great ideas, identify funding sources]

\* (3) Provide information for responding law enforcement personnel on community resources for people in a mental health crisis, and develop a seamless link between law enforcement and community mental health and substance abuse services.<sup>4</sup> [OBrien P14 Top (2) I am very uncomfortable with this recommendation. Unfortunately I missed the last two meetings of the Task Force so perhaps I missed the documentation that

<sup>3</sup> Position Statement 52: In Support of Maximum Diversion of Persons with Serious Mental Illness from the Criminal Justice System, Board of Directors, June 8, 2008  
[www.mentalhealthamerica.net/go/position-statements/52](http://www.mentalhealthamerica.net/go/position-statements/52) (last visited July 18, 2009).

<sup>4</sup> See "Criminal Justice Primer for State Mental Health Agencies," September, 2002.

supports this recommendation. In Madison, Crisis Intervention at the Mental Health Center of Dane County is a 24-hour gateway to mental health services for those in crisis. This recommendation does not recognize their role. I can't imagine a facility that has a "no refusal" policy. Before making such a recommendation we would certainly want to hear the experience of staff at Detox and Jail Booking on how people in crisis present themselves and the measures that must be taken to keep them and others safe. When you speak of people being "transferred" to other agencies, it sounds like their bodies are being taken there. But many of those services are offered in the community, not in residential placements. This begs the question of where these individuals, whose behavior led to police intervention in the first place, will be staying.]

[Gaber: LE should receive training but should not be responsible for providing treatment alternatives, not an LE function to provide mental health treatment.] [Suggested edit by Oliver: The material in question is a quote from another report. To clarify that LE is not expected to provide treatment, the quote could be edited this way: **We recommend pre-arrest strategies that "rely heavily on helping police become knowledgeable regarding the nature of mental and substance use conditions, provide tools to de-escalate crisis situations" and employ "options for treatment alternatives to incarceration that are available in the community."**]

**Amend to include more generic language; addiction included; postpone vote for rewrite.**

**Dorl and O'Brien**

**O'Brien moves to modify wording to : "explore the use of the Memphis Model for Dane County Law Enforcement Agencies." Friendly amendment Dorl, add "or something similar to Mephis Model (see appendix)**

**Aye's: All**

**No: 0**

**Abstain: 0**

**1-I-2 RECOMMENDATION: To allow for continuity of care for returning ex-offenders being treated with psychotropic medications, DOC in Dane County should require returning ex-offenders to apply for the new BadgerCare Plus state-funded insurance program for adults with no dependent children who earn up to 200% of the federal poverty level. DOC should provide assistance with the application process and if needed, the \$60 application fee. BadgerCare Plus provides coverage for people to see a Psychiatrist only, and pays for medications. Currently DOC in Dane County has overused its mental health purchase orders, so connecting ex-offenders with BadgerCare Plus will help to reduce the number of ex-offenders who may need DOC-supported mental health services. [OBrien P15 Top What does it mean that BadgerCare Plus pays for a psychiatrist "only"? It clearly pays for other sorts of medical care. Is that the only mental health service it pays for?]**

**Aye's: All**

**No: 0**

**Abstain: 0**

**\*1-I-3 RECOMMENDATION: Dane County and DOC shall fund a community support program (CSP) that is devoted solely to the population of returning ex-offenders in need**

**of continuing mental health treatment in order to avoid behaviors that will likely result in their return to prison.** The program need not be created from scratch, but could be a step-down program from the highly successful and proven Community Treatment Alternatives CSP run by the Mental Health Center for the past 18 years.<sup>5</sup> In addition, there should be a strong AODA component to such a program as part of the total wraparound services it would provide to meet all the needs of its participants. [Cavanaugh: Need more information. How is this different from Dual Diagnosis program already offered at Day Report Center.]

**Aye's: All**  
**No: 0**  
**Abstain: 0**

**1-I-4 RECOMMENDATION: DOC and Dane County Department of Human Services engage in a joint effort to bridge the funding gap between their agencies to allow for more referrals by DOC to mental health treatment providers and increase the Mental Health Center's ability to prioritize returning ex-offenders with mental illness, thus avoiding the closed wait list and obtaining needed services to avoid reincarceration.**

**Aye's: All**  
**No: 0**  
**Abstain: 0**

## **J. Special Issues Regarding Latinos and Other Immigrants**

\* Hoskins: Remove focus on immigration because there is a Dane County Immigration Task Force appointed by Supervisor Scott McDonnell, Chair [Does this comment apply to the whole section or just to the ICE debate?]

\*[Oliver: Concern throughout about mention of specific organizations rather than general types of organizations]

### **Public Defender Partnership with New Community Immigration Law Center**

**1-J-1 RECOMMENDATION: The State Public Defender's office in Madison will partner with the Community Immigration Law Center, based at Christ Presbyterian Church in Madison, to provide expert legal advice from local immigration attorneys to public defenders representing immigrant clients.**

[Oliver: specific or type?]

**Amend with slight language modification: see final copy.**

**Aye's: All**  
**No's:0**  
**Abstain: Hassel**  
**Note: Gaber departs.**

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<sup>5</sup> CTA currently has 81 clients but the real need is at least double, according to David Delap, CTA Director, and Greer. The program serves only those with serious and persistent mental illness and those who are conditionally released from Mendota or Winnebago Mental Health Institutes and found not guilty due to "mental disease or defect." 36% of CTA participants are African-American.

### Professional Translation into Spanish and Hmong of Forms, Pamphlets, and Documents for all Dane County Criminal Justice System agencies

**1-J-2 RECOMMENDATION:** Professional translation services should be included in budgets of all Dane County criminal justice system agencies, in order to avoid unprofessional and inaccurate translations of documents that may have a serious impact on a person's experience with Dane County's criminal justice system.

Amend with slight language modification: see final copy

**Aye's: All**

**No's: 0**

**Abstain: 0**

### Increase Availability of Interpreters for Law Enforcement

**1-J-3 RECOMMENDATION:** Dane County law enforcement agencies should create stronger and more consistent policies that determine when an interpreter should be called, or the Language Line should be utilized, for a person with limited English ability. Policies should require that when a person has trouble understanding English, even if they try to communicate with a few words of English, an interpreter or the Language Line should be called to ensure that the person fully understands his or her encounter with law enforcement.

- [Heffernan proposes moving recommendation 1-E-9 to here]

Amend with slight language modification: see final copy

**Aye's: 15**

**No's: 0**

**Abstain: 1 (Blanchard)**

### New Routes (Nuevas Rutas)

**\*1-J-4 RECOMMENDATION:** The Dane County Clerk should work more closely with the New Routes to ensure that its staff is adequately informed about the criminal and civil justice systems. We recommend a funding increase to add a staff member who is a professional legal advocate with extensive knowledge of the criminal justice system to provide legal advocacy services to Latino community members. [OBrien P17 Middle Recommendation The Dane County Clerk is not a criminal justice agency. Do you mean the Dane County Clerk of Court?] [Oliver: specific or type?]

Amend with slight language modification: see final report

**Aye's: All**

**No: 0**

**Abstain: 0**

### Increase Dane County Law Enforcement Agencies' Education and Outreach to the Latino Community

**1-J-5 RECOMMENDATION:** Dane County law enforcement agencies should model an outreach program similar to the Madison Police Department's Amigos en Azul to work to build the trust of Latinos in Dane County. Efforts should include community education initiatives using Latino media outlets such as La Movida, La Comunidad News, La Voz Latina, Madison en Vivo (TV), WORT, and community events. This should include more than just staffing an information

table, but be an active effort to teach the Latino immigrant community about the laws and how they are enforced, what to do when they are stopped by the police or involved in a traffic accident, and how to access Spanish-language interpretation and legal assistance when a person has a contact with the criminal justice system. [Mahoney: Previous attempts to create dedicated outreach positions were met with no support due to lack of funding of staff positions. Writers should identify a funding source other than 2010 budget.]

