



RACIAL JUSTICE IMPROVEMENT PROJECT

AMERICAN BAR ASSOCIATION
Criminal Justice Section

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RACIAL JUSTICE IMPROVEMENT PROJECT

Delaware Task Force

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- **Hon. Alex J. Smalls**
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The Racial Justice Improvement Project (RJIP) aims to identify and reform policies and practices that produce racial disparities in local criminal justice systems across the country. By working with officials in state and local criminal justice systems, RJIP attempts to address racial disparities by developing and implementing evidence-based policy reforms throughout the adjudication process where policies and practices have an adverse impact on people of color.



Delaware Task Force

The Delaware Task Force (DTF) was formed in 2010 to identify and address implicit biases leading to racial disparities in the state's violation of probation (VOP) rates. An initial study found a 4% higher rate of VOPs among Black probationers.¹ The DTF set two goals for its work through the Racial Justice Improvement Program (RJIP): to ensure race did not play a part in violations of probation and to implement the Delaware Criminal Justice Council's Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System (the Declaration).² In order to accomplish these goals, several changes were made to Delaware's probation system. First, the DTF provided implicit bias training for all supervisors and new staff in the Department of Probation and Parole, and implemented policy changes to ensure all new cadets would receive implicit bias training upon hiring. Second, the DTF modified the Department of Probation and Parole's Data Collection System (DACS) to better manage offender populations by providing to probation officers guidelines for setting sanctions based on predefined objective criteria.³ The DTF also implemented the Declaration, which encourages bias-free decision-making by officers of the state's courts and criminal justice agencies.⁴ Reactions to the changes to DACS were mixed, with officers reporting that the system was generally beneficial and easy to use, but that the new guidelines did not necessarily make it easier to do their jobs.⁵

However, the reforms instituted had a more open and obvious positive impact on probationers. Prior to reform, Black probationers accounted for 46.19% of the total number of probationers, while they made up 50.09% of all filed violations.⁶ In contrast, whites made up 53.36% of the total probationer population and only 49.89% of violations.⁷ This data indicated that white probationers were less likely to receive probation violations than Black probationers.⁸ Following the reforms, probation variations were more equally split between races, indicating a reduction in racial disparities in the VOP process.⁹ The point difference between the number of probationers and VOPs was reduced from +3.90 for Blacks and -3.47 for whites to +1.18 for Blacks and -.83 for whites.¹⁰ Due in part to the promising outcomes shown by the DTF's work, the Delaware government will be funding future racial justice initiatives in the state.

¹See *Delaware RJIP Task Force Report 4* (2013).

² Press Release, Delaware Recognized for Racial Justice Improvement Project Efforts (Oct. 24, 2011) (on file with author).

³ See Inga James, Delaware State Racial Justice Improvement Project: Implicit Bias in the Probation Violation Process 5-6 (2014).

⁴ See *Delaware RJIP Task Force Report*, *supra* note 1 at 4.

⁵ See *id.* at 10.

⁶ *Id.* at 13.

⁷ *Id.* at 13.

⁸ *Id.*

⁹ *Id.* at 14.

¹⁰ Note that "[i]f there were no racial disparity in probation violations, the point spread would be [zero] for both [groups], indicating that the percent of VOPS perfectly mirrored the proportion of each racial group in the general population." Therefore, the closer the values are to zero, the more effective the reforms. James, *supra* note 1 at 13.

PASSING THE TORCH

Following the Delaware Task Force's work with RJIP, the state of Delaware took over all racial justice initiatives, including funding and administration. Building on the RJIP task force's work, the state integrated bias free decision making training into the curriculum for all incoming probation officers and mandates that every cadet go through this training. In addition, the Department of Probation and Parole's Professional Conduct Policy was amended to expressly prohibit discriminatory decisions by probation officers, further committing to racial fairness in the state.

At the end of the 2-year RJIP grant initiative, the state of Delaware was not only able to take over the DTF's work in providing probation officers with bias free decision making training, but was able to build off of the task force's success and grow racial justice reform in the state. On top of continuing the work done by the DTF, Delaware has expanded racial justice reform. The Justice Reinvestment Act was passed and signed into law in 2012. The Act requires the use of an objective pre-trial risk assessment instrument, incentivizes completion of evidence-based programs that reduce recidivism by reducing time served or earning community supervision credit, and calls for an evaluation of community-based services that lower recidivism. Additionally, in 2014, the Delaware Criminal Justice Council held its first annual Criminal Justice Round Table. This event brought together public safety and criminal justice leaders to discuss what they perceived to be Delaware's most pressing needs and begin to think of possible solutions.

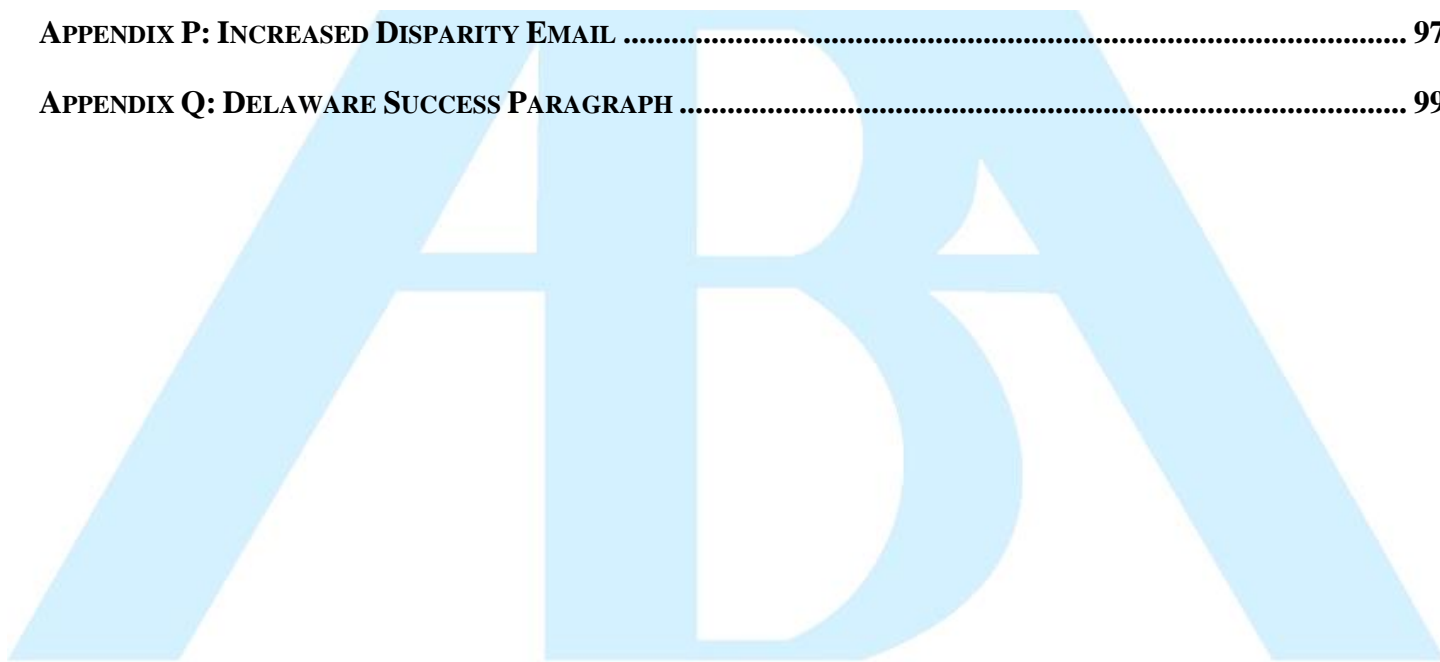
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SUMMARY OF DELAWARE TASK FORCE

GENERAL JURISDICTION INFORMATION

Delaware is a small Middle Atlantic State of 1,948 square miles.¹¹ It includes three counties—New Castle, Kent, and Sussex—which divide the state geographically. The estimated population of 935, 614 people is 71.1% white, 22.1% Black, and 8.7% Hispanic.¹²

New Castle County includes Delaware's only urban center, Wilmington, which is the largest city in Delaware and represents near 7% of the total population of the state.¹³ It also includes Newark, which, with a population of 31,618, is the location for the University of Delaware's main campus.¹⁴ The rest of the county consists of small towns and suburban subdivisions. New Castle's total population is 549,223 (67.6% white, 24.7% Black, and 9.2% Hispanic).¹⁵ Kent County has an estimated total population of 169,562, with 68.5% white, 25.1% Black and 6.6% Hispanic residents.¹⁶ Kent is the middle county and includes the state capital of Dover, a city of more than 37,000 people, and the Dover Air Force Base.¹⁷ The bulk of the county is rural. Sussex County is Delaware's southernmost, and geographically largest, county; it includes a series of coastal resort towns, small towns and rural areas.¹⁸ The total population is estimated at 206,445, with 82.5% white, 12.9% Black, and 9.2% Hispanic residents.¹⁹

Delaware has a unified criminal justice system. All of the courts are within the state structure and each court is represented in each county. The prison system is also a statewide system and there are no jails.²⁰ More than 30 police departments enforce Delaware's laws and a number of municipalities have their own police departments, as does New Castle County.²¹ The Delaware State Police has overall jurisdiction in the state.

Despite a small population and numerous police departments, Delaware has an overall crime rate 8% higher than the US average.²² As a result of the growing crime rate,²³ the corrections system has also grown, with an estimated 1 in 26 Delawareans active in the corrections system at any given moment.²⁴ Delaware self-reports that an estimated 66.8% of males convicted of crimes in 2005 were persons of color, and that 71.2% of those sentenced to incarceration were also persons of color.²⁵ Along with such an involved and full corrections system

¹¹ United States Census Bureau, Delaware (2010), available at <http://quickfacts.census.gov/qfd/states/10000.html>.

¹² *Id.*

¹³ United States Census Bureau, Wilmington (city), Delaware (2013), available at <http://quickfacts.census.gov/qfd/states/10/1077580.html>.

¹⁴ United States Census Bureau, Newark, Delaware (2013), available at <http://quickfacts.census.gov/qfd/states/10/1050670.html>.

¹⁵ United States Census Bureau, New Castle County, Delaware (2013), available at <http://quickfacts.census.gov/qfd/states/10/10003.html>.

¹⁶ United States Census Bureau, Kent County, Delaware (2013), available at <http://quickfacts.census.gov/qfd/states/10/10001.html>.

¹⁷ United States Census Bureau, Dover, Delaware (2013), available at <http://quickfacts.census.gov/qfd/states/10/1021200.html>.

¹⁸ United States Census Bureau, Sussex County, Delaware (2013), available at <http://quickfacts.census.gov/qfd/states/10/10005.html>.

¹⁹ *Id.*

²⁰ State of Delaware Department of Correction, Mission Statement (last visited June 11, 2015).

²¹ See Brian A. Reave, 2008 *Census of State and Local Law Enforcement Agencies* 4, 15 (US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics 2011).

²² Mark A. Levin, et al., *Criminal Justice Policy in Delaware: Options for Controlling Costs and Protecting Public Safety* 1.

²³ See *id.* (From January 2005 to 2009 crime increased over 12% in Delaware).

²⁴ See *id.*

²⁵ The Delaware Statistical Analysis Center, *Race and Incarceration in Delaware A Report to the Delaware General Assembly* 14 (June 30, 2011) available at http://cjc.delaware.gov/pdf/Race_Incarceration.pdf.

comes a significant financial burden, with over 6% of the 2008 budget going to corrections.²⁶ It is estimated that 1 day in a Delaware prison has the same cost as 22 days on probation or parole.²⁷ With three times the amount of Delawareans on parole or probation as are in prison, there is potential for the prison population to significantly expand if parolees or probationers violate their conditions and are ordered to prison.²⁸ The Delaware Task Force (DTF) targeting probation violations as their proposed area of reform has helped not only to address racial disparity in VOPs, but has also helped to address the financial costs of prison, along with the societal costs of so many Delawareans potentially being imprisoned.

RACIAL AND ETHNIC FAIRNESS SUMMIT

In September 2007, the Delaware Criminal Justice Council and the Delaware Supreme Court co-sponsored a Racial and Ethnic Fairness Summit (the Summit), which included more than 70 key stakeholders, including leadership from the state government, the courts, corrections, law enforcement, the Department of Justice, the Office of the Public Defender, and community organizations. The Summit was facilitated by staff from the Sentencing Project and included various presentations from national and state experts on racial fairness. Summit participants focused on developing recommendations designed to enhance fairness in the areas of data collection, training, resources, and policy development. The Summit resulted in the release of a final report and recommendations.

Subsequently, the Racial and Ethnic Fairness committee, co-chaired by Justice Henry DuPont Ridgely of the Delaware Supreme Court and Chief Judge Alex J. Smalls of the Court of Common Pleas, continued the recommendations identified at the summit. Follow-up planning sessions resulted in the creation of the Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System in Delaware (the Declaration), which was adopted by the Delaware Criminal Justice Council on April 19, 2010 and carried out by the Racial Justice Improvement Project's (RJIP) DTF. The Declaration exemplifies the serious and unwavering commitment to racial and ethnic fairness by all partner agencies participating in, and contributing to, its adoption.

BACKGROUND ON PROPOSED AREA OF REFORM

Participation in the American Bar Association's RJIP was identified as a way to continue the overall goals established at the Summit, and reiterated in the Declaration, to provide training, data collection techniques, and technical assistance to state agencies in order to promote racial and ethnic fairness in the criminal justice system.

In Delaware, any person convicted of a non-class A felony may potentially be eligible for probation.²⁹ Additionally, following release from an incarceration for a period of more than one year, a minimum of 6 (six) months at Level II, III, or IV supervision is required to transition back into society.³⁰ Based on a probation officer's discretion, an offender will be taken into custody and given a hearing to establish any violation, with

²⁶ See *id.*

²⁷ See *id.* at 2.

²⁸ See *id.* at 1.

²⁹ See 11 Del. C. § 4204.

³⁰ See 11 Del. C. § 4204(l).

the potential for probation to be revoked or a less restrictive sanction, such as placement on a temporary higher level of supervision, imposed.³¹

Early on in the project, the DTF identified violations of probation as the potential area for racial based criminal justice reform, since a significant percentage of the population of the Department of Corrections is incarcerated for violations of probation. Delaware's system of sanctions includes probation Levels I – III, progressing from unsupervised probation at Level I to intensive probation supervision at Level III.³² To assess disparity issues, the Division of Probation and Parole collected data for nine months, from June 2010 to February 2011, which compared violations of probations (VOPs) to Level II and III probation population by race. During that period, there were approximately 4,500 VOPs. A great deal of manual work was required to make the information available in a way which showed the racial make-up of probationers at different levels. An initial analysis of the data revealed a 4% variation by race in the data on VOPs. See **Appendix O**. Additional review of the data was performed by the Delaware Criminal Justice Council (CJC) through the Statistics Analysis Center.

Relative Rate Indices for Black and White Probation Violations

VOP Rates in the table below are calculated from the previous tables as the number of VOPs per 1,000 probationers (from Avg. # of Pbs). The Relative Rate Index is calculated as: $RRI = \text{Black VOP Rate} / \text{white VOP Rate}$.

Supervision Level	VOP Rate (VOPs/1,000 Probationers)		RRI
	Black	White	
II	301.2	256.9	1.17
III	454.7	416.3	1.09
II and III	378.2	326.1	1.16

Data collection for the DTF initiative revealed weaknesses within the Department of Probation and Parole's Data Collection System (DACS). There was no method in DACS for tracking probation officer decision-making relating to graduated sanctions. The DTF identified that modifications to the DACS system were necessary so that the imposition of graduated sanctions could be tracked to include the following information: the number of past violations, the type of graduated sanctions imposed by the Officer prior to the submission of the VOP report, and the recommended supervision Level from the submission of the VOP report. Furthermore, the proposed modifications would enable a DACS report to be generated from this information to review the types of graduated sanctions being utilized on offenders prior to the submission of the VOP reports. See **Appendix O**.

Initially, the DTF planned to use grant funds to make the technological modifications necessary to generate the requisite data. As part of planning the reform, the DTF reviewed various decision-making models for probation officers and visited the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) to learn about the graduated sanctions model they use. However, following the release of the Final Report by the Delaware Justice Reinvestment Initiative (JRI), another state-wide task force which was created by the Governor to recommend reforms to Delaware's justice system, the DTF determined that the proposed system

³¹ See 11 Del. C. § 4334.

³² See 11 Del. C. § 4204(c).

changes fell within the purview of, and had been partly incorporated, into legislative initiatives flowing from the much broader JRI. Therefore, the DTF decided that it would determine if a portion of the data collection modifications could be accomplished outside the scope of the JRI initiative.

The Delaware Department of Corrections (DDOC) retained CNT Infotech as their technology vendor for designing and developing the enhancements to DACS that were necessary to aid in the tracking of violations of probation. The modifications, enumerated under “implementation,” were completed in February 2013 and were rolled out to staff over the course of the next two months. The modification to the DDOC’s case management system enables officers to manage and track both probation violations and the type of sanctions that are implemented on probationers as a result of the violation. The implementation of these new functions provides the department with a tool to better manage its offender population and will allow the probation officers to have guidelines that drive the sanctions imposed, which will be based on predefined and objective criteria. The objective is that this evidence-based approach to guide probation officers’ discretion in imposing graduated sanctions for probation violations will assist the DDOC with both addressing potential racial disparity and reducing the number of violation reports to the court or Board of Parole.

CNT was chosen as the vendor to provide these services based on their in-depth understanding of the functionality of the system, as well as the operational aspects of the department. CNT had previously assisted the DDOC with the implementation of DACS modules. Training on the proper use of the modified system, as well as the recent changes to the department’s policy on the imposition of graduated sanctions, was completed in the spring of 2013.

TASK FORCE REFORM GOALS

The DTF collaborated with the DDOC in order to facilitate the necessary changes to DACS and implement a mechanism to manage and track probation violations, as well as the type of sanctions that are imposed on probationers as a result of the violations.

The principle objectives of this project were:

- ❖ To leverage existing DACS functions and processes to include better tracking of demographic indicators associated with violations, sanctions and outcomes.
- ❖ To provide probation officers convenient tools and information to make objective and informed decisions.
- ❖ To provide a systematic guideline for imposing sanctions to offenders when completing a violation report. This includes Intake, Classification, Case Management and other security functions.
- ❖ To provide the ability to generate statistical reporting on key indicators including gender, race, violations, level of violation, sanctions imposed and severity.
- ❖ Implementation of implicit bias and bias-free decision making training for DOC officers and managers.

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IMPLEMENTATION

Before the DTF could attempt its reform efforts in the probationary sector of its criminal justice system, the group first needed to get more reliable data on probation revocation. See **Appendix O**. While their initial sample of probation revocations showed only a 4% disparity, a more exhaustive, automated data collection showed significantly greater racial disparities. This greater racial disparity can be seen in **Appendix P**. Specifically, in some categories, Black probationers were twice as likely to be revoked than white probationers. In other categories, the disparity was even greater. They discussed, but never examined why the disparity existed. They proceeded on the assumption that probation officers had too much unchecked discretion and sought revocation far too frequently, instead of doing more effective community supervision of probationers with graduated sanctions.

It was believed that, if Delaware probation implemented a mandatory or controlled graduated sanctions scheme, probation officers would not have the discretion to move to revoke in a discriminatory manner, and would be forced to employ cheaper, more effective community-based sanctions to redress non-violent, non-compliant behavior by probationers. Thus, the second part of the racial justice reform plan was to have CSOSA (Calvin Johnson) to: (1) work with Delaware and give them the graduated sanctions scheme that they developed for use with probation and parole populations in DC; (2) assist Delaware in enhancing their case management system with enhanced automation functionality from CSOSA's SMART case management system; and (3) come to Delaware and do a demonstration of their graduated sanctions scheme and their SMART system for a broad cross section of the Delaware criminal justice system. However, the DTF ultimately decided that such exhaustive efforts should be reserved for the better resourced Governor's Task Force while the DTF focused on training and smaller modifications to DACS.

The main focus of the Delaware reform has been to work with probation officials to develop policies and standards that guide the discretion of probation officers in their supervision of probationers. The DTF took a number of specific steps to address how race might be influencing the discretionary decisions of probation officers. The state of Delaware hoped to reduce racial and ethnic disparities in the probation system by creating a more objective system of responding to probationer infractions and by reducing the extent to which implicit bias can impact probation officers' decision making.

- 1) **Modifications to the DACS System-** Given the specific goals of the Task Force, the following modifications have been developed in DACS over the duration of the reform process:
 - ❖ The existing Violation Report was modified to include graduated sanctions. The graduated sanctions system recommends to the Probation Officer a list of possible sanctions based on pre-defined criteria, including current level of supervision, severity of the violation and number of previous violations.
 - ❖ The existing reporting (LSI-R, Progress Reports, Violation Reports and Admin Warrants) was modified to include demographic information including race, gender, and lead charge.

- ❖ The existing Violation Report was modified to include the Recommended Level of Supervision on the printed reports.
- ❖ The List of Probation Violation Report, List of Progress Reports, and List of Admin Warrants was modified excel downloads to include the case closing method.

The implementation of these functions will provide the Department of Corrections with a tool to better manage its offender population and will enable the implementation of operational efficiencies. Furthermore, these changes will allow probation officers to have a guideline that drives the sanctions based on predefined, objective criteria, thereby reducing the danger of implicit bias influencing probation violation decisions. See **Appendix E** for officer thoughts on the modifications to DACS.

- 2) **Implicit Bias Training-** On July 18th, 2011, the DTF held a training event on bias-free decision making in Dover, Delaware. All 42 supervisors from the Department of Probation and Parole were required to attend this training. The following members of the DTF presented: Curt Shockley, Director of Probation and Parole; Justice Henry DuPont Ridgley; and Colonel Robert Coupe, representing the Delaware State Police. Wayne McKenzie (VERA Institute of Justice) and Edwin Burnette (National Legal Aid and Defender Association) served as facilitators. The agenda and other information on the event can be seen in **Appendix B**.

Implicit bias training has also now been incorporated into the mandatory training for all new probation officers. In addition, the DTF sponsored a train-the-trainer session on implicit bias for the Department of Probation and Parole, as well as judicial staff. Finally, implicit bias training was provided by to all Judicial Officers in the state of Delaware by Professor Jerry Kang of the University of California, Los Angeles School of Law at the Annual Judicial Conference in October 2012.

Directly resulting from DTF discussions on the important of bias training, an initiative to promote bias-free decision-making was undertaken by the Delaware State Police. This effort involved the development of automated traffic “warnings,” so that information about warnings, in addition to traffic tickets, would be stored electronically and easily accessible for later review.

- 3) **Delaware Declaration of Leading Practices-** The DTF also oversaw the implementation of the Delaware Criminal Justice Council’s Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System. The Declaration mandates that Delaware criminal justice agencies and the courts adopt policies on bias-free decision-making, use of deadly force, internal and external complaint process, and other areas that will promote racial and ethnic fairness, in order to receive preference to receive grant funding allocated through the Delaware Criminal Justice Council.

The Department of Probation and Parole’s Professional Conduct Policy was amended to expressly prohibit discriminatory decisions by probation officers. The Department of Probation and Parole updated their existing policy manuals on bias-free decision-making as a result of task force efforts. Specifically, Section 1.17 of the Probation & Parole Operations Manual is entitled “Professional Conduct.” This policy now includes language that states “employees will not discriminate against any party based on race, religion, color, sex, disability, ethnicity, financial status, or sexual orientation. Employees will make bias-free decisions related to the supervision of all offenders and while conducting all business of the division.” **Appendix A** contains a copy of the Declaration.

AMERICAN BAR ASSOCIATION

Criminal Justice Section

RJIP – Implementation Plan

Step 1: Clearly identify the problem/issue	There are a disproportionate number of violation reports submitted on African Americans to the Courts and/or Board of Parole.
Step 2: Engage in an “evidence-based” approach	Refine data with DOC (Probation) and get a bigger sample over 2 years.
Step 3: Explain the goal of the reform initiative you are proposing	To develop an evidence-based approach to guide probation officers’ discretion in imposing graduated sanctions for probation violations, including the opportunity for variation depending upon identifiable risk, with supervisor approval, in order to address racial disparity and reduce the number of violation reports to the Court or Board of Parole.
Step 4: Develop a clear, step-by-step plan what needs to be done to implement your reform initiative	Part I – Enhance use of Graduated Sanctions by developing written P&P policy on the use of Graduated Sanctions, and begin training on policies; Part II – Enhance DACS by improving Graduated Sanction table and the data capture of Graduated Sanctions imposed, prior to Violation of Probation (VOP) report being written. Enhance the VOP report in DACS to include additional fields that capture risk, number of violations, previous graduated sanctions imposed, and recommended SENTAC level; Begin training all officers and P&P management in Motivational Interviewing; Part III – Implement changes to DACS statewide and demonstrate the new program; Part IV – Get probation officer input/buy-in and use their comments to tweak system; Part V – DOC will produce regular reports, including number of VOP reports submitted by race, county and court.
Step 5: Create a name for your reform initiative	“Evidence Based Probation Enhancement Project”.
Step 6: Determine a realistic timeframe for implementation (Use Grant Reporting Deadlines)	Completion Schedule for Part I – V (above) On or before February 2012 – Part I On or before May 2012 – Part II and III On or before July 2012 – Part IV Simultaneously, task force will be working on initiatives in Step 9 (below).

Step 7: Get other criminal justice stakeholders to buy in to your reform and assist with the implementation process	Initial press release. Dispatch task force members to their agencies or community contacts and develop allies for this reform (i.e. those interested in cost savings at the jail; advocate for community-based rehabilitation; courts concerned about the number of revocation cases); met with criminal justice stakeholders – luncheons or attend regular staff meetings/training sessions for CJC, SENTAC, criminal judges, public defenders, prosecutors, probation officers, DOC officials, community groups, community treatment providers, NAACP, Urban league, SURJ, and others.
Step 8: Define “measureable” success and set achievable milestones	Reduce the overall number of violation or probation reports through the effective use of graduated sanctions; reduce racial disparity; conduct 2 to 4 racial bias training sessions in next 12 months; educate Delaware about the work of the task force.
Step 9: Determine how you will track the success of your reform (who will collect data and generate reports?)	New system must be able to generate regular, automated reports; Data will be reported by DOC (probation) and shared with CJC.
Step 10: Set smaller, short-term goals (“interim deliverables”) to show productivity	1. Implicit bias and cultural competence training for probation officers and others in CJ system (judiciary and staff); 2. Advance principles of the state Declaration of Leading Practices; 3. Motivational interviewing skills for probation officers.
Step 11: Collaborate with existing projects and initiatives in your jurisdiction	Justice Reinvestment Initiative and I-ADAPT Projects, University of Delaware.
Step 12: Identify technical assistance and supplemental funding needs	1. Standards and written policy for the use of graduated sanctions; 2. Training on motivational interviewing skills; 3. Develop a tool to measure reduction in racial disparity; 4. Develop a tool to track the use of graduated sanctions. 5. Implicit bias and cultural competence training for probation officers and others in CJ system (judiciary and staff) 6. Training on Advanced principles of the CJC’s Declaration of Leading Practices

BUDGET INFORMATION

RJIP Funding

Year 1 Racial Justice Improvement Project - Report for March 1, 2011

	Budget	Spending	Description	Remaining
Travel				
Travel Costs for 10 Task Force Members @ 100 per member	\$1,000.00			\$1,000.00
Ground Transportation & Misc travel Expenses @ \$100 per member	\$1,000.00			\$1,000.00
Total Travel	\$2,000.00			\$2,000.00
Contractual Services				
Misc. Meeting Costs - \$150 x 6 meeting	\$900.00			\$615.16
		\$196.34	Lunch for 12/9/10 MTG	
		\$88.50	Binders & Tabs for 2/21/11 MTG	
Printing of handout materials	\$500.00			\$500.00
Professional Services for Data Collection and Evaluation	\$6,900.00			\$6,900.00
Total Contractual Services	\$8,300.00			\$8,015.16
First Year Total	\$10,300.00			\$10,015.16

Year 2 Conclusion of Racial Justice Improvement Project

Travel				
Travel Costs for 10 Task Force Members @ 100 per member	\$1,000.00			\$1,000.00
Ground Transportation & Misc travel Expenses @ \$100 per member	\$1,000.00			\$1,000.00
Air Fare for 4 Subject Matter Experts	\$2,000.00			\$2,000.00
Room Rate \$125 x 4 Subject Matter Experts x 2 nights	\$1,000.00			\$1,000.00
Total Travel	\$5,000.00			\$5,000.00
Contractual Services				
Printing of handout materials	\$500.00			\$500.00
2 Subject Matter Experts @ \$450 x 2 training days and 1 planning day	\$2,700.00			\$2,700.00
Meeting Room Rental - 1 Room @ \$500 each x 2 days	\$1,000.00			\$1,000.00
Total Contractual Services	\$4,200.00			\$4,200.00
Contractual Services for Training on Declaration of Leading Practices				
Printing and Binding of handout materials	\$500.00			\$500.00
2 Subject Matter Experts @ \$450 x 2 training days and 1 planning day	\$2,700.00			\$2,700.00
Meeting Room Rental - 1 Room @ \$500 each x 2 days	\$1,000.00			\$1,000.00
Total Contractual Services	\$4,200.00			\$4,200.00
Supplies for Training Sessions				
Binders	\$300.00			\$300.00
Total Supplies	\$300.00			\$300.00
Second Year Total	\$13,700.00			\$13,700.00

RESULTS

EVALUATION PLAN

The State of Delaware hopes to reduce racial and ethnic disparities in the probation system by creating a more objective system of responding to probationer infractions and reducing the extent to which implicit bias can impact probation officers' decision making. In the evaluation of these reform efforts pre- implementation of the modified DACS system, the goal was to understand two primary areas: probation officer perceptions of the reforms and the number of probation

violations filed by race. In assessing both, I Jay consulting, the hired evaluation firm, utilized data collected before and after the reforms, thus providing pre- and post-reform data.

Probation Officer Perceptions

Pre-Reform Interviews

Prior to the implementation of the new DACS graduated sanctions system, ten state probation officers were interviewed using an open-ended questionnaire. The officers represented all three Delaware districts (Sussex, Kent, and New Castle Counties). Probation officers were selected to participate by their supervisor and oversaw levels II, III, and IV caseloads. The interviews will focus on the following topics:

- ❖ Current use and perceptions of the graduated sanctions process;
- ❖ Ways in which the graduated sanctions system is used in supervision;
- ❖ Views on implementing an automated graduated sanctions system; and
- ❖ Recommendations for implementation of the new system.

The average tenure of the interviewees was 10 years, 11 months with a range of 1 year 10 months to 18 years of services. The following table provides an overview of the sample:

Table 1. Number of interview participants in each county by supervision level.

	Level II	Level III	Level IV	TOTAL
Kent County	1	1	1	3
New Castle County	1	1	2	4
Sussex County	1	1	1	3
TOTAL	3	3	4	10

Each interview was conducted by phone and lasted roughly 30-45 minutes. Responses were recorded at the time of the interview and later consolidated into one transcript. Interviewee remarks were coded and analyzed to determine patterns and trends in the data. The interview protocol was created in collaboration with RJIP task force members and RJIP project staff and can be seen in **Appendix C**.

Results of the survey found that all interviewed probation officers indicated that they used graduated sanctions regularly and believed that the system helped in their supervision. In particular, the officers liked the flexibility of the system offers in tailoring their supervision efforts to individual probationers. Without this flexibility, most officers felt that their options in working with their probationers would be greatly reduced.

Officers also noted that their sanctions were always recorded in their DACS notes and then outlined in their violation reports, when appropriate. Most interviewees spoke of the need to provide a historical overview of the case for the judge as the primary reason for including the information in their reports. Others spoke of a desire to justify their violation request to the judge by describing the efforts already made on behalf of the probationer. The officers interviewed

mostly stated that they anticipated the new automated DACS recording system will be a positive improvement in the graduated sanctions process. As the primary benefits, interviewees cited the ability to easily review cases and access updates in real time for probationers as the primary benefits.

Several probation officers expressed concern about the ease of use of the new automated system. While most officers expressed an appreciation for what the Department of Parole and Probation was attempting to accomplish by automating the sanctions system, many stated that there would be a learning curve in its implementation and hoped that the Department had training designed to ease officers into the new system. Other officers were concerned that the new requirements would actually be more work for the officers, and that management would not take that into consideration when designing and executing the system. There was some apprehension that the needs of the officers will take a back seat to the needs of management.

Another concern mentioned by two officers was that officers would be held to a specific range of sanction options for particular violations, instead of being permitted the flexibility they have now. One officer stated that limiting options to drop-down boxes would eliminate the officers' ability to tailor sanctions to each probationer. Another officer indicated that being limited to a specific set of options would decrease her/his rapport with probationers, as well as introduce a "cookie-cutter" approach to supervision. In the interviews, there was a tendency for officers who have more experience to be more skeptical about the new system, and for less-experienced officers to be more accepting of the proposed changes.

Post-Reform

Approximately six months after the implementation of the graduated sanctions protocol, the new DACS recording system and the implicit bias training, a random sample of probation officers were asked to participate in an online survey about their perceptions and their experiences with the new graduated sanctions and DACS systems. The questionnaire consisted of 10 Likert-scale questions and one yes/no question about the officers' experience and perception of the new system. As with the previous survey, specific questions were developed in coordination with the DTF. A copy of this survey can be seen in **Appendix D**.

Survey responses were analyzed to identify frequency and descriptive statistics to determine perceptions and attitudes toward the graduated sanctions and new database. Results were used to inform the future of the program.

Thirty-two probation officers participated in the survey. Table 2 provides an overview of the number of responding officers by level of case supervision.

Table 2. Number of survey respondents by supervision level.

Supervision Level	# of Officers
Level II	7
Level III	12

Multiple levels	5
Supervisor	3
Administration	1
Unknown	4

Participating officers had a mean tenure of 10 years 3 months of service, with a range of 6 months to 26 years.

Surprisingly, results showed that officer impressions of the modifications did not vary much from the pre-reform interviews conducted, and results to the survey were similar to the interview findings. Officers tended to agree that the DACS system was helpful and beneficial to their jobs, but were less likely to agree that the graduated sanctions modifications made their jobs easier or that the new protocol was helpful to them in their jobs.