**Aye's: All**

**No: 0**

**Abstain: 0**

### **Create a Latino Community Liaison Position in Dane County**

**\*1-J-6 RECOMMENDATION:** This position would be responsible for coordinating all of the above recommendations, as well as creating community educational efforts regarding drinking and driving, domestic violence, prostitution, gangs, drugs and traffic laws. This position would also coordinate all aspects of the criminal justice system as they affect Latino community members, and assist people in accessing diversion programs and other alternatives to incarceration, revocation, prosecution and arrest. This person could also facilitate non-citizen jail inmates' ability to communicate with their consulates. [Blanchard concerned about AfAms; Oliver, Butler, Heffernan note discussion led to agreement that this should be 50% appointment, with implication there would be another 50% appointment recommended for AfAm liaison]

**Ayes: 4**

**No's: 10**

**Abstain: Dorl, Ketcham, Dillard**

### **1. Narrowly tailor Dane County Sheriff's voluntary communication with U.S. Immigration and Customs Enforcement (ICE)**

\*[NOTE: THIS IS ALL NEW AND REFLECTS UPDATED INFORMATION FROM DCSO ABOUT POLICIES. AS DISCUSSION IS NEW, IT IS INCLUDED HERE. Blanchard and Gaber advocate removing the entire section and recommendations. Heffernan asks whether to reference County immigration TF.][Mahoney wants to strike whole section, refer to the new Dane County TF]

\*The DCSO communicates voluntarily with ICE in at least two ways that create a disparate impact on Latino and other immigrants in Dane County. Neither is required by law.

- a. **DCSO Jail ICE notification policy:** requires Dane County Jail booking deputies to send an email notification to ICE for every immigrant booked into the jail, regardless of immigration status or severity of the alleged criminal activity. The email includes all identifying information about the person, and serves as an invitation for ICE to place an immigration hold on the person. During the first six months of 2009, DCSO made 188 notifications to ICE, and 73 immigration holds resulted from those emails from DCSO booking deputies. In all, DCSO turned over 42 people to ICE officials from the jail.

**\*PROBLEM:** While some of these people were charged with serious offenses such as sexual assault, 3rd – 5th offense OUI, and drug crimes -- others had no criminal history at all and had been charged for driving without a license, or carrying an open intoxicant. The result of this policy has been that immigrant families of deported non-criminals have been left without any means of support. An unintentional consequence of this policy, which widely known about in the Latino community, has been a marked decrease in the willingness of Latinos to trust law enforcement in general, with significant public safety consequences. Social service and domestic abuse providers report that many of their Latino clients no longer feel they can call the police when they need help, for fear that their family members will be deported.

**\*1-J-7 RECOMMENDATION:** **Narrowly tailor the ICE notification policy so that DCSO does not notify ICE about non-criminal inmates, such as those charged with driving without a license, or other minor ordinance violations.** The broad sweep of the current policy, while removing some dangerous offenders from the community, also leads to deportation of hardworking immigrant residents who are here to make a better life for themselves and their families. This recommendation would prevent non-criminal immigrants from being uprooted and forced to leave their families without support, while allowing the Sheriff to continue to promote public safety.

**\*ICE notification in the Dane County Courthouse:** The second voluntary communication that the DCSO initiates with ICE involves its dispatchers and bailiffs in the Dane County Courthouse. When law enforcement requests it, DCSO dispatchers check the national crime database (NCIC) for some individuals, including immigrants, when they are scheduled to appear at the Dane County Courthouse. After this check, if the bailiff finds that the person has an immigration hold, the bailiff will place the person in custody when they arrive at court, and notify ICE to pick them up later. The DCSO believes that it is mandatory to detain a person who has an immigration hold due to a violation of federal immigration laws. However, the U.S. Attorney General has published an opinion stating that it is merely voluntary for local law enforcement to detain immigrants accused of being in the country without documentation, not mandatory.<sup>6</sup> [

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<sup>6</sup> See U.S. Attorney General's Office of Legal Counsel April 3, 2002 memorandum: "Non-preemption of the authority of state and local law enforcement to arrest aliens for immigration violations." See also, *National Council of La Raza v. Department of Justice*, 411 F. 3d 350 (2nd Circuit, 2005) (Citing then-Attorney General John Ashcroft explaining that the 2002 OLC memo should be interpreted to mean, "when state and local law enforcement officers encounter an alien ...who has been listed in the NCIC database for violating the [Immigration and Nationality Act], they may arrest that individual and transfer him to the custody of the INS. The policy and the authority are no broader than this, and **the narrow, limited mission that we are asking state and local police to undertake is a voluntary one.**"

O'Brien P18 Bottom I don't think you'll find documentation that dispatchers (who work for 911 and not the court system) and bailiffs do what you describe.]

**\* PROBLEM:** In a recent incident, a woman from Central America who had been living in Dane County for 15 years came to court for a child support hearing but was instead detained by ICE agents at the family court and placed in deportation proceedings. Social service providers who work with Latinos report that some of their clients are now refusing to go to the courthouse for any reason, including to testify as a witness in a case, or to assert their rights in family or small claims court. [Blanchard objects to anecdotes that imply this is a common problem.]

**\*1-J-8 RECOMMENDATION:** DCSO dispatchers and bailiffs should not alert ICE when they find that a person appearing at the Dane County Courthouse has an immigration hold, and they should not detain the person, because it is not required by law. The current policy has a chilling effect on immigrants who no longer feel safe to use the courthouse to assert their rights in civil or criminal court proceedings.

Ayes: 10

No's: 2

Abstain: Hassel, Albert, O'Brien, Mlatawou

Note: O'Brien, Cavanaugh, Albert depart

## II. Recommendations for particular stages of the system.

### A. Interventions to prevent offending: Community Education

**2-A-1 RECOMMENDATION:** Collaborate with African-American, Latino and Asian community leaders, professional organizations, community-based organizations and churches, Dane County school districts, and higher educational institutions, to create a community education program targeted at members of the communities most affected by disparities in the criminal justice system. This program would focus on teaching strategies to help people take personal responsibility to keep themselves free of the criminal justice system and to ensure that their legal rights are protected. This will include methods to avoid coming under the scrutiny of the police, such as not engaging in illegal activities and avoiding "hanging out" in high crime areas, as well as teaching positive communication techniques, such as verbal judo, to use when a person finds themselves in contact with a police officer, that will help ensure that he or she leaves that encounter a free person. In this way, members of the affected communities may take responsibility for their own role in reducing racial disparities, and not place the full responsibility on members of the criminal justice system itself.

**Aye's: All**

**No: 0**

**Abstain: 0**

## B. Policing Practices

### 1. Police Discretion and Policing Strategies

**2-B-1 RECOMMENDATION: Adopt alternate strategies for addressing the problem of illegal drug dealing that have worked well elsewhere, such as the High Point Model.** The Madison Police Department is seeking funding to implement one such program, the High Point Model, in which community pressure is brought to bear on drug dealers as an alternative to prosecution. Details about this program are given in the appendix.

**Aye's: All**

**No: 0**

**Abstain: 0**

**2-B-2 RECOMMENDATION: Law enforcement should be encouraged to issue enforceable warnings in lieu of arrests for low-level offenses, such as disorderly conduct, traffic violations, minor retail theft, drug use and prostitution.** An enforceable warning would lead to a warrant for arrest if the conditions of the referral were violated. The intent is to offer pre-arrest diversion options to be integrated with existing post-arrest diversion programs, such as Deferred Prosecution Unit, RESPECT, the Drug Treatment Court, the Pathfinder program, New Routes, Cool Choices, and the Treatment Alternative Program (TAP) as well as the TimeBank and other restitution and community service programs. [Blanchard: Creative thinking, but objections: (1) Police already strongly encouraged to write tickets instead of arrest; (2) tracking "warnings" to see if they turn into "actual offenses" would require an elaborate system, (3) we do not and should not issue warrants to initiate lower level prosecutions, which seems to be what this calls for]

**Aye's: 13**

**No: 1**

**Abstain: 0**

**(\*) 2-B-3 RECOMMENDATION: All Dane county law enforcement agencies should adopt a clear policy to guide police officers' broad use of discretion in their day to day duties, including guidelines on proper and improper factors to consider, such as the policy written by UW law professor Michael Scott, which was adopted in 2009 by the MPD.** (see appendix) [Blanchard memo states concern that the referenced model policy does not include protection of suspect or other members of community.]