Responses to each of the survey questions, along with the mean for each response, can be found in Table 3. The original five-point rating scale was collapsed into three points: Strongly Disagree/Disagree; Neither Agree nor Disagree; and Strongly Agree/Agree.

Table 3. Survey responses to the post-reform questionnaire.

	N	Strongly Disagree/Disagree (n/%)	Neither Agree nor Disagree (n/%)	Strongly Agree/Agree (n/%)	Mean
The graduated sanctions protocol is an improvement in probation/parole supervision.	31	7/22.6	11/35.5	13/42.0	3.19
The graduated sanctions protocol provides greater flexibility in my supervision work.	31	9/29.1	10/32.3	12/38.7	3.16
The graduated sanctions protocol makes my job easier.	31	12/38.7	11/35.5	8/25.9	2.77
The graduated sanctions portion of DACS makes my job easier.	31	13/42.0	7/22.6	11/35.5	3.00
The graduated sanctions system is helpful to me in my job.	31	4/12.9	12/38.7	15/48.4	3.42
I am glad that the Department switched to the graduated sanctions protocol.	31	9/29.0	15/48.4	7/22.6	2.84

	N	Strongly Disagree/ Disagree (n/%)	Neither Agree nor Disagree (n/%)	Strongly Agree/ Agree (n/%)	Mean
I am glad that the Department modified DACS to include graduated sanctions	31	6/19.4	12/38.7	13/41.9	3.26
Entering information into DACS is easy.	31	1/3.2	7/22.6	23/74.2	3.90
Generating reports from DACS is easy.	30	0	5/16.7	25/83.3	3.97
DACS increases efficiency in my job.	31	1/3.2	3/9.7	27/87.1	4.23

It should be noted that, for many questionnaire items, the majority of responses fall into the “Neither Agree nor Disagree” category. Generally respondents use this category if they fall into one of the following groups:

- They have had mixed results in using the new system;
- They are neutral on the system; or
- They have not used the system and, therefore, cannot rate it.

It is likely that respondents in this evaluation fell into the first two categories, as only officers who were familiar with the system were asked to participate in the survey. Further investigation is warranted to better understand this phenomenon.

In addition to questions about the DACS and graduated sanctions systems, survey respondents were asked basic demographic information. There was no relationship between length of time on the job and perceptions of the graduated sanctions and DACS changes, meaning that officers responded similarly to the survey items regardless of how long they had worked for the Department of Corrections. There was also no relationship between the officers’ responses and their level of supervision.

As can be seen in Table 3, the items which received the strongest agreement are those that pertain to the DACS as a whole, including:

- “DACS increases efficiency in my job,” with a mean of 4.23;
- “Generating reports from DACS is easy,” mean 3.97; and
- “Entering information into DACS is easy,” mean 3.90.

These results mirror the statements made during the pre-reform interviews in that officers spoke highly of the DACS at both times.

Some of the narrative comments that support these high ratings include:

- *DACS is a great system in general for reports. There are a lot of reports that could be generated if more training was given. One must explore the system to find all of the somewhat hidden capabilities;*
- *I would not know how to keep paper records. It is a great tool that enhances an officers [sic] ability to supervise and keep an accurate log; and*
- *Easy, but time consuming.*

Both before and after the reforms, officers were less enamored with the graduated sanctions protocol and its DACS reporting. As can be seen, those items which received the lowest scores tended to be about the graduated sanctions protocol:

- “The graduated sanctions protocol makes my job easier,” with a mean of 2.77;
- “I am glad that the Department switched to the graduated sanctions protocol,” mean 2.84; and
- “The graduated sanctions portion of DACS makes my job easier,” mean 3.00.

Comments that supported the above ratings were:

- *This makes another step in a system that is receiving more and more individuals on probation daily with less and less officers;*
- *Each sanction we use takes more time per office visit and backs each Officer up on an already overloaded case loads [sic]; and*
- *I don't believe it was necessary to be so extremely documented, as the officers do it already.*

However, some respondents answered favorably to the items about the graduated sanctions protocol. Several of their comments follow:

- *It was something PO's were doing already, now it is just documented a little better for the Judges to understand;*
- *If done properly, audits are easier as well as VOP reports. The officer should be able to present a strong report to the court if a VOP is necessary; and*
- *With having the sanctions documented on one page to view, this makes it easier to summarize what has been done to bring the offender back in compliance with his/her conditions of supervision and what course of action to take next.*

Probation officers also had specific recommendations to improve the graduated sanctions protocol. Suggestions included:

- *Have the sanction comments visible in the window of casenotes instead of having to click on them;*
- *Elimination of higher levels of approval for sanctions as it is time consuming and limits the effective sanction options that do not require approval. Officer's [sic] should be*

trained in the appropriate use of higher sanctions and implement as necessary without approval;

- *The closing of cases is too easy. Makes for accidental closures. Need at least another “Are you sure you want to make these changes” options before you can save changes on the overall screen;*
- *Have the sanction comments visible in the window of casenotes instead of having to click on them.*

In sum, while probation officers viewed the DACS changes as both sometimes useful and generally time consuming, the below data shows that the DACS implementation assisted in positive outcomes for probationers of color. Survey narrative comments can be found in

Appendix E.

Violations of Probation

To determine whether the reforms had an actual impact on the racial disparity in number of probation violations, the Delaware Department of Corrections collected archival data from the DACS. These data represented the number of Blacks and whites (and a small “Other” category) served violations of probation (VOP) in relation to their percent of the general probationer population.

The initial batch of data was violations of probation from June 1, 2011 through February 28, 2012, prior to the implementation of the reforms. The post-reform probation violation data covered the time period July 1, 2013 through December 1, 2013.

Once the modified electronic database was put in place, a more rigorous evaluation could be executed to determine whether the new probation violation system reduced racial and ethnic disparities. The purpose of the analyses will be to determine statistically whether there is a difference between people of color and whites in the way probation infractions are treated.

The simplest way to conduct these analyses is to compare the number of violations submitted for persons of color versus whites, through an analysis of variance or similar means testing method. However, this analysis would ignore the events running up to the probation violation, such as previous sanctions authorized by the probation officers. Thus, multiple regression statistical method was recommended so that critical variables, such as arrest record and number and type of graduated sanctions can be held constant. In this way, the analysis provided a more valid picture of the efficacy of the program without the influence of extraneous variables.

To evaluate whether the RJIP reforms were effective in reducing racial disparities in probation violations, we looked at the rates of probation violations before and after the reforms. Following is a review of those findings.

Pre-Reform

Data outlined in Table 4 show that, while Black probationers accounted for 46.19% of the total number of probationers during the pre-reform time period, they made up 50.09% of all filed

violations. This produced a difference of +3.90 points. On the other hand, whites made up 53.36% of total probationer population and only 49.89% of violations during this time period, leading to a percentage point difference of -3.47. The variance in point differences between the Black and white probation violations indicated that whites were less likely to be violated than were Blacks.

Table 4. Nine month statewide totals for Level II-III VOPS and Probationers by race (6/1/2010 – 2/28/2011)

	# of VOPs	% of Total VOPs	# Total Probationers	% of Total Probationers	Difference
Black	2,258	50.09%	17,912	46.19%	+3.90
White	2,249	49.89%	20,692	53.36%	-3.47
Other	1	.02%	172	.44%	-.42
Total	4,508	100.00%	38,776		

Post-Reform

The second batch of data, as shown in Table 5, were collected after all reforms were enacted, between July 1, 2013 and December 1, 2013. As can be seen, the disproportionate number of Black probation violations was reduced at this data collection period. Blacks had a point difference of +1.18, and whites had a difference of -.83. Probation violations were more equally split between the two races than in the first data collection period, indicating that there was less disparity in VOPs between Blacks and whites.

Table 5. Five month statewide totals for Level II-III VOPS and Probationers by race (7/1/2013 – 12/1/2013)

	# of VOPs	% of Total VOPs	# Total Probationers	% of Total Probationers	Difference
Black	1,308	44.31	5,075	43.13%	+1.18
White	1,641	55.58%	6,637	56.41%	-.83
Other	3	.10%	54	.46%	-.36
Total	2,952	100.00%	11,766		

It should be noted that these data do not take into consideration historical information which influences violation decisions, such as prior violations, crime of record, probationer history, etc. Nor do the data tease out which reform contributed to the positive outcomes. Still, the reduction in disparity is encouraging given the short time frame and the relative newness of the system. Please see **Appendix F** for the complete violation of probation reports for 2011 and 2013. **Appendix G** contains individual Level II and III Violations of Parole by County and Race.

EVALUATOR RECOMMENDATIONS

For Practice:

- ❖ Create an instruction manual for the DACS and the new graduated sanctions protocol;

- Training was an important component of both the interviews and the online survey phases of the evaluation;
- ❖ Consider reducing the level of approval needed for lower level sanctions;
- ❖ Draw on the enthusiasm of the newer staff to push the graduated sanctions protocol;
- ❖ Provide training to court personnel and other stakeholders in the graduated sanctions protocol; and
- ❖ Offer implicit bias and bias-free decision making to all segments of the justice system.

For Future Evaluation:

- ❖ Develop and implement an evaluation design that will take into consideration previous probationer history, to control for past offenses, other violation efforts, and other relevant probationer characteristics and
- ❖ Continue to review archival data over longer periods of time to validate the findings of this evaluation;

The above analysis and evaluation were provided and conducted by I JAY Consulting. To see the full report from IJAY Consulting, see **Appendix H.

FINDINGS

PROJECT SUMMARY

The Delaware Department of Corrections (DDOC) worked to implement a mechanism through modifications to their case management system to manage and track probation violations and the type of sanctions that are implemented on Probationers as a result of violation. In order to accomplish this, the Department integrated these functions within the case management system, Delaware Automated Correction System (DACS). This allowed the users to use existing functions within DACS to track and report information about probationers. The implementation of these functions provided the Department with a tool to better manage its offender population and allowed the Probation Officers to have a guideline that drives the sanctions based on predefined objective criteria. The hope was that this evidence-based approach to guide probation officers' discretion in imposing graduated sanctions for probation violations will assist the DDOC to address any racial disparity and reduce the number of violation reports to the Court or Board of Parole.

In 2011, prior to implementation of any reform, an independent evaluator performed a preliminary evaluation of racial representation in probation violations. Upon completion of the reforms, the evaluator identified that these reforms had an impact on racial representation disparities in probation violations. Officers violated fewer Blacks, proportionately, during the post-reform period than during the pre-reform period. In general, probation officers were satisfied with their ability to impose graduated sanctions on probationers. Most felt that the level of flexibility afforded them was adequate in their supervision practices. In general, they also believed that the DACS is a useful and easy tool. However, in the post-reform phase, officers continued to experience difficulty in utilizing the graduated sanctions protocol within DACS. They felt it was time-consuming and cumbersome and was merely a tool for management.

The reforms instituted had a more obvious positive impact on probationers, however. Prior to reform implementation, while Black probationers accounted for 46.19% of the total number of probationers during the pre-reform time period, they made up 50.09% of all filed violations, whereas whites made up 53.36% of total probationer population and only 49.89% of violations. This data indicated that white probationers were less likely to receive probation violations than Black probationers. Following the reforms, probation violations were more equally split between races, indicating a reduction in racial disparities in the VOP process. The point difference between the number of probationers and VOPs was reduced from +3.90 for Blacks and -3.47 for whites to +1.18 for Blacks and -.83 for whites. Due in part to the promising outcomes shown by DTF's work, the Delaware government will be funding future racial justice initiatives in the state. See **Appendix H** for the raw data.

The findings of the evaluation indicate that the reforms implemented by Delaware had at least preliminarily positive outcomes. Further evaluation is needed to determine if people of color are disproportionately represented in probation violations can be reduced with statistical significance.

Ultimately, the legacy of the DTF will be that they presented the issue of graduated sanctions to the governor's task force to implement, they arranged for implicit bias training for all State court judges, public defenders, supervisory probation officers, and several line officers, and did motivational interviewing training for line probation officers. This is in addition to the operational and policy changes within Delaware probation that were made during 2011 to incorporate implicit bias training and bias-free decision-making policies

SUSTAINABILITY

From the outset, the proposed reforms have enjoyed the full support of all Task Force members consisting of individuals from numerous state agencies across the criminal justice system and at the highest levels of state government. Additionally, a cross section of providers from all aspects of the criminal justice system are represented on the DTF and have had input on the reforms and goals of the project. Commitment to the issue of racial and ethnic fairness is evident through the collaboration of these stakeholders beginning with the 2007 Race and Ethnic Fairness Summit, the CJC's adoption of the Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in 2010, and through the reforms achieved during this project, as well as all of the interim deliverables outlined above which touched various agencies across the system. Policy changes have been implemented and programs and systems have been modified to guide and measure the effect of these reforms. Delaware is committed to continuing its work to promote racial fairness throughout the criminal justice system.

The Delaware Task Force has concluded its work and has passed the torch of reform with parole violations. Delaware has decided not to re-apply for another grant with the RJIP to continue the work of the task force. Accordingly, they are now seeking to implement their training proposal and wrap-up the work of the task force. Delaware will need the support of the ABA to identify trainers for both probation officers and public defenders on implicit bias, and may require ABA assistance in providing the motivational interviewing training to probation officers the state of Delaware has agreed to fund future racial justice initiatives.



Criminal Justice Section

APPENDICES

APPENDIX A: DECLARATION OF LEADING PRACTICES

DELAWARE CRIMINAL JUSTICE COUNCIL

DECLARATION OF LEADING PRACTICES TO PROTECT CIVIL RIGHTS AND PROMOTE RACIAL AND ETHNIC FAIRNESS IN THE CRIMINAL JUSTICE SYSTEM

Adopted: April 19, 2010*

The Delaware Criminal Justice Council is an independent body committed to leading the criminal justice system through a collaborative approach that calls upon the experience and creativity of the Council, all components of the system, and the community. The Council shall continually strive for an effective system that is fair, efficient, and accountable. In keeping with this, the Criminal Justice Council issues the following Declaration to protect civil rights and to promote racial and ethnic fairness in the criminal justice system in Delaware:

- I. Leaders of agencies and courts must demonstrate a fundamental and complete commitment to racial and ethnic fairness in the criminal justice system.
- II. Early Intervention Strategies
 - A. All agencies and courts, regardless of size, should strive to incorporate the core concepts of early intervention into their personnel management practices to protect civil rights and to promote racial and ethnic fairness.
 - B. Agencies and courts seeking to develop early intervention should look to their peers for ideas, but must recognize that they will have to tailor their own system to the needs of their agency or court.
 - C. Agencies and courts should strive to include as many stakeholders as possible in the planning of early intervention systems.

* Adopted upon the recommendation of the Delaware Criminal Justice Council's Racial and Ethnic Fairness Committee, Co-chaired by Justice Henry duPont Ridgely and Chief Judge Alex J. Smalls. Adapted in part from *Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement* (Prepared by the International Association of Chiefs of Police, September 2006)

- D. Agencies and courts should ensure that supervisors have the appropriate experiences, skills, and training to perform their early intervention responsibilities.
- E. Agencies and courts should ensure that the early intervention system remains distinct from the disciplinary system.
- F. Agencies and courts should develop a discrete policy directive addressing the purpose and functional elements of the early intervention system.

III. The Civilian and Internal Complaint Process

- A. Agencies and courts should have a clear policy and well-defined practices for handling outside and internally generated complaints against personnel or the organization as a whole.
- B. Agencies and courts should establish an accessible complaint-filing process that allows for the receipt of complaints about misconduct from a wide range of sources.
- C. Agencies and courts should establish complaint investigation processes that are comprehensive and fair to all parties.
- D. Agencies and courts should specifically select and train personnel responsible for investigating complaints.

IV. Managing Use of Force by Law Enforcement, including Probation and Parole Officers, Court Security Officers, Bailiffs, and Constables.

- A. All law enforcement departments should have a clear use-of-force policy that specifically addresses both deadly and nondeadly use of force and is consistent with all legal and professional standards.
- B. A law enforcement department's use-of-force policy must address all available use-of-force options, clearly place these options on a use-of-force continuum, and associate these options with corresponding levels of subject resistance.

- C. A law enforcement department's policies and training should specifically address alternatives to use of force and encourage their use in appropriate circumstances.
 - D. Every law enforcement department should have a clear policy and set of standards for determining what level of force requires formal written documentation by involved officers.
 - E. Every law enforcement department should have a clear policy and set of standards for determining what level of force requires formal review by the chain of command or a specialized review unit (e.g., critical incident review team).
- V. Bias-free Decision Making.
- A. All agencies and courts should have a clear and unequivocal policy prohibiting racial profiling and promoting bias-free decision making.
 - B. Agencies and courts must embed the ideals of bias-free decision making in their mission statements, training, accountability mechanisms, and community outreach.
- VI. Personnel Management.
- A. Agencies and courts should recruit, hire, and promote personnel in a manner that best ensures that personnel reflect the communities that they serve.
 - B. Agencies and courts should start the recruitment process early to promote a representative workforce.
 - C. Agencies and courts should require employees to attend educational, professional and cultural awareness programs on racial and ethnic fairness for all personnel on a continuing basis.
- VII. Data Management.
- A. Agencies and courts should collect data as appropriate to measure compliance with leading practices identified in this Declaration to protect civil rights and promote racial and ethnic fairness.

VII. Community Outreach

- A. Agencies and courts should engage in community outreach to increase awareness about the operations of their agency or court and its commitment to racial and ethnic fairness in the criminal justice system.