**Aye's: All**

**No: 0**

**Abstain: 0**

**2-B-4 RECOMMENDATION: Law enforcement officers should exercise discretion to reduce the use of citations for relatively minor violations such as disorderly conduct, underage drinking, loitering, and trespassing, which when added together can total over \$1,000 for a single incident.** Such liberal use of multiple citations places an extreme burden on low-income people who cannot afford to pay the fines and may set off a downward spiral leading to a bad credit report, inability to obtain housing or employment, or arrest for failure to pay the fines. [Blanchard objects: no basis for calling use "liberal" nor for assumption that people of color are unfairly ticketed more

than others; also believes "quality of life offenses" and police responsiveness are important for whether neighborhoods "turn for the better or for the worse." [Mahoney: Strike. Writers have not provided any credible evidence that law enforcement uses "liberal" use of multiple citations. Just the opposite, the issuance of citations have prevented an increase in jail incarcerations.] [Cavanaugh: remove disorderly conduct as some disorderly is very serious, or recommend that Wisconsin Coalition Against Domestic Violence and other victims groups be allowed to respond. No victim advocacy on committee.]

**Amend with slight language modification: see final report**

**Aye's: 13**

**No: 1**

**Abstain: 0**

**\* 2-B-5 RECOMMENDATION: All Dane county law enforcement agencies should explain to motorists why they were stopped, and provide them with a business card and pamphlet about the complaint process.** [Gaber objects to automatic distribution of complain pamphlet, suggests "and provide them with a business card upon request." Business card includes phone number for compliments and complaints] [OBrien P21 Middle I do not agree that every police encounter should end with delivery of a pamphlet describing the complaint process, any more than every time you go to a store you should be told how to complain to customer service. This suggests that police are doing something wrong in most interactions with the public and is insulting. I agree that complaint procedures should be readily described and made available whenever an individual seeks that information.]

**(\*) [Heffernan suggests moving 1-E-11 to here]**

**Slight language modification, remove pamphlets—see final report**

**Aye's: All**

**No: 0**

**Abstain: 0**

## **2. Traffic Stop Data Collection**

**\*[NOTE: New recommendations submitted by Dorl. These interface with technical recommendations for data collection]**

**\*NEW 2-B-6 RECOMMENDATION [Dorl]: Law enforcement agencies should implement effective traffic and pedestrian stop data collection systems that should include the following criteria:**

- 1. Race or ethnicity of the person stopped;**
- 2. Gender of the person stopped;**
- 3. Location of stop;**
- 4. Reason for stop;**
- 5. Whether a consent search was requested;**
- 6. Whether a search was conducted and if so, whether contraband found;**
- 7. Whether the person was asked out of the car and/or frisked;**
- 8. Outcome of the stop.**

**Aye's: 13**

**No: 1**

Abstain: 0

**\*NEW 2-B-7 RECOMMENDATION [Dorl]: Dane County law enforcement agencies should not only collect the necessary data, but should plan and implement independent expert analysis of the data once collected.**

- Law enforcement should explore developing partnerships with academic, governmental and other qualified institutions to assist with the establishment of internal and external benchmarks and data analysis;
- Results of data analysis should be used by law enforcement in the design and development of officer training programs, office and agency evaluation, and crime prevention strategies and techniques;
- Law enforcement agencies should actively disseminate data and analysis to the public regardless of whether the data analysis does or does not indicate racial profiling and/or racial disproportionality.

Aye's: All

No: 0

Abstain: 0

### 3. Comprehensive Anti-Bias Policy

**\*NEW 2-B-8 RECOMMENDATION [Dorl]: Dane County law enforcement agencies, individually and collectively, should be encouraged to develop individual and/or county-wide anti-bias policies.** [Oliver: re-locate to 1-D clear statements of policy and broaden to include all agencies, not just LE: 1-D-4 "All Dane County agencies should develop clear written statements of anti-bias policies."]

Aye's: All

No: 0

Abstain: 0

## C. Prosecution decisions; Prosecution diversion and sentencing alternatives

**2-C-1 RECOMMENDATION:** Create written guidelines for decisions at each stage of the prosecution process including signature bond/bail requests, charging, referral to alternative or diversion programs, and proposed sentences. [Blanchard: see comments in 1-D-2]

Aye's: All

No: 0

Abstain: 0

### 1. Deferred Prosecution and Diversion Programs

**\* 2-C-2 RECOMMENDATION:** Expand existing diversion programs such as the Drug Court, DART (Day Report and Treatment Program) and TAP (Treatment Alternatives Program). [Schmidt: Propose alternative language: "Provide additional funding to existing diversion programs, such as the Drug Court, DART (Day Report and Treatment

**Program) and TAP (Treatment Alternatives Program) to eliminate long wait periods to begin treatment after admission to these programs and allow the continuation of culturally specific case management services, which are significantly under funded and in serious jeopardy of being able to continue without additional resources. Further expansion of these programs would also support increased use of diversion services for the AODA impaired offenders."]**

[NOTE: Schmidt provided a rewrite of the description of the Drug Court, DART, TAP programs to include in the report. There were a number of complaints about factual errors in the prior descriptions.]

\*[Schmidt: rewrite suggestion:] (1) Drug Court [NOTE: Per Obrien, official name is Drug Court Treatment Program] – the whole paragraph replace with: This highly successful diversion program began in 1995 and has about 75 participants at any given time, who receive intensive case-management services, residential or outpatient AODA treatment, and supportive housing and mental health services. It is a post plea, pre-adjudication alternative for substance abusing criminal defendants, who are offered the program as either a deferred prosecution agreement or an agreement to reduce the severity of crime charged and/or reduce the associated penalty. Participants are required to fully participate in treatment and case management services and regularly attend Drug Court reviews, where the Judge utilizes an individualized response of rewards and sanctions to foster the participant's progress. Case managers hold participants accountable while providing wrap around support services. A strong emphasis is placed on the employment, education and housing needs of participants. [Schmidt: rewrite suggestion:] (2) DART – the whole paragraph replace with: This pre-trial bail monitoring program began in 2007 specifically to address the high risk, high need criminal defendant who was held in custody following arrest on cash bail status, with a specific focus on African American males who are disproportionately represented. DART was specifically designed to address racial disparities in the criminal justice system by offering the DART program to persons who would not qualify for other bail monitoring programs and who would be unlikely candidates for diversion alternative program consideration by the criminal justice system. DART works with individuals who have a more extensive criminal history, a history of non appearance and warrant status, who are unemployed, lacking non-criminal community support and without a Dane County residence or other housing alternatives. Participants receive the full continuum of care (both mental health and AODA treatment and intensive case management) at a critical time when individuals are experiencing the impact of arrest, withdrawal from drugs and alcohol and are motivated for services. This program provides a window of opportunity at the front end of the system for defendants with serious AODA problems to go directly from jail to residential treatment. DART also serves as a fast track to mental health referral and treatment, which is otherwise unavailable due to the Mental Health Center no longer accepting referrals in 2007 due to the extensive wait list. DART has been successful in helping participants be considered for other diversion programs and avoiding jail or prison sentences based on their success in the program. A three year TAD grant is in its final year and may or may not receive ongoing TAD funds in 2010. Dane County should commit to expanding this highly successful program so that more people have an opportunity to turn their lives around. [Schmidt: rewrite suggestion: ] (3) TAP replace with: TAP is a post conviction sentence alternative program for persons with substance use problems. Its purpose is to help identify and provide community based treatment alternatives to persons who have a

substance abuse or addiction problem that is related to the crime(s) they are currently charged. It is a case management model intended to break the offenders alcohol/drug/crime cycle by linking the legal sanctions of the criminal justice system with the therapeutic process of treatment. It is based on a highly successful national model "TASC-Treatment Alternatives for Safer Communities". TAP began in 1989 and has 50 participants in the program at any given time receiving intensive case-management services, residential or outpatient AODA treatment, domestic violence treatment and supportive housing and mental health services. . Case managers hold participants accountable while providing wrap around support services. A strong emphasis is placed on the employment, education and housing needs of participants. When TAP is offered by the criminal justice system, it becomes part of the sentence disposition; where typically there is a reduction in the amount of jail time for persons who participate in TAP and complete the program.

Schmidt: rewrite suggestion: Page 22 of 35 Problem Statement Revision suggestion Pertains to the last sentence in this problem statement. In 2008 TAP had 25% minority participants, Drug Court 28% and DART 32%.

**[NOTE: Schmidt also provided more detailed suggestions for increasing the participation of people of color in drug court, DART and TAP. I believe the intent is to supplement the current recommendations.]**

**Amend per Schmidt's update:**

**Aye's: All**

**No: 0**

**Abstain: 0**

**\*2-C-3 RECOMMENDATION:** In order to include more people of color in TAP, prosecutors and defense attorneys should refer more people who are charged with drug offenses to TAP to take advantage of the AODA treatment and case management services that the program provides to treat underlying addictions that may be responsible for people's criminal behavior. [Schmidt: In order to include more people of color in TAP, prosecutors and defense attorneys should refer more people who are charged with crimes other than operating under the influence of intoxicants, the majority of which are white males. Other crimes could include drug offenses, battery, DC, and property offenses; where there is a correlation between the individuals substance abuse and the crimes they are committing. This would provide a monitored opportunity to take advantage of the AODA treatment and case management services that the program provides to treat underlying addictions that may be responsible for the persons criminal behavior while still holding offenders accountable.]

**Amend per Schmidt's update:**

**Aye's: All**

**No: 0**

**Abstain: 0**

**\*2-C-4 RECOMMENDATION:** DOC should use DART as an alternative to revocation for people whose probation/parole is being revoked for AODA and mental health-related reasons. DOC would share the responsibility of funding the program, and by referring people to DART as an ATR, they would help to halt the revolving door of incarceration,

release on probation/parole and revocation back into prison/jail. [Schmidt: In order to include more people of color in DART, additional assessment resources would allow DART staff to meet with individuals referred to the program within a week of receiving the referral rather than 2 to 4 weeks as is now the case. This would provide staff the opportunity to meet with persons referred and explain the program and its potential benefits to them, prior to their decision to post cash bail or have it converted to signature bond at a preliminary hearing, making them ineligible for the program. 62% of the persons making decisions to post cash bail prior to meeting with DART staff are African Americans as compared to 38% for Caucasians.]

Aye's: 12

No's: 0

Abstain: Teuscher

**\*NEW RECOMMENDATION 2-C-5 [Schmidt] Recommendation: Evaluate the incentives that are being offered by the criminal justice system for TAP and Drug Court to see if they are sufficient enough to encourage defendants to participate in treatment diversion programs. Perhaps one of the reasons some African Americans referred to Drug court reject the offers of Drug Court is related to the perceived value of the legal incentive. If someone already has a prior drug conviction, how valuable is a dismissal on another case in terms of employment, education or housing opportunities. Or if someone will be placed on probation following Drug Court, how attractive is the offer of Drug Court even if it means a reduced conviction. Since the main legal incentive for TAP is a reduction in jail, how meaningful is this if the person has only a small amount of jail time to serve so why not just sit the time. Perhaps TAP could be offered with a suspended jail sentence as an alternative to probation or a reduced term of probation. Some individuals believe they don't receive an offer of TAP because they failed on probation and are seen as having had a chance. Instead of county jail time they are sentenced to prison.**

Aye's: All

No: 0

Abstain: 0

**2-C-6 RECOMMENDATION: Collect and analyze data on diversion programs to determine whether there is a racial disparity in prosecutors' referrals of defendants to diversion programs and, if so, why it is occurring. In particular, track prosecutors' offers of diversion and offenders' responses to these offers.** The District Attorney's office would collect and analyze data regarding when community based diversion programs were offered as part of a plea bargain based on the charge(s) and race/ethnicity of the defendant. A simple check off list may be useful to limit the amount of time needed to record the data by prosecutors, which could then be handed in for data entry by another party. The purpose of this data collection is to identify potential racial disparities in referrals to diversion programs, and to help ensure that diversion options are in the mix of considerations for all prosecutors and defense attorneys at this stage of legal process. [Blanchard: unclear referent "community based diversion". New data collection task should include recommendation for funding.][Mahoney: identify funding]

Aye's: All  
 No: 0  
 Abstain: 0

•  
**2-C-7 RECOMMENDATION:** Have semi-annual meetings between representatives of deferred prosecution and sentencing alternative diversion programs and the staff of the DA's and Public Defender's offices, as well as the private defense bar and the DOC, to provide educational information on available programs, review racial demographics of referrals and admissions, and discuss outcomes and service development. This will further develop a collaborative relationship between the community based programs and prosecutors and defense attorneys, and ensure that all parties have updated knowledge on available alternative programs.

\*NOTE: I think the following comments are moot in light of Schmidt's revision, we should check 1) 2) OBrien P22 Top Check with Lila what DART stands for. I don't think you have it right but I can't get ahold of anyone right now to find out. 3) OBrien P22 Drug Court Delete "as well as domestic violence treatment" Although Drug Court can require individuals to undertake treatment other than AODA when necessary, it may include psychiatric care, individual therapy, couples therapy, or domestic violence treatment, etc. I think it's best just to leave all that out as none are a frequent component of Drug Court. Also formal name is Drug Court Treatment Program. At the end, criminal charges are dismissed *or reduced*. [NOTE: Schmidt's revision does not include domestic violence] 4) OBrien Middle DART is not run by the Mental Health Center. It is a collaboration between the Courts and the Mental Health Center. I would say technically it is "run" by Commissioner Meurer, but I don't think it's necessary to include that information. 5) Cavanaugh Page 22 of 35, (2) DART Referring to defendants as the "worst of the worst" is offensive and should be removed. I think readers will understand "high risk". [Not in Schmidts revision.] 6) Cavanaugh Page 22 of 35, (3) TAP The last sentence "In addition, there seem to more incentives to reduce jail times, resulting in more probation and less opportunity to participate in programs such as TAP. This is factually incorrect. The DOC has actually seen a decrease over the past two years in the number of people on supervision. I believe you may be attempting to refer to the impact of jail programs on pleas, but this does not have anything to do with DOC. [Did Schmidt revision fix this?]

Aye's: 12

No's: 0

Abstain: Teuscher

## 2. Study Prosecutorial Discretion

**(\*) 2-C-8 RECOMMENDATION:** The Dane County District Attorney's office should conduct a study of prosecutorial discretion with attention to the role that criminal history plays, as it affects racial disparities in prosecution, with the assistance of either the UW-Madison LaFollette Institute for Public Affairs or The Vera Institute Prosecution and Racial Justice program. The Vera Institute's program is widely cited as a best practice in reducing racial disparities in criminal justice, and has worked with the Milwaukee District Attorney's office, as well as the DAs of Charlotte, North Carolina and San Diego, California. The program works to develop sustainable data and management systems

that enable prosecutors to identify evidence of possible racial bias in prosecutorial decisions and respond appropriately if such evidence is found. The Vera Institute helps district attorneys to collect and analyze data about their offices' structures and processes, which they can then use to take corrective action when necessary. [Oliver: OK to specify specific firm or should it be "well qualified group with a proven track record such as . . . "]

**Aye's: All**  
**No: 0**  
**Abstain: 0**

### 3. Universal Screening

**2-C-9 RECOMMENDATION:** Set as a county priority and begin planning for the establishment of a system, such as the one currently being developed for Milwaukee County, that would use a validated risk assessment instrument and face-to-face interviews with every new inmate booked into the Dane County jail to obtain valuable information about each defendant that can be considered by decisionmakers at every point in the system.<sup>7</sup> Universal screening would provide decisionmakers throughout the criminal justice system with information on the defendant's criminal, family, educational, employment and treatment history, and the nature and severity of the offense, and also identify other risk/need factors such as mental health and substance abuse problems, homelessness, under-employment, educational level, family composition and other available community supports. This information would follow the person through each stage of the system, and help identify those people best suited for release on their own recognizance (rather than setting a high cash bail), those eligible for diversion or deferred prosecution programs, and those in need of pretrial interventions such as the DART program run by the Mental Health Center of Dane County. It would also provide information to inform decisions about sentencing, alternatives to incarceration and alternatives to revocation of probation and parole.