IX. Preference for Grants

- A. Effective January 1, 2011, any applicant that certifies compliance with this Declaration shall be given preference in the award of grants administered by the Criminal Justice Council over any applicant that does not so certify.



Criminal Justice Section

Bias-Free Decision Making in the Probation Department:

*This training program is sponsored by the
Delaware Racial Justice Task Force*

Task Force Members:

*Justice Henry duPont Ridgely, Delaware Supreme Court
Curt Shockley, Director of the Delaware Probation and Parole
Honorable Joseph R. Biden, III, Delaware Attorney General
Drewery N. Fennell, Executive Director of the Criminal Justice Council
Amy Arnott Quinlan, Deputy Director of the Administrative Office of the Courts
Peggy Bell, Executive Director of the Delaware Criminal Justice Information System (DELJIS)
Patricia W. Griffin, State Court Administrator
Janet Leban, Executive Director, Delaware Center for Justice
Honorable Alex J. Smalls, Court of Common Pleas
Colonel Robert Coupe, Delaware State Police
Honorable Brendan O'Neil, Public Defender of the State of Delaware
Richard Andrews, Deputy Attorney General*

July 18, 2011

Siena

Dover Sheraton Hotel

Dover Delaware

**Bias Free Decision Making
July 18th, 2011**



Criminal Justice Section

A project funded by the Bureau of Justice Assistance

Delaware Probation Department Workshop 9:30AM to 4:00PM
Sheraton Dover, 1570 North Dupont Highway Dover
Siena Room

Conference Objectives

This workshop is organized as part of the ABA Criminal Justice Section's Racial Justice Improvement Project and is created and sponsored by the Delaware Task Force. The specific purpose of this conference is to:

1. Demonstrate important concepts such as social cognition and implicit bias and allow participants to understand the role this plays in the operation of criminal justice agencies and systems, most specifically as it relates to the Probation Department, and how these concepts are connected to perceptions about the fairness, integrity, and reliability of the criminal justice system.
2. Instruct participants on how bias-free decision making tools can facilitate better communication and relationships amongst colleagues, as well as between officer and offender.
3. Encourage participants to acknowledge and utilize trainings on the concept of Bias-Free Decision making in their local office.

Participant Learning Objectives:

Through participation in this conference, participants will be able to:

1. Understand and explain the importance and rationale for the study and application of cultural competency and implicit Bias, and how they may influence decisions.
2. Learn to recognize some behaviors that may suggest bias or differential treatment.
3. Learn some techniques that help de-bias perceptions and improve interactions.

Conference Faculty:

Edwin Burnette, Vice President of Defender Legal Services for the National Legal Aid & Defender Association

Wayne McKenzie, General Counsel, New York Probation Department

Salma S. Safiedine, Attorney, American Bar Association Criminal Justice Section.

Presentation Agenda



A project funded by the Bureau of Justice Assistance

9:30 Introduction of the Delaware Task Force and Discussion of the Task Force's Current Progress, Bias Free Decision Making Initiatives.

Curt Shockley, Director of Delaware Probation and Parole

Justice Henry duPont Ridgely, Delaware Supreme Court

Colonel Robert Coupe, Delaware State Police

9:45 True and False - Delaware's Probation Department

Salma Safiedine, ABA Criminal Justice Section Attorney

This interactive session opens the lines of communication between presenters and attendees providing a true/false game for participants tailored specifically to the Delaware Probation Department.

10:00 Culture, Cultural Competency & the Criminal Justice System

Salma Safiedine

This session explores the language and concept of cultural competency, and the rationale for its application in the criminal justice context, delving into such questions as: What is culture? What are culture groups? What are cultural collisions? How do these concepts apply in the criminal justice context? How do these concepts apply to parole and probation specifically?

10:30 Implicit Bias

Wayne McKenzie, General Counsel New York Probation

Edwin Burnette, Vice President NLADA

This session presents the concepts of "social cognition" and "implicit bias" from the field of social psychology. Through the plenary lecture and break out discussions, participants will explore such questions as: What are "social cognition" and "implicit bias"? What role do they play in the operation of criminal justice agencies and systems? In what ways are they connected to community perceptions about the fairness, integrity, and reliability of the criminal justice system? How are these concepts related to the role of ensuring decisions are made bias-free? How do systemic justice issues impact community perceptions regarding the integrity and reliability of the criminal justice system? The probation department? Is this always a matter of "bad intent," or is something else going on?

11:45 The Cost of Revocation

Wayne McKenzie

Edwin Burnette

Participants will engage in an interactive discussion relating to the cost of probation revocation on the criminal justice system. Efficiency and costs along with the overall effect probation revocation has on the criminal justice system and society.

12:30 Lunch



Criminal Justice Section

A project funded by the Bureau of Justice Assistance

Over Lunch, through guided discussion, participants will reflect on the opening presentations. Participants will also brainstorm strategies and opportunities for continuing cultural competency education and training in their local office.

1:15 Bias Free Decision Making for Probation

Wayne McKenzie

Edwin Burnette

Participants will engage in thought-provoking activities that will help define Bias-Free Decision making and evaluate discretionary decisions. Participants will begin to develop tools to promote Bias-Free Decision in their local office.

2:15 Session Debrief

As with the morning session, through guided discussion, participants will reflect on the opening presentations.

2:30 Break

2:45 Action Planning

Wayne McKenzie

Edwin Burnette

Participants will “map out” specific next steps for organizing a training session in their home office, and will provide feedback to project organizers regarding potential on-going project support. Discussions will include gathering input on methods that could help curtail and monitor the probation officers’ discretionary decisions regarding revocation of probation and respective implementation ideas. (E.g. amendments to revocation standards, interim sanctions for violators that do not necessarily include a transfer in probation level, or amendments to current computer programs).

3:45 Closing Remarks, Q&A

Wayne McKenzie

Edwin Burnette



Criminal Justice Section

A project funded by the Bureau of Justice Assistance

BIAS FREE DECISION MAKING WORKSHOP

July 18, 2011

1. To what extent are you familiar with the following terms?

	Not at all	Not very	Somewhat familiar	Very familiar
Implicit Bias				
Cultural Competency				
Micro-inequities				
Social Cognition				

2. To what extent do you agree with the following statements?

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree
Cultural competency is relevant to my job within the criminal justice system.				
Race, culture, and diversity impact community perceptions about the fairness, integrity, and reliability of the criminal justice system.				
Cultural diversity issues are prevalent within judicial, prosecution, and public defense agencies.				

3. What do you consider to be the 2 main issues that undermine community confidence in the integrity, reliability, and fairness of your jurisdiction's criminal justice system?

APPENDIX C: PARTICIPANT INTERVIEW PROTOCOL

Racial Justice Improvement Project State of Delaware Department of Probation and Parole Participant Interview Protocol

Name:

- ❖ Do you currently use graduated sanctions as part of your supervision strategy?
 - How does it work for you?

- ❖ Give me an example of a case in which you have already used graduated sanctions.
 - Was it helpful to use a graduated sanctions system in that case?

 - Would you have liked less flexibility?
 - Why or why not?

 - More flexibility?
 - Why or why not?

- ❖ When you use them, do you document them in DACS case notes? Do you include them as part of your violation of probation report?
 - Why or why not?

- ❖ What do you see as the benefits of automating the graduated sanctions system?

- ❖ What might be the challenges of implementing the new automated computer system?
 - How do you expect those will be overcome?

APPENDIX D: DELAWARE PROBATION OFFICER SURVEY

* 1. **The graduated sanctions protocol is an improvement in probation/parole supervision.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ N/A

Additional Comments

* 2. **The graduated sanctions protocol provides greater flexibility in my supervision work.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ N/A

Additional Comments

* 3. **The graduated sanctions protocol makes my job easier.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

* 4. **The graduated sanctions portion of DACS makes my job easier.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ N/A

Additional Comments

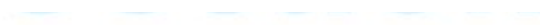
* 5. **The graduated sanctions system is helpful to me in my job.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ N/A

Additional Comments

* 6. **I am glad that the Department switched to the graduated sanctions protocol.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree



*** 7. I am glad that the Department modified DACS to include graduated sanctions.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ N/A

Additional Comments

*** 8. Entering information into DACS is easy.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ N/A

Additional Comments

*** 9. Generating reports from DACS is easy.**

- ☐ Strongly agree
- ☐ Agree
- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree

* 10. **DACS increases efficiency in my job.**

- ☐ Strongly agree
☐ Agree
☐ Neither agree nor disagree
☐ Disagree
☐ Strongly disagree
☐ N/A

Additional Comments

* 11. **Have you experienced difficulty with the recent changes to the DACS?**

- ☐ Yes ☐ No ☐ N/A

Additional Comments

12. **Do you have any additional comments about the graduated sanctions or the DACS modifications?**

Section

- * 13. Is there anything that you would like to see modified in the current DACS or graduated sanctions protocol?

- * 14. What level of supervision do you provide?

- * 15. How long have you worked at the Department of Correction?

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APPENDIX E: SURVEY NARRATIVE RESPONSES

NARRATIVE RESPONSES TO THE PROBATION OFFICER POST-REFORM ONLINE QUESTIONNAIRE

1. The graduated sanctions protocol is an improvement in probation/parole supervision.

- It does nothing but let the courts know we have addressed the issue prior to the violation and the judges are not liking that we are doing it from our end. I have had several judges ask why the previous violations have not been addressed and have had to explain the graduated responses to them.
- It is something that numerous officers have already been doing on their own and explain in the history of supervision section. Now that it is mandated it does to a point take away from violations and is an extra step that isn't necessary.
- This Officer was already using internal sanctions to help offenders become more compliant with their conditions of probation.
- I believe that these sanctions have been in place for some time; however they are well documented on one page for Probation and / or the courts to view. To view all this information in one location, saves time and will provide precise information to the courts if a violation report is submitted.
- It better informs the judges of the efforts made by officers prior to filing a VOP.
- We already perform the task in our scheduled case notes. This seems to be a tool for the Supervisors/Regional Managers. The supervision requirements for Level 4 don't always relate to Level 3. We have fewer cases, but should be supervising them much closer.
- Agreed that they are useful, as they were informally used prior to DACS implementation. Found to be more useful when used with lower level offenders.
- Officers have been imposing graduated sanctions for years. The protocol provides a different platform to document these activities.
- This process is semi common practice amongst most officers; it is just more clearly documented via the graduated sanction process and DACS case note.
- I have only used the verbal warning sanction thus far. For me, this is the same as I have done in the past 16 years (unless there is a threat to victim or community safety.) I documented in case notes of the issue and it would be noted in a VOP report if needed. Regardless, I am optimistic that this protocol may have some benefit to P&P supervision and the judicial system as a whole.
- Many officers already used graduated sanctions in one form or another prior to official implementation of this protocol.
- I believe it may be clearer in showing attempts made to get the offender back in compliance.
- It is neither. I was already doing these things before, but I just didnt have to document every time I verbally warned someone about their non-compliance.
- Really don't know yet if it is an improvement in P&P cause it hasn't been in effect long enough to see if it will make a difference with the Judges or not.

- it is something we have always done - while the extra documentation is good for proof, it is also seen as taxing and time consuming for other officers.

2. The graduated sanctions protocol provides greater flexibility in my supervision work.

- I was utilizing a system like this prior. I would make the offenders report in more frequently, refer them to treatment, conduct more home visits, and if the situation called impose curfews. Accomplished this by progress reports to the judge. This is another step that just takes more time from me to more effectively supervise a caseload.
- The protocol does not provide greater flexibility. It mandates more of our time in an already busy schedule.
- Found that the flexibility has remained about the same. Graduated sanctions have more so served as a formal way to document the informal sanctions that were previously used at a Probation Officer's discretion.
- Probation officers have always had the flexibility and legal authority to use graduated sanctions.
- The ability to impose sanctions has always existed. This is simply a better way of tracking what we should already be doing.
- See previous comment.
- I like the ability to impose "minor" sanctions without supervisor approval or going through the Court.

3. The graduated sanctions protocol makes my job easier.

- This makes another step in a system that is receiving more and more individuals on probation daily with less and less officers.
- More responsibility and job duties with below average pay.
- Formal use of graduated sanctions is more time consuming as it requires input into DACS formally and cannot be used as a basis for violation.
- The graduated sanctions protocol adds another step of documentation to the process.
- It is my opinion that this mainly applies to graduated responses to offender compliance, more so than responses to non-compliance.
- It actually takes more time rather than making a note of how their non-compliance was handled, but does make it easier to sanction a person and move the case as "clean" instead of waiting for a Judge to approve a "no action be taken at this time PR"

4. The graduated sanctions portion of DACS makes my job easier.

- Due to the fact that they have changed the standards that the graduated sanctions operate under but haven't yet changed the scoring system for the LSIR's you can still have people who need a sanction but you can't place one without extra steps due to the fact that they fall outside of the scoring system (Low-Moderate and High-Moderate). The system is what is normally expected with a DACS operating system.
- Each sanction we use takes more time per office visit and backs each Officer up on an already overloaded case loads.
- With having the sanctions documented on one page to view; this makes it easier to summarize what has been done to bring the offender back in compliance with his/her conditions of supervision and what course of action to take next.
- It is considerably more time consuming.
- Again different case loads, Cannot access yet at Level 4

I just need to know how to use it. I have used it once and had to ask for help from a Super User.

- It doesn't make an Officer's job easier but it does allow for formal documentation of an addressed issue.
- The system provides a platform for all negative graduated sanctions to be captured in one place on the violation of probation report.
- If done properly, audits are easier as well as VOP reports. The officer should be able to present a strong report to the court if a VOP is necessary.
- Have not seen much change to date. As stated above, I have only used the "verbal warning" so far. Have not filed a VOP with graduated sanctions yet.
- Additional time is required to enter the sanction in DACS, thereby adding to case processing that is already very time-consuming.
- There is a little more work involved than just putting in a DACs note.

Section

5. The graduated sanctions system is helpful to me in my job.

- As previously stated, this is something I was already doing.
- The graduated sanctions are a liberal approach to slap the offender on the wrist for violating his/her probation.
- I'm sure it will be if I change case loads. It will give a better picture of what the Offender has been doing thru the course of his probation. Sometimes officers forget about the 2 weekend sanctions that were given early in someone's sentence for not reporting ect.
- Graduated sanctions were previously already used in some capacity by Officer's & now inputting the sanctions into DACS allows for clarification that issues with Probationer's are addressed.
- If/when a VOP is filed, the sentencing authority can readily see what efforts have been taken by the supervising officer in attempting to get an offender into compliance. I believe this will be EXTREMELY useful for the presenting Court Officer.
- I think the only thing it may improve is when the probationer goes back in front of the Judges they can see that we actually do work with these people as much as we can and that we don't just lock them up for small things.

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Criminal Justice
Section

6. I am glad that the Department switched to the graduated sanctions protocol.

- I don't believe it was necessary to be so extremely documented, as the officers do it already.
- This is an unnecessary protocol that was created by individuals who have no operational concept of what probation in Delaware is.
- Each Offender needs to be held more accountable for their actions. Sanctions have done little to change the behavior of the violent offender.
- It adds to the credibility of Officer's operations.
- If the DOC needs to measure success in the use of EBP then implementation of graduated sanctions and a mechanism in DACS to track the information will assist us in collecting necessary data. Probation officers and the courts were already using graduated sanctions in supervision of offenders.
- This process was cited previously in my history of probation portion of a Violation Report. I feel that it appears to weaken my violation in the regards that if I cite a condition for a graduated sanction that condition does not show up in my exhibit B, thus sometimes showing only one or two conditions that are being cited for the current violations.
- I think seasoned officers have been doing their own graduated sanctions for the most part. I also think many of us are already reinforcing positive behaviors when seen. In the past, I have given probationers "rewards" for good behaviors such as a curfew free weekend, or permitting travel to neighboring Maryland to attend something (i.e. movies, OC, concerts) other than business, medical or court appointments.
- It was something PO's were doing already, now it is just documented a little better for the Judges to understand

7. I am glad that the Department modified DACS to include graduated sanctions.

- There are other tools that the Department could implement in DACS that would increase my job effectiveness rather than graduated sanctions.
- DACS is a great system that is many years ahead of other States. I'm not sure of the cost associated with adding the graduated sanctions in DACS; one would have to look at the cost/benefit ration. The sanctions could have just been added like a case note instead of more like a violation.
- It is more time consuming, but the efforts prior to VOP are well documented.
- As a tracking mechanism
- This will benefit Judges and court officers at court appearances.
- It doesn't allow for the notes made to be spell checked.

8. Entering information into DACS is easy.

- When DACS is working properly entering information in DACS is very easy.
- This is a generalized question, does it pertain to sanctions or is it meant to be general? DACS in general is a great system. Using it for sanctions is very time consuming.
- Easy, but time consuming.
- Very easy to use.
- I wish that I could signify easily which graduation sanction goes with which condition. The current way, it appears that I gave multiple sanctions to multiple condition violations, and I think that it should be an option to which sanction applies to which conditions, but allow for a sanction to include multiple conditions as an option as well.

9. Generating reports from DACS is easy.

- When DACS is working properly entering information in DACS is very easy.
- DACS is a great system in general for reports. There are a lot of reports that could be generated if more training was given. One must explore the system to find all of the somewhat hidden capabilities.
- wish JFC reports could be generated
- Especially if the Officers uses them on a weekly basis.
- Easy to use.