Amend per Dorl's language: see final report.

Aye's: All  
 No's: 0  
 Abstain: 0

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<sup>7</sup> See, "The Transformation of Pretrial Services in Allegheny County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment," Pretrial Justice Institute, October 9, 2007. In addition, Milwaukee County has created a Risk Assessment Tool and has completed a proposal for a universal screening program, which they expect to cost at least \$2 million per year. They have applied for a federal grant to fund the program, which is has not yet been implemented while awaiting news on whether it will be funded.

#### 4. Restorative Justice

**\*2-C-10 REVISED RECOMMENDATION [REVISION BASED ON TF DISCUSSION]: Encourage creation of restorative justice programs in areas that are experiencing racial and cultural tensions that involve the criminal justice system.**

A small task force composed of a representative group of stakeholders would have the responsibility of working out the details on identifying the funding and implementing the program. The program would consist of the following components:

- **Neighborhood assistant district attorney. (ADA)**  
This is modeled after the Milwaukee County District Attorney's Office where assistant district attorneys are assigned to a neighborhood, usually associated with a police district. The ADA would work with professionals from other systems in the area, including schools, social services and the police department. The ADA along with a paralegal or social worker would be responsible for the development and implementation of a community conference program.
- **Community Conferencing program**  
This program is designed to offer qualifying offenders of low level misdemeanors and felony offenses the option of having their case reviewed by a group of community members under the supervision of the District Attorney's office. The ADA would be responsible for recruiting and training volunteers to participate in restorative circles in which offenders are given an opportunity to repair the harm with the community and victim for their offense. The circles would be led by trained facilitators. The prosecutor and paralegal would hold preliminary meetings with both the victim and offender to ensure their willingness to take part in this type of process. The circles would be led by trained facilitators. The victim's needs and concerns are paramount in a restorative process, however, the conference can occur without their participation. The offender must agree to abide by the recommendations agreed upon amongst the community conferencing circle members.
- **Community Policing**  
Neighborhood policing has been implemented in Madison neighborhoods and has been quite effective. They would work with the prosecutors, paralegals and community members in carrying out the mission of the restorative justice model.
- **Data Collection**  
The program would need to keep routine records on the disposition of the outcomes of participants by race and ethnicity in order to assess its impact on racial disparity.
- **Mentoring Component**  
A critical element for the success of an offender and restoration of a victim in such a program is the implementation of a support mechanism. There will be a need for community members to volunteer to support both the victim and offender on important issues impacting their lives.

Aye's: All  
No: 0  
Abstain: 0

### D. Jury Selection

- 2-D-1 RECOMMENDATION: Support Dane County Clerk Carlo Esqueda's efforts to arrive at best practices for diversifying Dane County jury pools to ensure juries whose ethnic composition reflects that of Dane County as a whole. [Albert: This issue was examined for years by a committee headed by retired Judge Moira Krueger. We should locate and examine that report.]

Amend with slight language modification; see final report.

Aye's: 11

No: 1

Abstain: Hassel

### E. Re-Entry: Community supervision, Probation and Parole

\*2-E-1 RECOMMENDATION: Dane County should collaborate with the DOC to analyze corrections data to determine whether the racial disparities in revocations not involving prison sentences are due to unequal treatment in supervision. [Cavanaugh: DOC study has been done, don't do a new one.] [Oliver: That wasn't a study of Dane County, and the study has methodological flaws as there was no comparison with people who were not revoked, nor a separation between probationers and those on post-prison supervision, even though revocation rates are more disparate for probation and the racial mix of the two groups is different]

Aye's: 13

No's: 0

Abstain: 1 (Blanchard)

2-E-2 RECOMMENDATION: Dane County should form a joint committee of representatives from Dane County EOC, the District Attorney's office, the Public Defender's office, the Courts and the community at large to create and support a mentoring program that has a connection to the labor market enabling individuals to get access to a full panoply of services such as drug treatment, remedial education, employment-readiness and skills development, and other programs to help offenders break the cycle of crime and move into legitimate employment. [Blanchard: DA and PD not appropriate agencies for such mentoring programs]

Aye's: 12

No's: 1

Abstain: 0

2-E-3 RECOMMENDATION: Dane County EOC should collaborate with other agencies to conduct controlled studies to test for racial discrimination in the Dane County job market.

\*[NOTE: Per TF discussion and directives, Dillard drafted revised recommendations regarding jobs and job programs, which are listed below]

Note: this recommendation will be combined with 3-Z-1

Aye's: All

No: 0

Abstain: 0

**\*2-E-4 NEW RECOMMENDATION [Dillard]:** DOC and Dane County Job Center should promote the state's new Transitional Jobs Program to ex-offenders (MORE INFO??) This program is similar to the state Department of Children and Family Services "Subsidized Private Sector Employment Program" for W-2 enrollees under which, instead of getting a welfare-like cash grant, they would be hired into transitional job created by non-profit organizations. This would allow people to perform useful work, receive minimum wage pay, pay taxes, and qualify for the Earned Income Tax Credit.

Aye's: All  
No: 0  
Abstain: 0

**\*2-E-5 NEW RECOMMENDATION [Dillard]:** Dane County should follow the example of San Francisco and many other U.S. communities who have passed laws banning city and county employment applications from asking questions about prior arrest and conviction records, in order to make public jobs more accessible to ex-offenders.

Aye's: All  
No: 0  
Abstain: 0

**\*2-E-6 NEW RECOMMENDATION [Dillard]:** Dane County should take the lead with incentives and encouragement of employers to hire ex-offenders by opening more Alternative Selection positions for county jobs, and introducing this process to those who do business with Dane County.<sup>8</sup>

Aye's: All  
No: 0  
Abstain: 0

**\*2-E-7 NEW RECOMMENDATION [Dillard]:** Dane County should partner with the Center on Wisconsin Strategy (COWS), who is a key player in designing and implementing policy experiments in Wisconsin's major metropolitan areas, including "high-road economic and workforce development" strategies.

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<sup>8</sup> The federal government also provides a \$5000 bond to an employer who hires an ex-offender to protect the employer against losses caused by the employee (See <http://www.dwd.state.wi.us/jobservice/taxcredit/default.htm>)

**\*[DELETED RECOMMENDATION replaced with above 4 recommendations from Dillard: RECOMMENDATION: Dane County EOC should partner with relevant agencies to organize and publicize a program encouraging each Dane County employer to hire one ex-offender each year. Incentives for such hiring can be offered in the form of an already-existing Federal tax credit and bonding. *[Jerome is getting more information on these].*][Hoskins: EOC should partnership with relevant agencies to organize and publicize programs to encourage each Dane County employer to hire 2 or more offenders on a yearly basis]**

**Aye's: All  
No: 0  
Abstain: 0**

**2-E-8 RECOMMENDATION: Dane County EOC should maintain information on employers who hire ex-offenders, by the race of the offender.**

**Aye's: All  
No: 0  
Abstain: 0**

**2-E-9 RECOMMENDATION: DOC should track whether individuals on community supervision in Dane County are employed.**

**Aye's: All  
No: 0  
Abstain: 0**

**2-E-10 RECOMMENDATION: Dane County should expand its financial support for smaller agencies and programs serving ex-offenders with a high representation of persons of color or ex-offenders in leadership positions, taking into account information on the effectiveness of these programs.**

**Aye's: All  
No: 0  
Abstain: 0**

**2-E-11 RECOMMENDATION: Dane County prosecutors and judges should encourage the Use of Dane County Drug Court Treatment Program as an Alternative to Revocation for community supervision, probation or parole who have new drug charges. DCTP combines AODA treatment and case management with the coercive power of the court to impose sanctions and other consequences for failure to meet expectations. People on community supervision, probation or parole, with the help of their case managers, are expected to obtain and maintain employment or education, stable housing and freedom from drugs and alcohol. Statistics in Dane County and elsewhere**

show that addicts who complete drug treatment courts are more likely to maintain sobriety and less likely to commit new offenses than addicts who undergo treatment alone or criminal sanctions alone. DOC is doing a study of revocation issues right now, the results of which might better inform this area of recommendation.