10. DACS increases efficiency in my job.

- DACS is a tool to assist in the supervision of offenders in the community and also in the institutions. There are other things that it could do which are in its capabilities that would increase my efficiency even more but it does increase my efficiency.
- DACS is a great tool that is always evolving.
- I would not know how to keep paper records. It is a great tool that enhances an officers ability to supervise and keep an accurate log.
- It is as good as the data entered.
- With things being electronic, it makes things more efficient. I wish that there was an upload feature so that we could upload PDF documents of sentence orders or current signed conditions. Possibly require the documents to be uploaded and a notification of needing new documents be populated when there is a new sentence. This could cut down on some of the actually paper files.

11. Have you experienced difficulty with the recent changes to the DACS?

- There was a problem, but that problem has been resolved so no.
- There is always a learning curve with each new application. The changes take time to get used to.
- Recent change, when you are in a current case note (example)- Office Visit, you can no longer view previous case notes. If the offender has a question regarding treatment appointments for example and I would like to document this during our current office visit, I can no longer view this information from a previous screen.
- The inability to scroll through older case notes while entering a new case note (office visit) is a problem. We frequently need to look back into case notes while typing a new note.
- Any change however mild is complicated to some extent. The hard part is to limit the interference, and for the most part this has been achieved.
- There are many issues that need resolved in DACS.
- Very little- it's just a matter of using the screens a few times.
- They have been corrected but it was inconvenient when you could not access old notes while writing in a new note.
- The supervision fee features are garbage.
- Not at this time. For a bit, there were some problems where you couldn't look back at a case notes when you were typing one in but that was fixed.
- --entering some graduated sanctions has been difficult - errors for various reasons.
- --generating reports sometimes doesn't work - possible adobe problem.

Section

12. Do you have any additional comments about the graduated sanctions or the DACS modifications?

- Graduated sanctions are a liberal approach to help the Court system and jail system to become less crowded. If the penalties for crime and violation of probation were more harsh it would add a higher deterrent level.
- I believe that this is a great tool to use. It will allow the officers to view exactly what they have done to bring the offender back in compliance before writing to the court. Having all your sanctions in location, it will save the officer's time. In the past, I have had to view case notes that sometimes date back to a year of supervision to see what has been done or what hasn't been done. This tool will certainly save officers time and make managing their caseloads easier.
- Give the operators written instructions. It seems my notes or having the Super User sit at my PC to fix the problem, does not solve future issues. It does not count at 0300 in the morning when you are by yourself at the office and are trying to make it work.
- The only challenge is that the options offered in the Graduated Sanctions are limited and effective sanctions require higher levels of approval which adds to the time spent.
- It is a good way to track if officers are supervising offenders properly. Instead of reducing violations, it may simply result in people being sanctioned for something that they otherwise would have just been warned about.
- A problem arises when you can't site the Offender for the allegations of noncompliance when you execute an Admin. Warrant. Then it just looks like your executing an Admin. for something minor when in truth you have all the other allegations stuck in the Graduated response; which the sentencing authority is unable to see.
- I have seen VOPs and presented cases in Court (as court officer) based solely on one dirty urine or some other minor technical violation. The "History of Supervision" was barely several small paragraphs that included demographic and job info but not much else (other than required criminal history and such). That is not how we were taught as cadets to write a VOP. I feel that is an issue with individual officers AND their supervisors for approving such a weak report. I think graduated sanctions would be most beneficial for those officers.
- much like any change, it is good for "SOME" officers - others don't embrace it. There is no follow up from management to enforce them.
- It is something that we were already doing. Now, it just diminishes the seriousness of a VOP. It softens consequences of unaccountability to ineffectiveness.

Section

13. Is there anything that you would like to see modified in the current DACS or graduated sanctions protocol?

- how slow it is at times
- I would like to see a section added to the field sheet that indicates whether or not an individual is a convicted felon.
- Other than more options in case notes and some other minor changes nothing too pressing.
- Make it more like a case note as opposed to a undertaking like writing a violation.
- Graduated Rewards added.
- Elimination of higher levels of approval for sanctions as it is time consuming and limits the effective sanction options that do not require approval. Officer's should be trained in the appropriate use of higher sanctions and implement as necessary without approval.
- There should be a less time consuming way for officers to impose sanctions that require a judges signature. As it stands now the officer must type a formal case note under graduated sanctions in addition to the standard case note and write a progress report to impose the condition(s). There is much redundancy. Once the graduated sanction case note is enter DACS should be able to produce a form that can be submitted to the court for approval or an agreement with the court on use of standard graduated sanction such a drug/alcohol evaluation without submitting a progress report.
- Too new to tell.
- The removal of the graduated sanctions.
- Suggestion: Should Graduated Sanctions be populated in Progress reports, Admin's and VOP reports so the sentencing authority can gauge the degree of the violation as a whole, to observe if the proper intervention (Graduated Response) was used to exhibit compliance or for a Clear History of Supervision for compliance vs. noncompliance. Question: Are we able to site the offender in the Exhibit-B of the Violation or Admin. for noncompliance with the Graduated Response which has led to the Violation as a whole?
- No, it is more involved to enter the graduated response than say a DACs note, but it is still very doable.
- There are problems with looking back on previous case notes while you are typing a new case note. This is problematic because when you are unable to look back on previous conversation with offenders you may not be reminded to follow up on certain topics or problems you previously observed or wrote about.
- The Supervision Room Waitlist function under Case Management needs to be implemented so that we are properly notified when offenders are in the building. It was created on DACS, but is not used by the Department.

The Judges/Court Staff/AG Office/PD Office do not seem to understand the graduated sanctions protocol. Therefore, making it difficult to recieve the appropriate sentencing for offenders at Violation Hearings.

APPENDIX F: COMPLETE PAROLE VIOLATION REPORTS

2011-Pre Reform

COMPARISON OF VOPS TO PROBATION POPULATION BY RACE

9 MONTH STATEWIDE TOTALS FOR LEVEL II - III VOPS/PROBATIONERS (06/01/2010 – 02/28/2011)

	# of VOPs	Percent	# of Pbs	Percent	Difference
Black	2,258	50.09 %	17,912	46.19 %	+ 3.90
White	2,249	49.89 %	20,692	53.36 %	- 3.47
Other	1	0.02 %	172	0.44 %	- 0.42
Total	4,508		38,776		

STATEWIDE BREAKDOWN BY LEVEL AND RACE

Black

Level	# of VOPs	Percent	# of Pbs	Percent	Difference
Level II	897	19.90 %	8,933	23.04 %	- 3.14
Level III	1,361	30.19 %	8,979	23.16 %	+ 7.03
Total	2,258	50.09 %	17,912	46.20 %	+ 3.89

White

Level	# of VOPs	Percent	# of Pbs	Percent	Difference
Level II	1,003	22.25 %	11,712	30.20 %	- 7.95
Level III	1,246	27.64 %	8,980	23.16 %	+ 4.48
Total	2,249	49.89 %	20,692	53.36 %	- 3.47

Other

Level	# of VOPs	Percent	# of Pbs	Percent	Difference
Level II	1	0.02 %	136	0.35 %	- 0.33
Level III	0	0.00 %	36	0.09 %	- 0.09
Total	1	0.02 %	172	0.44 %	- 0.42

April 2011 Totals

2013-Post Reform

INDIVIDUAL LEVEL II & III VOPs BY COUNTY AND RACE

STATEWIDE TOTAL LEVEL II - III VOPS/PROBATIONERS (07/01/2013 – 12/01/2013)

	# of VOPs	Percent	# of Pbs	Percent	Difference
Black	1,308	44.3	5,075	43.1	+ 1.2
White	1,641	55.6	6,637	56.4	- 0.8
Other	3	0.1	54	0.5	- 0.4
Total	2,952		11,766		

STATEWIDE BREAKDOWN BY LEVEL AND RACE

Black

Level	# of VOPs	Percent	# of Pbs	Percent	Difference
Level II	511	17.3	2,296	19.5	- 2.2
Level III	797	27.0	2,779	23.6	+ 3.4
Total	1,308	44.3	5,075	43.1	+ 1.2

White

Level	# of VOPs	Percent	# of Pbs	Percent	Difference
Level II	637	21.6	3,200	27.2	- 5.6
Level III	1,004	34.0	3,437	29.2	+ 4.8
Total	1,641	55.6	6,637	56.4	- 0.8

Other

Level	# of VOPs	Percent	# of Pbs	Percent	Difference
Level II	2	0.1	36	0.3	- 0.2
Level III	1	0.0	18	0.2	- 0.2
Total	3	0.1	54	0.5	- 0.4

APPENDIX G: INDIVIDUAL LEVEL II AND III VIOLATIONS OF PAROLE BY COUNTY AND RACE

INDIVIDUAL LEVEL II & III VOPs BY COUNTY AND RACE

STATEWIDE TOTAL LEVEL II - III VOPS/PROBATIONERS (07/01/2013 – 12/01/2013)

	# of VOPs	Percent	# of Pbs	Percent	Difference
Black	1,308	44.3	5,075	43.1	+ 1.2
White	1,641	55.6	6,637	56.4	- 0.8
Other	3	0.1	54	0.5	- 0.4
Total	2,952		11,766		

STATEWIDE BREAKDOWN BY LEVEL AND RACE

Black

Level	# of VOPs	Percent	# of Pbs	Percent	Difference
Level II	511	17.3	2,296	19.5	- 2.2
Level III	797	27.0	2,779	23.6	+ 3.4
Total	1,308	44.3	5,075	43.1	+ 1.2

White

Level	# of VOPs	Percent	# of Pbs	Percent	Difference
Level II	637	21.6	3,200	27.2	- 5.6
Level III	1,004	34.0	3,437	29.2	+ 4.8
Total	1,641	55.6	6,637	56.4	- 0.8

Other

Level	# of VOPs	Percent	# of Pbs	Percent	Difference
Level II	2	0.1	36	0.3	- 0.2
Level III	1	0.0	18	0.2	- 0.2
Total	3	0.1	54	0.5	- 0.4

**DELAWARE STATE
RACIAL JUSTICE IMPROVEMENT PROJECT:
IMPLICIT BIAS IN THE PROBATION
VIOLATION PROCESS
FINAL EVALUATION FINDINGS**



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JANUARY 18, 2014

Introduction and Background

In 2010, the State of Delaware began to plan and implement a series of reforms within its probation and parole system to reduce the disproportionate number of people of color being violated. To this end, the Delaware Department of Correction (DOC) began a course of reforms to address the racial disparity in probation violations.

Most notably, the DOC implemented a mechanism to manage and track probation violations within the *Delaware Automated Correction System* (DACS), the Department's offender information management system, and the type of sanctions that are imposed on probationers as a result of violations. Other reform efforts created to further this cause included:

- ❖ Implementation of implicit bias and bias-free decision making training for DOC officers and managers;
- ❖ Collaboration with the Court Services and Offender Services Agency (CSOSA) regarding modification to the case management system, modeled in part on CSOSA's system;
- ❖ Implementation of a graduated sanctions protocol; and
- ❖ Training on the graduated sanctions protocol.

Some of the key objectives of this project included:

- ❖ Leveraging existing DACS functions and processes to include better tracking of demographic indicators associated with violations, sanctions and outcomes;
- ❖ Providing probation officers with convenient tools and information to make objective and informed decisions;
- ❖ Providing a systematic guideline for imposing sanctions to offenders when completing a violation report; and
- ❖ Creating the ability to generate statistical reporting on key indicators including gender, race, violation(s), level of violation, sanctions imposed and severity.

To accomplish this, the Department modified the DACS. These changes permitted users to utilize existing additional functions within DACS to track and report information about probationers.

The following adjustments were developed in DACS to support the above objectives:

- ❖ Modification of the existing violation report to include graduated sanctions. The graduated sanctions system will recommend to the probation officer a list of possible sanctions based on pre-defined criteria, including current level of supervision, severity of the violation and number of previous violations;

- ❖ Modification of the existing reporting systems to include demographic information, such as race, gender and lead charge;
- ❖ Modification of the existing violation report to include the recommended level of supervision on the printed reports; and
- ❖ Modification of the List of Probation Violation Report, List of Progress Reports and List of Administrative Warrants excel downloads to include the case closing method.

The implementation of these functions provided the Department of Corrections with a tool to better manage its offender population and enable the implementation of operational efficiencies. Furthermore, these changes gave probation officers a guideline that drives the sanctions based on predefined, objective criteria, thereby reducing the danger of implicit bias influencing probation violation decisions.

In this evaluation, we sought to understand two primary areas: probation officer perceptions of the reforms and the number of probation violations filed by race. In assess both, we utilized data collected before and after the reforms, thus providing pre- and post-reform data.

Methods

Probation Officer Perceptions

Prior to the implementation of the new DACS graduated sanctions system, ten state probation officers were interviewed using an open-ended questionnaire. The officers represented all three Delaware districts (Sussex, Kent, and New Castle Counties). Probation officers were selected to participate by their supervisor and oversaw levels, 2, 3, and 4 caseloads. The average tenure of the interviewees was 10 years, 11 months with a range of 1 year 10 months to 18 years of services. The following table provides an overview of the sample:

Table 1. Number of interview participants in each county by supervision level.

	Level 2	Level 3	Level 4	TOTAL
Kent County	1	1	1	3
New Castle County	1	1	2	4
Sussex County	1	1	1	3
TOTAL	3	3	4	10

Each interview was conducted by phone and lasted roughly 30-45 minutes. Responses were recorded at the time of the interview and later consolidated into one transcript. Interviewee remarks were coded and analyzed to determine patterns and trends in the data.

Please see Appendix A for a copy of the interview protocol.

After the implementation of the graduated sanctions protocol, the new DACS recording system and the implicit bias training, a random sample of probation officers were asked to participate in an online survey about their perceptions of the new graduated sanctions and DACS systems. The questionnaire consisted of 10 Likert-scale questions and one yes/no question about the officers' experience and perception of the new system.

Please see Appendix B for a copy of the survey.

Thirty-two probation officers participated in the survey. Table 2 provides an overview of the number of responding officers by level of case supervision.

Table 2. Number of survey respondents by supervision level.

Supervision Level	# of Officers
Level 2	7
Level 3	12
Multiple levels	5
Supervisor	3
Administration	1
Unknown	4

Participating officers had a mean tenure of 10 years 3 months of service, with a range of 6 months to 26 years.

Violations of Probation

To determine whether the reforms had an actual impact on the racial disparity in number of probation violations, the Delaware Department of Corrections collected archival data from the DACS. These data represented the number of Blacks and Whites (and a small "Other" category) served violations of probation (VOP) in relation to their percent of the general probationer population.

Results

Probation Officer Perceptions

Pre-Reform

All interviewed probation officers indicated that they used graduated sanctions regularly and believed that the system helped in their supervision. In particular, the officers like the flexibility of the system offers in tailoring their supervision efforts to individual probationers. Without this flexibility, most officers felt that their options in working with their probationers would be greatly reduced.

Officers also noted that their sanctions were always recorded in their DACS notes and then outlined in their violation reports, when appropriate. Most interviewees spoke of the need to provide a historical overview of the case for the judge as the primary reason for including the information in their reports. Others spoke of a desire to justify their violation request to the judge by describing the efforts already made on behalf of the probationer.

The officers interviewed mostly stated that they anticipated the new automated DACS recording system will be a positive improvement in the graduated sanctions process. As the primary benefits, interviewees cited the ability to easily review cases and access updates in real time for probationers as the primary benefits.

Several probation officers expressed concern about the ease of use of the new automated system. While most officers expressed an appreciation for what the Department of Parole and Probation was attempting to accomplish by automating the sanctions system, many stated that there would be a learning curve in its implementation and hoped that the Department had training designed to ease officers into the new system.

Other officers were concerned that the new requirements would actually be more work for the officers, and that management would not take that into consideration when designing and executing the system. There was some apprehension that the needs of the officers will take a back seat to the needs of management.

Another concern mentioned by two officers was that officers would be held to a specific range of sanction options for particular violations, instead of being permitted the flexibility they have now. One officer stated that limiting options to drop-down boxes would eliminate the officers' ability to tailor sanctions to each probationer. Another officer indicated that being limited to a specific set of options would decrease her/his rapport with probationers, as well as introduce a "cookie-cutter" approach to supervision.

In the interviews, there was a tendency for officers who have more experience to be more skeptical about the new system, and for less-experienced officers to be more accepting of the proposed changes.

Post-Reform

Probation officers completed an online survey after the reforms to assess their perceptions and experiences with the graduated sanctions systems and the DACS modifications. Surprisingly, officer impressions of the modifications did not vary much from the pre-reform interviews conducted, and results to the survey were similar to the interview findings. Officers tended to agree that the DACS system was helpful and beneficial to their jobs, but were less likely to agree that the graduated sanctions modifications made their jobs easier or that the new protocol was helpful to them in their jobs.

Responses to each of the survey questions, along with the mean for each response, can be found in Table 3. The original five-point rating scale¹ was collapsed into three points: Strongly Disagree/Disagree; Neither Agree nor Disagree; and Strongly Agree/Agree.

Table 3. Survey responses to the post-reform questionnaire.