**Aye's: All**  
**No: 0**  
**Abstain: 0**

**2-E-12 RECOMMENDATION: Dane County should encourage DOC to conduct a weekly review by regional office of all who are on probation holds and in custody to determine if an intermediate sanction could be implemented (rather than revocation) and review to determine if timelines are being met. Staff cases as necessary.** Currently, supervisors and agents staff all custody's and determine whether or not revocation is appropriate. The DOC Regional Office reviews revocation packets after a waiver has been secured or approximately 10 days prior to administrative hearing with the Division of Hearings and Appeals. This recommendation would allow Regional Office to review basic information on all holds on a weekly basis and, for those cases facing revocation, Regional Office can determine if sanctions other than revocation would be appropriate.

**Aye's: All**  
**No: 0**  
**Abstain: 0**

**2-E-13 RECOMMENDATION: The DOC should send a weekly audit to all field supervisors identifying custody timelines/due dates with the expectation that field supervisors will review and make sure necessary actions are taken.** Currently, Dane County field supervisors are expected to follow their own tracking process to monitor timelines and due dates associated with custody and the revocation process. We recommend that the DOC send weekly audits to allow field supervisors to compare their own tracking to the Offender Active Tracking System (OATS) database. Regional Office would then set the expectation that this audit be reviewed weekly and that the Field Supervisors review all custody's to ensure timelines are followed and that continued custody remains appropriate. [Q: What should Dane County do about this?]

**Aye's: All**  
**No: 0**  
**Abstain: 0**

**2-E-14 RECOMMENDATION: Dane County should ask DOC to provide training to all Dane County agents on resources available for Alternatives to Revocation (ATRs) and the continuum of non-incarceration intermediate sanctions.** Currently, Region 1 DOC staff are aware of major ATR programs such as halfway houses, transitional living placements, drug court, DART, and institution ATRs. However, each individual agent

must stay abreast of other potential alternatives in the community through individual community service providers. We recommend that DOC Region 1 staff have regular training, through unit meetings or other method, to share resource information and receive information from service providers. We also recommend that, if funding and resources are available, DOC Region 1 have a resource manual available to all staff.

**Aye's: All**  
**No: 0**  
**Abstain: 0**

**2-E-15 RECOMMENDATION:** Dane County officials should monitor the efforts within DOC to review additional Probation/Parole Rules for appropriateness and for nexus between rules and the criminal behavior we are trying to prevent and should provide input to DOC regarding the impact of these rules from the perspective of other agencies, such as social services, law enforcement or the public defender's office. Feedback should similarly be provided regarding the implementation of DOC "Rule 1" – a catch-all for when probationer/parolee does not act "in the best interest of their rehabilitation." [Cavanaugh: drop "catch all" language, per previous comments] [Oliver: Suggest dropping the last sentence entirely.]

**Aye's: All**  
**No: 0**  
**Abstain: 0**

**2-E-16 RECOMMENDATION:** Dane County social services agencies should seek collaborative relations with DOC to ensure continuity of care for re-entry of people on mental health and other medications. This should include comprehensive release planning by DOC, and increased funding for the Mental Health Center could to help relieve the severe shortage of mental health services and medications for people with mental illness re-entering the community from corrections. Lack of access to needed treatment and medications increases the risk of revocation to prison.

**Aye's: All**  
**No: 0**  
**Abstain: 0**

**2-E-17 RECOMMENDATION:** Open Community Development Authority's and Dane County Housing Authority's low-income and Section 8 housing programs to people re-entering the community from jail or prison. Pass an ordinance, if necessary, to allow DCHA and CDA to remove the current two-year ban for a person convicted of a crime to be able to apply for public housing. [OBrien P29 Bottom Are there federal or state requirements that make the recommendations re: Section 8 housing impossible?][ Albert: Section 8 housing originated and is governed by Federal legislation. A thorough examination of the Federal legislation to see if any local authority can change that legislation. If no such exemption exists the supremacy

clause and common law state that cities, towns, etc. have no authority or power to pass ordinances that would modify Federal legislation.]

**Aye's: All**

**No: 0**

**Abstain: 0**

\*(?) 2-E-18 NEW RECOMMENDATION FROM Hoskins: The sheriff and his deputy need to work with a data system along with the County Executive to make certain that the Dept of Corrections is not holding an offender beyond 50 days without a valid reason or code. Each Probation Agent should be required to visit the offender in Mail within 3 days without an excuse. [NOTE from Oliver: This was included as a comment but it sounds like a recommendation.]

Table needs further discussion with Hoskins.

Other social/economic issues that contribute to racial disparity.

**3-Z-1 RECOMMENDATION: City of Madison Department of Civil Rights should engage in testing for enforcement of fair employment laws in the City of Madison.**

**Aye's: All**

**No: 0**

**Abstain: 0**

**3-Z-2 ON HOLD PENDING RE-WRITE FROM GROUP 2: G2: Reduce access and mis-use of the public to information Wisconsin Circuit Court Access Program by: (1) creating a fee for access, (2) permitting law enforcement access only, (3) permitting access only at stations in the Dane County Courthouse and not on the internet and/or (4) offering information only about criminal convictions and not pending or dismissed cases. [[Note: Discussion also raised the possibility of requiring registration to use the system and keeping an accessible public record of who searches the data base and whose records they look at, arguing that someone in CCAP has a right to know who is searching for information about them.]]** These changes would make it more difficult for employers and landlords to access information showing pending charges and non-relevant past criminal convictions and therefore make it more difficult to discriminate. **Benchmark:** Less information about Dane County residents will be available on Wisconsin Circuit Court Access Program. [[??]] Additional material: There is evidence that employers are routinely checking CCAP for every job applicant and that people with any record, even an arrest for a dismissed charge or innocent finding, hurts employment prospects. [Blanchard: Drop as we have no clear suggestion. Concern that victim safety has not been part of the discussion.][ Mahoney: Strike on hold rec re CCAP until the issue can be further explored as to impact on victims of crimes. Public access by victims of Domestic Violence have proven an important tool. Needs further thought.] [Hoskins: CCAP should only be visible to the courts, agencies, companies and relevant organization that may use the information to assist with an offender's case or hiring status. This is a major

concern because ex-offenders data is being used to ruin their future, double jeopardy punishment and they are being labeled and stereotyped.]

- Jackson moves to remove. Ketcham seconds. Votes on removal:

**Aye's: All**

**No: 0**

**Abstain: 0**

**3-Z-3 RECOMMENDATION: Modify Dane County employment applications to permit the County to ask potential employees about pending charges or convictions only to the extent an employer is permitted, under City of Madison ordinances, to consider criminal history in deciding who to employ.** This would require the application for a particular position to list offenses that are circumstances of the charge substantially relate to the circumstances of the particular job. The applicant could only be asked if he or she had a conviction or pending charge in those categories.