	N	Strongly Disagree/ Disagree (n/%)	Neither Agree nor Disagree (n/%)	Strongly Agree/ Agree (n/%)	Mean
The graduated sanctions protocol is an improvement in probation/parole supervision.	31	7/22.6	11/35.5	13/42.0	3.19
The graduated sanctions protocol provides greater flexibility in my supervision work.	31	9/29.1	10/32.3	12/38.7	3.16
The graduated sanctions protocol makes my job easier.	31	12/38.7	11/35.5	8/25.9	2.77
The graduated sanctions portion of DACS makes my job easier.	31	13/42.0	7/22.6	11/35.5	3.00
The graduated sanctions system is helpful to me in my job.	31	4/12.9	12/38.7	15/48.4	3.42
I am glad that the Department switched to the graduated sanctions protocol.	31	9/29.0	15/48.4	7/22.6	2.84

¹ Where 1 = Strongly Disagree; 2 = Disagree; 3 = Neither Agree nor Disagree; 4 = Agree; and 5 = Strongly agree

	N	Strongly Disagree/ Disagree (n/%)	Neither Agree nor Disagree (n/%)	Strongly Agree/ Agree (n/%)	Mean
I am glad that the Department modified DACS to include graduated sanctions	31	6/19.4	12/38.7	13/41.9	3.26
Entering information into DACS is easy.	31	1/3.2	7/22.6	23/74.2	3.90
Generating reports from DACS is easy.	30	0	5/16.7	25/83.3	3.97
DACS increases efficiency in my job.	31	1/3.2	3/9.7	27/87.1	4.23

It should be noted that, for many questionnaire items, the majority of responses fall into the “Neither Agree nor Disagree” category. Generally respondents use this category if they fall into one of the following groups:

- They have had mixed results in using the new system;
- They are neutral on the system; or
- They have not used the system and, therefore, cannot rate it.

It is likely that respondents in this evaluation fell into the first two categories, as only officers who were familiar with the system were asked to participate in the survey. Further investigation is warranted to better understand this phenomenon.

In addition to questions about the DACS and graduated sanctions systems, survey respondents were asked basic demographic information. There was no relationship between length of time on the job and perceptions of the graduated sanctions and DACS changes, meaning that officers responded similarly to the survey items regardless of how long they had worked for the Department of Corrections. There was also no relationship between the officers’ responses and their level of supervision.

As can be seen in Table 3, the items which received the strongest agreement are those that pertain to the DACS as a whole, including:

- “DACS increases efficiency in my job,” with a mean of 4.23;
- “Generating reports from DACS is easy,” mean 3.97; and
- “Entering information into DACS is easy,” mean 3.90.

These results mirror the statements made during the pre-reform interviews in that officers spoke highly of the DACS at both times.

Some of the narrative comments that support these high ratings include:

- *DACS is a great system in general for reports. There are a lot of reports that could be generated if more training was given. One must explore the system to find all of the somewhat hidden capabilities;*
- *I would not know how to keep paper records. It is a great tool that enhances an officers [sic] ability to supervise and keep an accurate log; and*
- *Easy, but time consuming.*

Both before and after the reforms, officers were less enamored with the graduated sanctions protocol and its DACS reporting. As can be seen, those items which received the lowest scores tended to be about the graduated sanctions protocol:

- "The graduated sanctions protocol makes my job easier," with a mean of 2.77;
- "I am glad that the Department switched to the graduated sanctions protocol," mean 2.84; and
- "The graduated sanctions portion of DACS makes my job easier," mean 3.00.

Comments that supported the above ratings were:

- *This makes another step in a system that is receiving more and more individuals on probation daily with less and less officers;*
- *Each sanction we use takes more time per office visit and backs each Officer up on an already overloaded case loads [sic]; and*
- *I don't believe it was necessary to be so extremely documented, as the officers do it already.*

However, some respondents answered favorably to the items about the graduated sanctions protocol. Several of their comments follow:

- *It was something PO's were doing already, now it is just documented a little better for the Judges to understand;*
- *If done properly, audits are easier as well as VOP reports. The officer should be able to present a strong report to the court if a VOP is necessary; and*
- *With having the sanctions documented on one page to view, this makes it easier to summarize what has been done to bring the offender back in compliance with his/her conditions of supervision and what course of action to take next.*

Probation officers also had specific recommendations to improve the graduated sanctions protocol. Suggestions included:

- *Have the sanction comments visible in the window of casenotes instead of having to click on them;*

- *Elimination of higher levels of approval for sanctions as it is time consuming and limits the effective sanction options that do not require approval. Officer's [sic] should be trained in the appropriate use of higher sanctions and implement as necessary without approval;*
- *The closing of cases is too easy. Makes for accidental closures. Need at least another "Are you sure you want to make these changes" options before you can save changes on the overall screen;*
- *Have the sanction comments visible in the window of casenotes instead of having to click on them.*

In sum, while the DACS is viewed as a useful tool for probation officers, those parts that support the graduated sanctions are seen as difficult to use, time consuming, and, perhaps, unnecessary.

Survey narrative comments can be found in Appendix C and the full data set can be found in Appendix D.

Violations of Probation

To evaluate whether the RJIP reforms were effective in reducing racial disparities in probation violations, we looked at the rates of probation violations before and after the reforms. Following is a review of those findings.

Pre-Reform

Data outlined in Table 4 show that, while Black probationers accounted for 46.19% of the total number of probationers during the pre-reform time period, they made up 50.09% of all filed violations. This produced a difference of +3.90 points.² On the other hand, Whites made up 53.36% of total probationer population and only 49.89% of violations during this time period, leading to a percentage point difference of -3.47. The variance in point differences between the Black and White probation violations indicated that Whites were less likely to be violated than were Blacks.

Table 4. Nine month statewide totals for Level II-III VOPS and Probationers by race (6/1/2010 – 2/28/2011)

	# of VOPs	% of Total VOPs	# Total Probationers	% of Total Probationers	Difference
Black	2,258	50.09%	17,912	46.19%	+3.90
White	2,249	49.89%	20,692	53.36%	-3.47
Other	1	.02%	172	.44%	-.42
Total	4,508	100.00%	38,776		

² If there were no racial disparity in probation violations, the point spread would be 0 for both Blacks and Whites, indicating that the percent of VOPS perfectly mirrored the proportion of each racial group in the general population.

Post-Reform

The second batch of data, as shown in Table 5, were collected after all reforms were enacted, between July 1, 2013 and December 1, 2013. As can be seen, the disproportionate number of Black probation violations was reduced at this data collection period. Blacks had a point difference of +1.18, and Whites had a difference of -.83. Probation violations were more equally split between the two races than in the first data collection period, indicating that there was less disparity in VOPs between Blacks and Whites.

Table 5. Five month statewide totals for Level II-III VOPS and Probationers by race (7/1/2013 – 12/1/2013)

	# of VOPs	% of Total VOPs	# Total Probationers	% of Total Probationers	Difference
Black	1,308	44.31	5,075	43.13%	+1.18
White	1,641	55.58%	6,637	56.41%	-.83
Other	3	.10%	54	.46%	-.36
Total	2,952	100.00%	11,766		

It should be noted that these data do not take into consideration historical information which influences violation decisions, such as prior violations, crime of record, probationer history, etc. Nor do the data tease out which reform contributed to the positive outcomes. Still, the reduction in disparity is encouraging given the short time frame and the relative newness of the system.

Please see Appendix E for the complete violation of probation reports.

Summary and Recommendations

This evaluation suggests that the reforms had a positive impact on the disproportionate racial representation in probation violations. Officers violated fewer Blacks, proportionately, during the post-reform period than during the pre-reform period. This is good news indeed.

In general, probation officers were satisfied with their ability to impose graduated sanctions on probationers. Most felt that the level of flexibility afforded them was adequate in their supervision practices. In general, they also believed that the DACS is a useful and easy tool.

However, in the post-reform phase, officers continued to experience difficulty in utilizing the graduated sanctions protocol within the DACS. They felt it was time-consuming and cumbersome and was merely a tool for management.

Based on the data, we have several recommendations:

For Practice:

- ❖ Create an instruction manual for the DACS and the new graduated sanctions protocol;
 - Training was an important component of both the interviews and the online survey phases of the evaluation;
- ❖ Consider reducing the level of approval needed for lower level sanctions;
- ❖ Draw on the enthusiasm of the newer staff to push the graduated sanctions protocol;
- ❖ Provide training to court personnel and other stakeholders in the graduated sanctions protocol; and
- ❖ Offer implicit bias and bias-free decision making to all segments of the justice system.

For Future Evaluation:

- ❖ Develop and implement an evaluation design that will take into consideration previous probationer history, to control for past offenses, other violation efforts, and other relevant probationer characteristics and
- ❖ Continue to review archival data over longer periods of time to validate the findings of this evaluation;

The findings of this evaluation indicate that the reforms implemented by Delaware had at least preliminarily positive outcomes. Further evaluation is needed to determine whether these reforms can reduce the disproportionate minority representation in probation violations.

Appendix I: DTF Press Release

FOR IMMEDIATE RELEASE
October 25, 2011

Delaware Recognized for Racial Justice Improvement Project Efforts

The Delaware Courts, criminal justice agencies, and others were recognized for their leadership in efforts to implement racial and justice fairness initiatives during a conference sponsored by the Bureau of Justice Assistance (BJA) and the American Bar Association on October 21 – 22, 2011 in Washington, D.C. In September 2010, Delaware was selected as one of four states to receive a \$24,000 two-year Racial Justice Improvement Project (RJIP) grant sponsored by the Bureau of Justice Assistance (BJA) and the American Bar Association, as a part of the ABA's program to support state criminal justice systems in efforts to enact key practices to promote fair, efficient and accountable systems. Representatives of the jurisdictions receiving the ABA grants attended the Conference held to review progress midway in the grant period.

Cynthia Jones, RJIP Project Director, said: "We congratulate the Delaware RJIP initiative for the outstanding progress it is making in efforts to enhance racial and justice fairness. As a Delaware native, I am especially proud of the progress that has been made in the Delaware criminal justice system."

The Delaware RJIP initiative is led by Supreme Court Justice Henry duPont Ridgely, with task force members including the Honorable Alex Smalls, Chief Judge of the Court of Common Pleas, Peggy Bell, Executive Director of Delaware Criminal Justice Information System (DELJIS), the Honorable Brendan O'Neill, Public Defender, Colonel Robert Coupe, Delaware State Police Superintendent, Curt Shockley, the Director of Probation and Parole, the Hon. Joseph R. Biden, III, Attorney General and Richard Andrews, State Prosecutor, Drewry N. Fennell, Esq., Executive Director of the Criminal Justice Council, community representative Janet Leban, Executive Director of Delaware Center for Justice, the Honorable Patricia W. Griffin, Director of the Administrative Office of the Courts and Task Force Facilitator, Amy A. Quinlan, Esq., Deputy Director of the Administrative Office of the Courts.

Delaware's RJIP task force's approach is two-pronged. First, steps are being taken to ensure that racial disparity does not play a role in cases in which a criminal defendant is charged with a violation of probation (VOP). Efforts completed include adopting bias-free decision making policy and training requirements for probation officers. Additional training and changes to DOC's automated data collection system to allow for automated tracking of graduated VOP sanctions are planned for the second year of the grant. Curt Shockley, Director of Probation and Parole, stated: "The RJIP initiative is providing an opportunity for the Division of Probation and Parole to review its internal processes to ensure that racial disparity does not play a role, no matter how small, in its officers' decisions. We are grateful to have the support of the courts, the ABA and the criminal justice community in these efforts."

Second, the task force is working with the Criminal Justice Council on implementation of CJC's Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System. The Declaration, adopted in April 2010, outlines steps to be taken by courts and criminal justice agencies, in a variety of areas, to ensure civil rights and racial and ethnic fairness. The Declaration can be viewed at <http://cjc.delaware.gov>.

Other actions taken as a direct result of task force initiatives include efforts by the Delaware State Police, which already has a strong initiative promoting bias-free decision making, to automate additional aspects of the traffic complaint/warning process. Colonel Robert Coupe, Delaware State Police Superintendent, expressed his appreciation of the RJIP process, and stated "I believe that the law enforcement community generally, and the State Police specifically, is benefiting from the work of the RJIP task force's concentration on racial and justice fairness initiatives. When the automation of traffic warnings is completed, we will have the structure in place, as we do with automated traffic tickets, to readily review decisions to ensure they are bias-free."

"The American Bar Association supports Delaware's efforts to ensure that racial disparity does not play a role in the state's criminal justice system. By implementing reforms that address fundamental fairness in the courts, in law enforcement and criminal justice agencies, the state ensures fair, efficient and accountable systems. Probation and parole reform, for example, can minimize the reliance on technical violations and remove signs of disparate racial impact, while protecting public safety. These reforms will help ensure a fair criminal justice system and save money that can be used to help shore up the judicial system in other areas. American Bar Association President Wm. T. (Bill) Robinson III

FOR ADDITIONAL INFORMATION,

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APPENDIX J: JANUARY 29, 2014 DTF PRESENTATION

Racial Justice Improvement Project Task Force



Amy A. Quinlan, Esq.
Deputy State Court Administrator
Delaware Administrative Office of the Courts

History of the Delaware RJIP

- 80 Supreme Court Task Force on Racial and Ethnic Fairness
 - created 4/5/95
 - Administrative Directive 101
- 80 Representatives from:
 - the judiciary
 - private attorneys
 - members of the public and the clergy
 - state legislators
 - The Delaware Attorney General
 - The United States Attorney for Delaware
 - The Delaware Office of the Public Defender
- 80 Evaluate racial and ethnic fairness issues in connection with court proceedings and personnel practices
 - personnel and employment practices;
 - access to the courts;
 - civil, criminal and juvenile justice
- 80 Final report issued
10/1/96

History (Cont'd)

- 80 Delaware Criminal Justice Council and Delaware Supreme Court co-sponsored a Racial and Ethnic Fairness Summit
 - September 2007
 - included more than 70 key stakeholders
 - facilitated by staff from the Washington D.C. based The Sentencing Project
 - resulted in the release of a final report and recommendations
- 80 Racial and Ethnic Fairness committee
 - Co-chaired by Justice Henry duPont Ridgely of the Delaware Supreme Court and Chief Judge Alex J. Smalls of the Court of Common Pleas
 - focused on developing recommendation designed to enhance fairness in the areas of data collection, training, resources and policy development.
 - Follow-up planning sessions resulted in the creation of Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System in Delaware (the 'Declaration')

Initiatives

- Administrative Directive 107
 - adopted 4/4/96
 - created Court's Interpreter Program for LEP litigants
- Delaware State Police developed and implemented policy:
 - reaffirmed commitment to police in a non-biased manner
 - provided training to all troopers
- State wide Racial and Ethnic Fairness Summit in 2007
 - sponsored by the Delaware Supreme Court and the Criminal Justice Council

RJIP Task Force Composition

The Task Force includes:

- Hon. Henry du Pont Ridgely, Delaware Supreme Court;
- Hon. Alex J. Smalls, Chief Judge, Court of Common Pleas;
- Hon. Joseph R. Biden, III, Attorney General;
- Hon. Brendan O'Neill, Public Defender;
- Colonel Robert Coupe, Superintendent, Delaware State Police;
- Curt Shockley, Director, Probation and Parole;
- Drewry N. Fennell, Esq., Executive Director, Criminal Justice Council;
- Peggy Bell, Executive Director, Delaware Criminal Justice Information System (DELJIS);
- Janet Leban, Executive Director, Delaware Center for Justice;
- Hon. Patricia W. Griffin, State Court Administrator, Administrative Office of the Courts;
- Amy A. Quinlan, Esq., Deputy Director, Administrative Office of the Courts.

RJIP Task Force – State of Delaware



Chief Judge Alex Smalls with representatives from the Task Force and ABA

Violations of Probation Data Analysis

- Division of Probation and Parole ("P&P") provided initial data
 - 9 month period (6/1/10 – 1/18/11)
 - Approximately 4,500 VOPs
 - Compared violations of probation (VOPs) to probation population by race
- 4% variation by race
- Additional review of the data performed by Delaware Criminal Justice Council ("CJC") through the Statistics Analysis Center ("SAC")

Relative Rate Indices for Black and White Probation Violations

VOP Rates in the table below are calculated from the previous tables as the number of VOPs per 1,000 probationers (from Avg. # of Pbs). The Relative Rate Index is calculated as: $RRI = \text{Black VOP Rate} / \text{White VOP Rate}$.

Level	VOP Rate (VOPs/1,000 Probationers)		RRI
	Black	White	
II	301.2	259.9	1.17
III	454.7	416.3	1.09
II and III	378.2	326.1	1.16

Objectives of the RJIP Task Force

1. Ensure race does not play a role in violations of probation ("VOP")
2. Implement *Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System*

Declaration

- Mandates the following:
 - all stakeholders from the criminal justice system continually strive for an effective system that is fair, efficient and accountable
 - Delaware criminal justice agencies and the courts adopt policies on the following:
 - ✓ Bias-free decision-making
 - ✓ Use of deadly force
 - ✓ Internal and external complaint process
 - ✓ Other areas that will promote racial and ethnic fairness
- Adopted by Delaware Criminal Justice Council on 4/19/10

RJIP Task Force – Short Term Deliverables

Training – July 2011

- ∞ Day-long
- ∞ implicit bias and bias-free decision making
- ∞ all supervisory probation officers
- ∞ approximately 42 upper-level management officers
- ∞ all three counties
- ∞ Wayne McKenzie (VERA Institute of Justice) and Edwin Burnette (National Legal Aid and Defender Association) served as facilitators.