Replaces 2-E-5

**Aye's: All**

**No: 0**

**Abstain: 0**

**3-Z-4 RECOMMENDATION: Provide clean and sober living situations like Oxford House perhaps using housing seized by the City of Madison under nuisance ordinances.**

Oxford House is a concept in recovery from drug and alcohol addiction. In its simplest form, an Oxford House describes a democratically run, self-supporting and drug free home. Parallel to this concept lies the organizational structure of Oxford House, Inc. This publicly supported, non-profit 501(c)3 corporation is the umbrella organization which provides the network connecting all Oxford Houses and allocates resources to duplicate the Oxford House concept where needs arise.<sup>9</sup> The members of Oxford House pay rent. Therefore this would be an excellent use of vacant housing, whether owned by the City or the private sector.

Amend with minor language modification. See final report

**Aye's: All**

**No: 0**

**Abstain: 0**

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<sup>9</sup> Source: [http://www.oxfordhouse.org/userfiles/file/purpose\\_and\\_structure.php](http://www.oxfordhouse.org/userfiles/file/purpose_and_structure.php)

## F. Driver's license recovery

**3-A-1 RECOMMENDATION:** In collaboration with the City of Madison, Dane County should fund a comprehensive effort to reduce the numbers of unlicensed driver through the establishment and operation of a community wide driver's license recovery and employability resource center based on the successful model created by Justice 2000 Inc. in Milwaukee. [OBrien P33 Middle YWCA has a program to help people get drivers licenses. Why not ask for increased funding for that program, rather than establishing a new one? I'll send you a link.]

Amend with minor language modification. See final report

Aye's: All

No: 0

Abstain: 0

**3-A-2 RECOMMENDATION:** Dane County should support efforts in the state legislature to reduce the number of drivers' license suspension imposed as a result of failure to pay child support, drug violations and unpaid traffic citations. (Recent efforts by Justice 2000 resulted in the passage of a bill to end automatic license suspension for drug convictions impacting over 11,000 low income residents.)

Aye's: All

No: 0

Abstain: 0

**3-A-3 RECOMMENDATION:** Establish policies that exhaust other means of fine collection rather than the automatic suspension of one's driver's license.

Aye's: All

No: 0

Abstain: 0

**3-A-4 RECOMMENDATION:** Form a work group consisting of various stakeholders including child support enforcement, court personnel, advocates for fathers and the District Attorney's office to determine how license suspension for non-payment of child support can be reduced. This group would also be responsible for identifying a measurable goal within its first year to assess the progress. This information should be tracked by the Clerk of Courts, the Child Support Agency, and the Department of Corrections (probationers/parolees).

Amend with minor language modification. See final report

Aye's: All

No: 0

Abstain: 0

**3-A-5 RECOMMENDATION:** The Department of Corrections should establish a program that assists individuals about to be released with obtaining their driver's license as part of their re-entry. This program could be done in collaboration with community based organizations and law school clinical programs, such as the CSLAP program at the UW Law School.

Aye's: All  
 No: 0  
 Abstain: 0

### III. New Ideas about Funding

**4-Z-1 RECOMMENDATION:** Hire a criminal justice grantwriter to seek out and apply for funding to support the Task Force's recommendations and other best practices aimed at reducing racial disparities in Dane County's criminal justice system. If grants require matching funds, Dane County should make it a priority to provide the match.

Aye's: All  
 No: 0  
 Abstain: 0

**4-Z-2 RECOMMENDATION:** Dane County Office of Equal Opportunity and the Madison Department of Civil Rights should apply now for grants from foundations that seek to reduce racial disparities and promote social justice, such as: [[DETAILS ABOUT POSSIBLE FUNDERS OMITTED FROM THIS LIST OF RECOMMENDATIONS]] 1. Soros Foundation- Open Society Institute 2. W.K. Kellogg Foundation 3. Herb Block Foundation  
 Amend with minor language modification. See final report

Aye's: All  
 No: 0  
 Abstain: 0

### IV. Implementation of the Task Force's Recommendations

As an example of the coordination and commitment needed to really impact this problem, after the 1998 Task force on Race Relations released its recommendations, then-Madison Mayor Sue Bauman required that all city agencies work towards demonstrating that the recommendations had been adopted and implemented in their departments, and empowered the Madison Equal Opportunities Commission to monitor progress by periodically reporting to the Common Council "until such time as

monitoring this report [was] no longer relevant." (Madison Mayor's Race Relations Task Force Final Report, 1999.)

(DRAFT!!)

**5-Z-1 RECOMMENDATION:** Create an implementation committee of current task force members who wish to continue to work towards the implementation of this report's recommendations.

Amend with minor language modification. See final report

**Aye's: All**

**No: 0**

**Abstain: 0**

**Note:** Hassel departs.

**5-Z-2 RECOMMENDATION:** Empower the Dane County OEO and Madison's Department of Civil Rights to monitor the implementation of these recommendations and report directly to the County Executive and the Mayor.

**Aye's: All**

**No: 0**

**Abstain: 0**

## V. Detailed Data Collection Recommendations

### A. Law Enforcement

#### 1. Traffic stops

**6-A-1T-1 Recommendation:** All Dane County law enforcement agencies should collect and analyze their data on racial patterns of traffic stops and release public reports at least annually.

**6-A-1T-2 Recommendation:** Dane County law enforcement agencies should collaborate to develop consistent standards for collection and analysis of traffic stop data in accord with nationally-recognized best practices such as the New Jersey consent decree, the resources collected at Northeastern University's

\* **6-A-1T-3 Recommendation:** Dane County law enforcement agencies should evaluate their traffic stop data quarterly to identify patterns of possible biased treatment by police officers and take steps to modify police behavior as appropriate. [Gaber objects: cannot recognize "patterns" based on traffic stop data alone; officer may be assigned to a beat with more residents of color]

**6-A-1T-4 Recommendation:** Dane County law enforcement agencies should adopt Early Intervention Systems to track complaints about police officers and patterns of possible biases in traffic stops or arrests and take steps to modify police behavior as appropriate.

#### 2. Other police encounters

**6-A-2O-1 Recommendation:** Dane County law enforcement agencies that are not already doing so should transition to the WIBRS or another data system that permits more detailed analysis of arrest patterns than simple counts by race and offense.

**6-A-2O-2 Recommendation:** Dane County law enforcement agencies should work with other Dane County agencies and outside experts to provide statistical analysis of their arrests for the patterns of possible racial disparities.

**6-A-2O-3 Recommendation:** Dane county law enforcement agencies should prepare annual reports available to the public on the racial patterns of their arrests. (This may take the form of a public release of the information routinely sent to OJA as part of the Uniform Crime Reports, separating Hispanics from Whites, as recommended elsewhere.)

[[NOTE TO TF: Law enforcement comments on a previous draft are concerned how to define or track "police encounters" in the recommendations below. I have added language to address this concern, but further rewriting is necessary to generate language that is appropriate. ]]

\* **6-A-2O-4 Recommendation:** Dane County law enforcement agencies should keep records of police encounters with citizens in non-traffic situations that do not result in

**arrest or charges. These records should include the race/ethnicity of the person stopped, the reason for the stop, and the outcome of the stop (i.e. citation, information, warning).** A "police encounter" in these recommendations refers to an incident in which a law enforcement officer stops a citizen to inquire or warn about possible illegal activity by that citizen. It includes any case in which a law enforcement officer asks for or obtains identification from the citizen, whether or not there is a suspicion of illegal activity. It includes any case in which an individual citizen is prevented by the officer from going about his or her business for more than a minute, whether or not an arrest results, except for crowd and traffic control.

[Gaber objects: What is considered an "encounter?" If an officer is walking the beat and stops to talk to a citizen is that an encounter? If they are investigating a fight in a bar or on the street and they "encounter" a number of people, do they capture the data on each one? I can go on detailing a number of "encounters" that would not make sense to capture, and the task itself would be monumental as officers have thousands of "encounters" each year. This would also cast a chilling effect on officers and their ability to positively engage citizens.] [Oliver: a definition of "encounter" was included in the 2<sup>nd</sup> draft of these recommendations because of Gaber's earlier expression of concern in an earlier draft. For clarity, it is moved into the recommendation itself instead of preceding it, but still does not address all his concerns. The relevant issues are: (1) To capture the equivalent of traffic stop data for non-traffic stops, (2) To determine whether Whites are more likely to be warned or cautioned without a citation or arrest than Blacks, (3) To address "walking while Black" or "sitting on the porch while Black" concerns. The question is whether it is possible to define this narrowly enough to address relevant concerns without creating the undue burden Gaber justly worries about.]

**6-A-20-5 Recommendation: Dane County law enforcement agencies should have clear policies about which police encounters are recorded in their databases and which are not.**

**6-A-20-6 Recommendation: Dane County law enforcement agencies should collaborate to have consistent policies between agencies about which police encounters are recorded in their databases and which are not.**

**(?\*) 6-A-20-7 Recommendation: Dane County law enforcement agencies should maintain records of all encounters in which a law enforcement officer asks a citizen for identification and the reason for this request. [Not clear whether Gaber's objection to 6-A-20-8 applies to this as well]**

**6-A-20-8 Recommendation: Dane County law enforcement agencies should maintain electronic databases of arrests and police encounters that support their enforcement efforts, can be interfaced with PROTECT and WIBRS, and can permit analysis of racial patterns in arrests and discretionary decisions.**

**6-A-20-9 Recommendation: Dane county law enforcement agencies should prepare annual reports available to the public on the racial patterns of their arrests and no-charge encounters.**

**6-A-20-10 Recommendation:** Dane county law enforcement agencies should collaborate to develop best practices for maintaining and analyzing data on the racial patterns in police encounters with citizens and their outcomes (i.e. arrest, citation, warning, counseling, determination that no illegal or improper behavior has occurred).

**6-A-20-11 Recommendation:** Dane county law enforcement agencies should prepare and release to the public annual reports on police encounters with citizens.

## **B. Referral decisions**

\* **6-B-1 Recommendation:** Dane County Law Enforcement agency databases should include the court to which a referral was made to facilitate reconciliation between law enforcement and court records. [Gaber: Courts should do this, not LE] [Oliver: LE has to know somewhere in its systems where referrals are sent]

**6-B-2 Recommendation:** Dane County should collect and compile information on the outcomes of Dane County cases referred to federal court or to municipal courts.

**6-B-3 Recommendation:** Dane County should analyze the racial/ethnic patterns in referrals and their outcomes, and prepare an annual public report on these patterns.

## **C. Prosecutor decisions (Dane County District Attorney)**

**6-C-1 Recommendation:** The Dane County District Attorney should continue to work with Dane County law enforcement agencies to facilitate the use of electronic referrals into the PROTECT system wherever possible to permit analyses that link law enforcement and prosecution records. After the start up costs for making this transition, electronic referrals rather than manual data entry should save many hours of staff time in the District Attorney's office. [[NOTE to TF: This does not affect whether the data can be analyzed for disparities, but may impact the capacity of the prosecutor's office to free up staff time for such analysis, depending on the actual savings of staff time from electronic referrals .]]

**6-C-2 Recommendation:** The Dane County District Attorney should be provided with the staff and software necessary to use the PROTECT and CCAP databases to prepare annual reports on the racial patterns of prosecution. (a) As such analyses are relatively new and complex, a search should be made for best practice models for such reports and the District Attorney should consider working with outside consultants or academic experts. Dane County should provide extra funding to support the necessary staff or consultants. (b) Suggested factors to examine include: bail decisions; whether a preliminary hearing was held; whether the accused is in custody during the process; the length of time between arrest, the preliminary hearing (if any), and final adjudication; whether the accused has private counsel, court-appointed counsel, a public defender, or no counsel; how long the defense attorney has had access to the police report prior to the adjudication; offers of diversion or deferred prosecution agreements; charges dismissed outright; recommended sentences.

**6-C-3 Recommendation:** The Dane County District Attorney should consult with DAIT regarding the possibility of adding fields to the PROTECT database to capture information deemed important to a disparity analysis that are not currently available in the database, such as diversion or deferral programs offered and the prosecutor's assessment of criminal history, risk factors, or treatment needs.

## **D. Sentences**

**6-D-1 Recommendation:** Dane County judges should create or facilitate a system for recording sentence recommendations from plea bargains and any modifications in the final sentence imposed by the judge. This would permit a more refined analysis of decision-making if racial disparities in sentencing are found after adequate control for criminal history.

**6-D-2 Recommendation:** Dane County judges should support an analysis of racial/ethnic patterns in sentencing to determine whether there are racial disparities in sentences after adequate controls for legally-relevant factors. Particular attention should be paid to the in/out decision of incarceration versus probation, as this is where disparities have generally been found in studies of other jurisdictions. Particular attention should be paid to lower-level offenses, as research in other jurisdictions generally finds more racial disparity in sentences for less-severe offenses. If disparities are found, data on recommended versus imposed sentences should be used to determine appropriate places for remediation.

**6-D-3 Recommendation:** Dane County judges should work with the District Attorney's office (and outside consultants, if necessary) to determine whether the findings of Oliver's 2004 CCAP study on custody at sentencing are still true and, if so, to identify the sources of racial differences in custody status.

**6-D-4 Recommendation:** Dane County officials should consider commissioning a study of the impact of criminal history and sentencing on recidivism and whether there is a racially disparate impact of using criminal history in sentencing and should cooperate with a qualified person or institution interested in doing such a study. [[TF: This recommendation is vague because it is not immediately clear who would have the capacity to do such a study, and it would be a complex undertaking that probably have to be done in collaboration with an academic institution or consultant.]]

## **E. Legal Representation**

\* **6-E-1 Recommendation:** The Dane County judges should support an analysis of the data from court records to determine whether having a defense attorney affects custody decisions, plea bargains, and sentences. [Blanchard: pointless, we know having an attorney is better.] [Oliver: good point, propose revision: "The Dane County judges should support an analysis of the data from court records to determine whether having a defense attorney varies by race or ethnicity and whether legal representation contributes to racial disparity in custody decisions, plea bargains, or sentences."]

**6-E-2 Recommendation:** A work group of judges, public defenders and other attorneys in Dane County should develop criteria for assessing the quality of performance of court-appointed attorneys.

## F. Community Corrections

6-F-1 Recommendation: Dane County should work with DOC to determine why offenders are revoked in Dane County. This analysis should: (1) determine whether revocation could have been avoided with appropriate services or interventions, and (2) determine whether there is evidence of unequal treatment by race in the decision to revoke. A study of racial disparity in revocation needs to examine the records of both those revoked and those not revoked.

6-F-2 Recommendation: Dane County law enforcement, the Dane County Jail, and the Department of Corrections should collaborate to maintain information on patterns of arrests of people on community supervision including the reasons for these arrests to determine whether they are contributing to public safety or making it more difficult for those supervised to rehabilitate and reintegrate in a legitimate lifestyle.

## G. Population Data

6-F-1 Recommendation: Dane County should appoint one agency to calculate the appropriate annual county population denominators by race, sex, and age for the needs of various Dane County agencies and should make these estimates available on a web site in a format ready for download and merger into other data systems.

6-G-2 Recommendation: Dane County should consult with demographers at the Applied Population Lab and elsewhere about the best approach to generating appropriate population denominators by race, age and sex for sub-county units, should generate these estimates for all Dane County municipalities and should make these estimates available on a web site in a format ready for download and merger into other data systems.

6-G-3 Recommendation: Dane County law enforcement agencies should collect and maintain data on offender's residence status as part of understanding the dynamics of racial disparities. Suggested categories are: resident of the municipality, resident of Dane County, no fixed residence, resident of another locale. Some agencies may wish to maintain information on recent migrants to the area. Any such information should be collected in a consistent fashion.

6-G-4 Recommendation: Dane County law enforcement agencies should work with the Department of Transportation and the Applied Population Lab to develop best practices for the population denominators for traffic stops.