Short Term Deliverables (Cont'd)

- ∞ Implementation of Delaware Criminal Justice Council's Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System - 2010
- ∞ Development of automated traffic "warnings" within the Delaware State Police so that information about warnings would be stored electronically – Spring 2011
- ∞ The Department of Probation & Parole Professional Conduct Policy amended to expressly prohibit discriminatory decisions – July 2011
- ∞ Implicit bias training now mandatory training for all new probation officers – Fall 2011
- ∞ Train-the-trainer session on implicit bias for Probation and Parole and judicial staff – Spring 2012

Short Term Deliverables (Cont'd)

- Implicit bias training provided by Professor Jerry Kang, University of California, Los Angeles School of Law to all Delaware Judicial Officers in October 2012
- P&P collaborating with CSOSA regarding modifications to the case management system modeled, in part, after CSOSA's SMART System - 2011 to 2012
- The Graduated Responses Policy implemented - August 2013.

Year 2 Reform Implementation

- ∞ P&P's data collection system ("DACS")
 - Manual process to obtain racial make-up of probationers at different levels
 - Lacking method for tracking decision making relating to graduated sanctions
 - identified need to track and report on
 - ✓ number of past violations
 - ✓ type of graduated sanctions imposed by Officer prior to submission of VOP report
 - ✓ recommended SENTAC Level from the submission of the VOP report

Change in Plans

- Delaware Justice Reinvestment Initiative ("JRI") proposed systems changes to address
- Efforts to secure additional funding for Comprehensive Implicit Bias and Motivational Interview training for P&P Officers proposed
- Training to be completed in one day to:
 - accommodate all 350 officers
 - Diminish disruption in critical services to litigants and courts
- Request for funding to support initiative was denied

Year 2 Reform Implementation – Back to the Drawing Board

- ∞ Revisited originally proposed reform
 - Could a portion of data collection modifications be accomplished outside the scope of the JRI initiative?
- ∞ Retained vendor to design and develop enhancements to the case management system
 - Delaware Automated Correction System (DACS)
 - aid in tracking violations of probation
- ∞ Modifications completed in February 2013 and rolled out to staff Spring 2013
- ∞ Evaluation tool created
 - Project Technical Advisor, Inga James, I Jay Consulting
 - Recommendations adopted by P&P
 - 3 phases
 - 1. Qualitative interviews with probation officers re protocol (currently underway)
 - 2. Quantitative analysis 6 months after implementation of new tracking

APPENDIX K: DTF REPORT JANUARY 7TH 2013

Delaware RJIP Task Force January 7, 2013 Report

Jurisdiction:	<u>Delaware</u>
Date of Last Task Force Meeting:	<u>May 21, 2012</u>
Date of Upcoming Task Force Meeting:	<u>To be announced</u>
Projected Project Completion Date:	<u>October 2013</u>

1. Please list the name and title of each RJIP task force member in your jurisdiction and also include their email address. We will update our website with the names you list below. (Please highlight the task force members who do not wish to have their email address posted on our website). If you would like to remove a task force member that is currently listed or make a change, please also state that below. *You can find the list of your jurisdiction's task force members by visiting the project's website and finding "Task Force Information" in the top menu, then by clicking on your jurisdiction in the drop-down menu.*

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*Retired Task Force members have been denoted by an asterisk and should be deleted from the list.

2. Please explain the goal of your reform initiative and define measurable success of your reform. How are you implementing the reform and producing outcome measures?

The RJIP Task Force identified violations of probation as the potential area for racial disparity that it wished to review, since a percentage of the population of the Delaware Department of Corrections (DDOC) is incarcerated for violations of probation. Delaware's system of sanctions includes probation levels I – III, progressing from unsupervised probation at level I to intensive probation supervision at level III. To assess disparity issues, data was collected by the Division of Probation and Parole for a 9 month period (6/1/10 – 2/28/11), which compared violations of probations (VOP's) to Level II and III probation population by race. An initial analysis of the data revealed a 4% variation by race in the data on VOP's. The Task Force is working to develop an evidence-based approach (through policy changes, training and data collection practices) to guide probation officers' discretion in imposing graduated sanctions for probation violations, including the opportunity for variation depending upon identifiable risk, with supervisor approval, in order to address racial disparity and reduce the number of violation reports to the Court or Board of Parole. New 4% disparity in violations, but didn't know what led to that disparity so wanted to look to see how graduated sanctions were imposed, created guidelines because guidelines were not there before. Formulate the process, the guidelines were implemented because before there were no guidelines. So create policy and guidelines for officers to follow when they go to impose sanctions and then track this. Guidelines for graduated sanction.

Additionally, the Task Force implemented the Delaware Criminal Justice Council's Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System. The Declaration mandates that Delaware criminal justice agencies and the courts adopt policies on bias-free decision-making, use of deadly force, internal and external complaint process, and other areas that will promote racial and ethnic fairness, in order to receive preference to receive grant funding allocated through the Criminal Justice Council.

3. Please explain your current status in completing your reform initiative.

The DDOC (Department of Corrections) has retained CNT Infotech as their technology vendor to design and develop enhancements to the case management system (the Delaware Automated Correction System (DACS)) to aid in the tracking of violations of probation. The project will allow DDOC to develop a system that will provide a tool to manage and track probation violations and the type of sanctions that are implemented on Probationers as a result of violation. CNT was chosen as the vendor to provide these services based on their in-depth understanding of the functionality of the system as well as the operational aspects of the Department and previously assisted DDOC with the implementation of DACS modules. CNT has submitted their proposal which was approved and the proposed work is underway with an estimated completion date of February 15, 2013.

4. What are your key milestone dates/deadlines leading up to the conclusion of your sites reform and evaluation? Please include upcoming specific task force meeting dates, specific or approximate dates for dissemination / promotion of project activities (including press, luncheons, launches), and other important administrative / logistical dates of your project. Please also state whether you would like assistance in the promotion of your reform.

CNT's proposal has been approved by the Task Force and all necessary Probation and Parole personnel and appropriate funding is available. Once the system changes have been completed, training of all personnel regarding proper use of the modified system will be conducted. Relevant information regarding the changes and training will be disseminated through newsletters and other medium. Training has already taken place on the recent changes to the Department's policy on the imposition of graduated sanctions. Finally, a press release will issue in Spring 2013 regarding the completed reforms as a result of the cooperative work between Probation and Parole and other members of the Delaware RJIP Task Force.

5. Please provide a brief paragraph summarizing your site's reform. In this 1 paragraph only statement, limit your information to what you feel comfortable posting on our project website:

The DDOC will implement a mechanism through modifications to their case management system to manage and track probation violations and the type of sanctions that are implemented on Probationers as a result of violation. In order to accomplish this, the Department will integrate these functions within the case management system, Delaware Automated Correction System (DACS). This will allow the users to use existing functions within DACS to track and report information about probationers. The implementation of these functions will provide the Department with a tool to better manage its offender population and will allow the Probation Officers to have a guideline that drives the sanctions based on predefined objective criteria. The hope is that this evidence-based approach to guide probation officers' discretion in imposing graduated sanctions for probation violations will assist the DDOC to address any racial disparity and reduce the number of violation reports to the Court or Board of Parole.

6. Have you gotten other criminal justice stakeholders to buy in to your reform and assist with the implementation process, or have you collaborated with existing projects and initiatives in your jurisdiction since choosing your reform effort? If so, please list who and how they have contributed. Please also include any consulting services you have sought or received from entities or individuals. Please also include whether you have requested or added any entity representatives to serve on your task force.

The Task Force has sought the assistance of the project's Technical Advisor, Inga James, I Jay Consulting, to assist with creating an evaluation tool for the reform. Ms. James submitted her proposal which is attached. Her recommendations have been reviewed and adopted by Probation and Parole.

Additionally, a cross section of providers from all aspects of the criminal justice system are represented on the Delaware Task Force and have had input on the reforms and goals of the project. Participation from a multitude of stakeholders across the criminal justice system has yielded numerous interim deliverables as the Task Force continued its work towards its ultimate reform. Those deliverables include the following:

- P&P's policies have been updated to include language that states that "employees will not discriminate against any party based on race, religion, color, sex, disability, ethnicity, financial status, or sexual orientation. Employees will make bias-free decisions related to the supervision of all offenders and while conducting all business of the division."
- Delaware State Police developed and implemented a policy that:
 - reaffirmed the commitment of DSP personnel to police in a non-biased manner, and
 - provided training on the new policy and topic to all troopers.
- Implicit Bias training for P&P management was conducted on July 18, 2011.
- A new training program for P&P Officers began in the Fall of 2011 to ensure that all new officers receive implicit bias training.
- A train-the-trainer program for all other P&P officers and judiciary staff was held in April 2012.
- Efforts are underway to secure additional funding for the implementation of Motivational Interview training for all P&P Officers.
- Implicit Bias training for all judicial officers was conducted at the Annual Judicial Retreat on October 18, 2012.

The proposed reforms have the full support of all task force members and their respective agencies. P&P and the CJC continue to collaborate on additional data collection. Additionally, the task force, in partnership with Drew Fennell from the CJC, has reached out to statewide agencies and groups involved in the criminal justice system to coordinate training on the Declaration and bias-free decision making.

7. Have you remained consistent with your policy reform and implementation plan from October 2011? Please explain if you have deviated from your original plan.

The Task Force has had to revisit the initial planned reform for year two of the RJIP grant as the initial concept (the tracking of the combined effect of implicit bias and motivational interview training for probation officers on racial disparities in probation revocation and discretionary decision-making) was rejected by the ABA.

8. Have you identified mechanisms to track and measure the effectiveness of your reform? Have you met with the Project Evaluator? How are you tracking the success of your reform overall and specific projects or programs that you have since carried out? Do you have a formalized evaluation plan? If so, please attach your evaluation plan to this report and briefly describe the process below. If you are still working on your evaluation plan, when do you hope to have it completed?

The Task Force has sought the assistance of the project's Technical Advisor, Inga James, I Jay Consulting, to assist with the creation of an evaluation tool for the reform. Ms.

James submitted her proposal which is attached. Her recommendations have been reviewed and adopted by Probation and Parole.

9. **Have you been met with any new challenges in accomplishing your goals? If so, have they been overcome? What were the lessons learned?**

The current reform is on track and computer modifications are targeted for completion by February 15, 2013.

10. **At this point in the project, do you have any recommendations for eliminating or modifying any steps in the projects replication?**

Due to the high level of commitment from all Task Force participants and with guidance from the ABA and I Jay Consulting, the Task Force has had great success and moving forward with its reform. Although the project encountered some roadblocks along the way, all issues have been resolved and the resulting reform is on target.

11. **To date, what amount of grant funds (if any) do you have remaining? Do you have plans to spend the remaining grant funds? Please explain. Please also attach a simplified version of your project budget upon submission of this report.**

The balance remaining on the grant is currently \$20,042.80. These funds have been earmarked to cover the costs of the computer modifications to the DACS system. A copy of the most recent financial report is attached.

12. **Please identify supplemental funding and technical assistance needs below.**

The Task Force will continue to work with Inga James to complete the evaluation of the reform. No other technical assistance or funding is anticipated at this time.

Criminal Justice Section

APPENDIX L: DECEMBER 9TH PROJECT DIRECTOR REPORT

The ABA Racial Justice Improvement Project
<http://new.abanet.org/sections/criminaljustice/Pages/RacialJustice.aspx>

Delaware Task Force
Project Director Field Visit
December 9, 2010



Delaware Racial Justice Task Force

Col. Robert Coupe, Superintendant, DE State Police

Drewry Fennell, Executive Director, Criminal Justice Council

Henry duPont Rldgely, Associate Justice, DE Supreme Court

Brendan O'Neill, DE Public Defender

Patricia Griffin, State Court Administrator

Janet Leban, Executive Director, DE Center for Justice

Richard Andrews, Deputy Attorney General

Project Director Report

1. Update on the RJIP (since October 22nd conference)

- November 18th—task force facilitators teleconference (including BJA, Salma, Jack, Inga);
- Inga James: initial assessment telephone interviews with facilitators
- December 1st --RJIP Advisory Committee teleconference
-

2. Other Task Forces

All have held initial meetings and submitted written meeting minutes; field visits are scheduled for each jurisdiction

- Delaware—December 9th
- Brooklyn--December 14th site visit
- New Orleans-- December 15th
- Minnesota—January 21st

2. Technical Assistance/Training/Speakers

- ABA Criminal Justice Section
- RJIP Board Members
- Supplemental BJA Technical Assistance Grants

3. Upcoming Events:

- RJIP Newsletter
- North Carolina has started its own RJIP
- ABA Criminal Justice Section (Presentations on RJIP)
- Possible Fall 2011 Reunion Training Conference in D.C.

4. Delaware RJIP (moving forward)

- Diversity?
- Presentations by group within DE CJ system (i.e. Bench/bar conference, panels); DE minority community; Press Releases

5. Delaware Report: What has been done? What are the next steps?

- Handout on Timeline
- February Report to ABA: concrete steps (beyond initial discussion and preliminary ideas)
- The "Working Hypothesis"

The Racial Justice Improvement Project

Task Force Timeline

Step 1: Identify a
Systemic Problem
and The Cause
February 2011
(Report due to ABA)

Step 2: Collect and
Analyze Data to
Determine the
Severity of the
Problem
(Before May 2011)

Step 3: Develop a
Policy Reform and
Implementation Plan
Fall 2011
(Report due to ABA)

Step 5: Implement the
Reform and Produce
Outcome Measures
(January 2012)

Step 4: Identify
Mechanisms to Track
and Measure
Effectiveness of
Reform
(December 2011)

APPENDIX M: CSOSA MEMORANDUM

TO: SALMA S. SAFIEDINE
FROM: BERTHA M. ASTORGA
SUBJECT: DELAWARE TASK FORCE MEETING WITH CSOSA
DATE: 6/18/2015

- *In attendance:* Cynthia Jones (RJP/ WCL), Calvin Johnson (Dir. of Research & Evaluation, CSOSA), Nancy W are (Dir. of CSOSA – left early), another CSOSA member who left early, and 3 other CSOSA personnel from the Legislative, Government and Public Affairs Division. From the DE Task Force (DETF): Drew Fennell, Amy Quinlan, DE State Police Rep (Robert Coupe?), Mr. Fastiello* (with the Admin. Office of the Courts), and three other individuals from the DE Corrections.
- *Summary of the Meeting:* Cynthia Jones began by introducing the issue Delaware has of implementing SMART (Supervision and Management Automated Record Tracking). Ms. Jones noted that DE's system is not compatible with the SMART system. She suggested that DE adopt and implement some of the functionalities of the SMART system to not "re-invent the wheel" since the government has spent a lot of money funding the creation of SMART. The majority of the meeting involved Mr. Calvin Johnson showcasing and navigating through the SMART website on a projector while answering questions posed by Ms. Jones and the DETF. Other topics discussed aside from SMART: JUSTIS, Kiosks system, and assessing risks & violation levels. Overall tone of the meeting was that CSOSA and Dir. of CSOSA were very supportive and are open to helping the DETF. DETF expressed their concerns with implementation mentioning that courts sometimes don't have the confidence in the corrections or other agencies to assess risk. DETF also expressed that one of their primary conversations has been dealing with consistency. The meeting ended with the DETF asking CSOSA and Calvin Johnson if they can have a follow-up conversation. Mr. Johnson said they are open and willing to offer support and follow-up.
 - *SMART:* SMART system records offenders' violations, sanctions, treatment results, information on their social network, housing info, marital status, employment info, arrest history, trauma related info, substance abuse history, mental health history, among other things. The SMART records sanctions one by one as opposed to the DE system that records sanctions all together in an open free space. Supervisory officer is noted in each violation report for accountability purposes. One important thing about this system is that every agency will be able to track down an offender's compliance history and therefore manage the person accordingly. SMART system has a violation report and an alleged violation report, and every information that goes to the alleged violation report goes to the sentencing judge's mailbox. SMART is a system that depends on uploading docs, which allows for there to be more text. SMART also allows for case managers to track their officers' supervision practices. SMART also allows agencies to track the success of treatment programs.

Section

- *JUSTIS*: Dir. Nancy Ware began discussing the information sharing system of JUSTIS. JUSTIS started as a hub for sharing specific criminal justice information but now is a way to track and monitor cases. This information is shared among the major criminal justice agencies that are a part of JUSTIS. Ms. Jones pointed out that DETF has a similar system called DELJUST* and suggested that it could be an area where additional funding could be used to improve the system.
- *Kiosk System*: is currently being used in DC, MD, NY and PA. It is used to monitor low-level crime through kiosks. The reason behind using kiosk is to use probations officers in a more efficient way by having them focus more time with high risk offenders as opposed to low-level offenders. Consists of offenders signing in at kiosks (various locations, MD has 60+ kiosks) with their finger print and answering questions about employment, new arrests, etc. The kiosk sign-ins would replace physical visits to probation officers' office. They are getting good compliance with this system as well as a cost-benefit analysis shows there is an advantage to using Kiosk system.
- *Assessing risks*: CSOSA uses a technical violations matrix and technical violation severity index to classify violations in a consistent way that show up in the violation and alleged violation reports in SMART. DE expressed that they did not have such index or guidelines in place and voiced their interest in borrowing CSOSA's matrix and index as well as a document with the instructions- CSOSA agreed to share those three files with them.

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Criminal Justice Section

APPENDIX N: DELAWARE TASK FORCE RJIP CONTRACT



AMERICAN BAR ASSOCIATION

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CHAIR
Charles Joseph Hyman
Brooklyn, NY

CHAIR-ELECT
Bruce Green
New York, NY

FIRST VICE CHAIR
James Cobb
Washington, DC

VICE CHAIRS AT LARGE
Dore Amoson, Hensgrate, NY
J. Vincent Apple, Louisville, KY
Elizabeth Gray, New Orleans, LA
David Kelley Steele, Baltimore, MD
Nina Akinso, Los Angeles, CA

BUDGET OFFICER
Ronald Goldsack, Larchmont, NY

IMMEDIATE PAST CHAIR
Anthony Joseph Birmingham, AL

SECTION DELEGATES TO THE HOUSE OF DELEGATES
Jeffrey A. Schirberg
Washington, DC
W. E. and Shepherd
W. John Crutch, FL

BOARD OF GOVERNORS LIAISON
Neil Sonnet, Miami, FL

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Roger Fuchs
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William Fitzpatrick
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Jan Harrell
Los Angeles, CA
Kumala Harris
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Matthew Heck, Jr.
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Cynthia Hader-Or
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STAFF
Jack Hanna
Director
Regina Ashman
Program Assistant
Sacey Brown
Membership Coordinator
Shamika Duffie
Administrative Assistant for
Criminal Justice Standards
Philadelphia, PA

October 18, 2010

Drewry N. Fennell
Delaware Criminal Justice Council
State Office Building – Tenth Floor
820 French St.
Wilmington, DE 19801

Dear Drewry N. Fennell:

We are delighted to inform you that the American Bar Association through its Racial Justice Improvement Project on behalf of the Criminal Justice Section has approved a grant of \$24,000.00 (\$12,000 each year for two years) to the Delaware Criminal Justice Council and the Administrative Office of the Courts ("Grantee") to support your implementation of the Racial Justice Improvement project. This grant is made possible pursuant to an award from the Bureau of Justice Assistance.

The grant period will run from October 1, 2010 to October 1, 2012. It will be your responsibility to submit two semi-annual short reports and a final report and a financial statement detailing your activities as of October 1, 2010. The semi-annual reports will be due on February 1, 2011, July 1, 2011, February 1, 2012 and July 1, 2012. Each semi-annual report must also contain financial reports and current budgets. All financial reports must be based upon a preapproved budget. The final report will be due 40 days after the conclusion of the project.

Grantee and the Task Force shall acknowledge the support of the American Bar Association Fund and the Bureau of Justice Assistance, Department of Justice in any printed material or publicity, prepared as a result of this grant. Copies of any announcements, press releases, or other publicity prepared as a result of this grant and the project it supports must be submitted to the ABA for prior approval.

Section

Grantee shall indemnify and hold the American Bar Association and the Bureau of Justice Assistance, and its officers, agents and employees harmless against any and all liability imposed or claimed, including reasonable attorneys fees and other legal expenses, arising directly or indirectly from any act or failure of Grantee's assistants, employees, Task Force appointees, or agents including all claims relating to injury or death of any person or damage to any property or any cause of action of whatever nature, that may arise out of the performance under this letter of agreement.

The relationship created under this letter of agreement is that of Grantor and Grantee and in no way creates an employer/employee relationship.

Reports, information and data given to or prepared or assembled under this letter of agreement shall be kept confidential and shall not be made available to any individual or organizations without prior written approval.

This grant is intended for use exclusively as set forth in the Request for Proposals. You must provide an approved detailed budget after the October 22nd meeting. At the meeting ABA staff will go over the process for submitting an approved budget. If you find that you need to deviate from your approved budget, you must secure approval from Salma S. Safiedine. Any expenses over \$1,000 must be approved by Salma S. Safiedine in advance.

Not including the October 22, 2010 meeting in Washington, DC, each Task Force must meet at least six times per year; at least two of those meetings will be with the Program Director for the Racial Justice Improvement Project, Cynthia Jones. These meetings should be used to:

- Identify and understand the racial justice issues in each jurisdiction;
- Discuss data collection strategies and results;
- Build consensus on a specific issue(s) that each jurisdiction would like to address through the Task Force;
- Build consensus as to an appropriate response or solution to the identified issue(s);
- Map out a strategic plan to address the issue(s);
- Identify the resources needed to implement the plan;
- Begin implementation of the plan;
- Anchor leadership and the on-going commitment of local stakeholders to continuing the work of the Task Force.

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Racial Justice Section

The Task Force Facilitator will be responsible for coordinating and managing the work of the task force. Specific duties include scheduling and directing meetings, preparing written materials for meetings, arranging guest speakers and presentations, ensuring adequate community representation and participation, disseminating written materials, overseeing the selection and supervision of any consultants hired to assist the Task force with research or technical assistance; updating the Racial Justice web site with materials as required, assisting the ABA in the collection of baseline data on the jurisdiction's criminal justice system, preparing and distributing a Meeting Agenda in advance of each task force meeting and preparing a Meeting Report following each task force meeting, both of which must be submitted in order to receive ABA reimbursement funds for meeting expenses.

To facilitate meaningful and effective racial justice reform, task force meetings must be comprised of the task force members of each of the criminal justice agencies represented on the task force. The task force member should be either the chief of the agency, or a designated individual with the authority to speak on their behalf. In addition, depending on the nature of the racial justice reform, some task force projects may require the formation of sub-committees. The composition of any sub-committee(s) is left to the discretion of the Task Force, but must have representatives of all agencies that will be impacted by the work of the sub-committee.

There will be no alcoholic beverages served at the Task Force meetings. All receipts for all expenses or invoices must be detailed and submitted when a request for funds is made. Grant funds may be used for a wide variety of expenses related to the goals of the task force. Detailed below are specific categories of expenses and the limitations and restrictions for each type of expense:

- transportation/commuting costs;
- meeting space (when meetings cannot be held in a conference room at the office of a task force member);
- food and non-alcoholic beverages;
- equipment (including software, long-distance calls, presentation materials);
- the production and printing of written materials;
- guest speakers/trainers (and related travel, fees and expenses);
- research and data collection (i.e., legal analysis, report preparation, hiring part-time consultants to complete surveys, impact analysis, computer or other technical assistance); and other related costs.

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Criminal Justice Section

One meeting's total costs may not exceed \$1,000 without prior approval. To receive reimbursement, there must be a Meeting Agenda prepared and disseminated prior to each task force meeting, and a short Meeting Report following the meeting. These documents are to be submitted with any requests for reimbursement. The Meeting Report must state who attended the meeting from each task force member organization, his/her job title (i.e., Deputy Chief of Police, Chief Judge, Chief Public Defender), the length of the meeting, and a summary of the meeting (i.e., what was discussed, what agreements/progress made) with the next steps for the task force outlined (i.e., formation of sub-committees formed, research requested, future meetings planned).

Reasonable expenses related to sub-committee meetings and projects will also be covered by the grant but must comply with the same reporting requirements for the entire task force (budget restrictions, Meeting Agenda, Meeting Report).

We are awarding this grant in anticipation that you will carry out all aspects of this project as laid out in the project proposal. The American Bar Association reserves the right to cancel this contract at any time if your jurisdiction is not complying with the designated policies and procedures of the American Bar Association or that of the Bureau of Justice Assistance.

In accepting this award you agree that the funds will be used exclusively for charitable purposes as described in Section 501(c)(3) of the Internal Revenue Service Code, consistent with the ABA's tax exempt purpose, the ABA mission statement and the ABA's goals as described on pages 1-2 of the ABA Policy and Procedures Handbook (2006-2007) and that they will not be used to attempt to influence legislation (except as permitted by Section 501), or to participate in any political campaign for public office.

In the event the Grantee is unable or refuses to perform the work required under this grant, the Grantee must return all grant funds to the ABA within thirty (30) days of receipt of written notice from the ABA.

Please indicate your acceptance by countersigning and returning the original of this letter along with a narrative plan and proposed budget for use of those Funds. Retain a copy for your files. Upon receipt of the countersigned letter, the American Bar Association Criminal Justice Section will open your fund to begin disbursement.

Criminal Justice Section

**ADDENDUM 2 TO AGREEMENT BETWEEN
Delaware Criminal Justice Council AND
The American Bar Association**

This addendum 2 supplements and is incorporated into the Agreement dated October 18, 2010, ("Agreement"), and the Addendum to the Agreement dated January 13, 2011 ("Addendum"), as if fully set out therein, between the **Delaware Criminal Justice Council**, with offices at **State Office Building – Tenth Floor 820 French Street Wilmington, DE 19801** ("Party") and the American Bar Association ("ABA"), a not for profit corporation organized under the laws of the State of Illinois, with its principal place of business at 321 N. Clark Street, Chicago, IL 60654

The Parties, intending to be legally bound, agree as follows:

1. The Delaware Criminal Justice Council already received a total of \$12,000.00 from October 2010 to October 2011.
2. The Delaware Criminal Justice Council will receive the contracted amount of \$12,000.00 in lump sum for October 2011 to October 2012, contingent on the conditions laid out in this addendum 2 and the Agreement and Addendum previously agreed upon.
3. The Delaware Criminal Justice Council agrees to not receive their 2011 to 2012 funds unless the Task Force requirements in this project have been satisfied and a chosen area of reform has been decided upon.
4. The Delaware Criminal Justice Council will use all funds provided for implementation and promotion of their chosen area of racial justice reform.
5. The Delaware Criminal Justice Council agrees to provide semi-annual reports due on **February 1, 2012** and **August 1, 2012**. Each report submitted will contain a financial report and an updated budget.
6. The Delaware Criminal Justice Council agrees that on the first of each month an updated budget will be provided to Salma S. Safiedine by email in one document that dictates spending and a remaining balance for the year.
7. The Delaware Criminal Justice Council agrees to submit a final report 40 days after the conclusion of the project in October dictating all project specifics including but not limited to: A Delaware Task Force two-year overview, information on the task force formulation, Task Force discussion, key decision points, data procedure, data accumulation, data analysis, implementation of reform, tracking reform, procedure for hiring and identifying consultants, and any other additional information necessary to understand the Delaware Task Force's work throughout the project.
8. Funds may be retracted if reporting is not made in a timely and sufficient manner.

Section

APPENDIX O: THE FOUR PERCENT DISPARITY REPORT

VOPs BY COUNTY AND RACE

TOTAL LEVEL I - III VOPs from 09/01/2010 – 11/30/2010

	# of VOPs	Percent	Probationers	Percent	% Difference
Black	864	46.68 %	6,309	42.15 %	+ 4.53 %
White	984	53.16 %	8,577	57.31 %	- 4.15 %
Other	3	0.16 %	81	0.54 %	- 0.38 %
Total	1,851		14,967		

The probationer population in this section includes the active (as of 11/30/10) probationer population at District Offices that supervise Level I, Level II, and Level III probationers.

BREAKDOWN BY RACE, LEVEL VIOLATED, & CONDITION (# 1, 3, 7, & 9)

TOTALS FOR LEVELS

	<u>Black</u>		<u>White</u>		<u>Other</u>	
Level	# of VOPs	Percent	# of VOPs	Percent	# of VOPs	Percent
Level I	142	16.44 %	257	26.12 %	2	66.67 %
Level II	308	35.65 %	332	33.74 %	1	33.33 %
Level III	414	47.92 %	395	40.14 %	0	0.00 %
Total	864		984		3	

Percent in this section represents the percent for a specific race and level compared to all of the VOPs written for a specific race between 09/01/10 – 11/30/10 (e.g. 16.44 % of all VOPs written on black probationers between 09/01/10 – 11/30/10 involved a black probationer on Level I supervision.)

**These statistics exclude Level I Restitution Only and Level IV (Home Confinement and Work Release) VOPs*

CONDITION VIOLATIONS

<u>Condition</u>	<u>Black</u>		<u>White</u>		<u>Other</u>	
	<u>Times Cited</u>	<u>Percent</u>	<u>Times Cited</u>	<u>Percent</u>	<u>Times Cited</u>	<u>Percent</u>
Condition # 1	401	46.41 %	426	43.30 %	2	66.67 %
Condition # 3	400	46.30 %	398	40.45 %	0	0.00 %
Condition # 7	254	29.40 %	290	29.47 %	0	0.00 %
Condition # 9	520	60.19 %	626	63.62 %	2	66.67 %

Percent in this section represents the percent of VOPs for a specific race which had this specific condition violation included within a VOP compared to all the VOPs written for a specific race between 09/01/10 – 11/30/10 (e.g. 46.41 % of the VOPs written on black probationers from 09/01/10 – 11/30/10 cited Condition # 1.)

BREAKDOWN BY COUNTY

NEW CASTLE DO 52 & DO 56 District Offices

	<u># of VOPs</u>	<u>Percent</u>	<u>Probationers</u>	<u>Percent</u>	<u>% Difference</u>
Black	547	51.46 %	3,462	43.91 %	+ 7.55 %
White	515	48.45 %	4,383	55.59 %	- 7.14 %
Other	1	0.09 %	40	0.50 %	- 0.41 %
Total	1,063		7,885		

	<u>Black</u>		<u>White</u>		<u>Other</u>	
Level I	74	13.53 %	117	22.72 %	0	
Level II	206	37.66 %	197	38.25 %	1	100.00 %
Level III	267	48.81 %	201	39.03 %	0	
Total	547		515		1	
Condition # 1	264	48.26 %	232	45.05 %	1	
Condition # 3	245	44.79 %	208	40.39 %	0	
Condition # 7	203	37.11 %	168	32.62 %	0	
Condition # 9	293	53.57 %	306	59.42 %	1	100.00 %

**KENT
DO 53 District Office**

	<u># of VOPs</u>	<u>Percent</u>	<u>Probationers</u>	<u>Percent</u>	<u>% Difference</u>
Black	149	44.21%	1,288	46.82 %	- 2.61 %
White	186	55.19%	1,451	52.75 %	+ 2.44 %
Other	2	0.59 %	12	0.44 %	+ 0.15 %
Total	337		2,751		

<u>Black</u>			<u>White</u>		<u>Other</u>	
Level I	41	27.52 %	58	31.18 %	2	100.00 %
Level II	37	24.83 %	44	23.66 %	0	
Level III	71	47.65 %	84	45.16 %	0	
Total	149		186		2	
Condition # 1	57	37.75 %	63	33.87 %	1	50.00 %
Condition # 3	89	58.94 %	95	51.08 %	0	
Condition # 7	18	11.92 %	47	25.27 %	0	
Condition # 9	112	74.18 %	133	71.51 %	1	50.00 %

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Criminal Justice Section

SUSSEX
DO 54, DO 55, & DO 57 District Offices

	# of VOPs	Percent	Probationers	Percent	% Difference
Black	150	36.32 %	1,015	32.41 %	+ 3.91 %
White	263	63.68 %	2,095	66.89 %	- 3.21 %
Other	0		22	0.70 %	+ 0.70 %

Total	413		3,132
-------	-----	--	-------

Black

Level I	27	18.00 %
Level II	54	36.00 %
Level III	69	46.00 %

Total	150
-------	-----

Condition # 1	74	49.33 %
Condition # 3	57	38.00 %
Condition # 7	28	18.67 %
Condition # 9	105	70.00 %

White

81	30.80 %
80	30.42 %
102	38.78%

263

122	46.39 %
89	33.84 %
71	27.00 %
170	64.64 %

Other

0
0
0
0

AMERICAN BAR ASSOCIATION

Criminal Justice Section

**OUT OF STATE
DO 51 Interstate Probation and Parole**

	<u># of VOPs</u>	<u>Percent</u>	<u>Probationers</u>	<u>Percent</u>	<u>% Difference</u>
Black	18	47.37 %	544	45.37 %	+ 2.00 %
White	20	52.63 %	648	54.05 %	- 1.42 %
Other	0		7	0.58 %	- 0.58 %
Total	38		1,199		

<u>Black</u>			<u>White</u>		<u>Other</u>
Level I	0	0.00 %	1	5.00 %	0
Level II	11	61.11 %	11	55.00 %	0
Level III	7	38.89 %	8	40.00 %	0
Total	18		20		0
Condition # 1	6	33.33 %	9	45.00 %	
Condition # 3	9	50.00 %	6	30.00 %	
Condition # 7	5	27.78 %	4	20.00 %	
Condition # 9	10	55.56 %	17	85.00 %	

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Criminal Justice Section

LEVEL II & III VOPs BY COUNTY AND RACE

STATEWIDE TOTAL LEVEL II - III VOPs from 09/01/2010 – 11/30/2010

	<u># of VOPs</u>	<u>Percent</u>
Black	722	49.79 %
White	727	50.14 %
Other	1	0.07 %
Total	1,450	

STATEWIDE BREAKDOWN BY LEVEL AND RACE

	<u>Black</u>		<u>White</u>		<u>Other</u>	
<u>Level</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>
Level II	308	21.24 %	332	22.90 %	1	0.07 %
Level III	414	28.55 %	395	27.24 %	0	0.00 %
Total	722	49.79 %	727	50.14 %	1	0.07 %

Percent in this section represents the percentage for a specific race and level compared to the statewide total of all Level II and III VOPs written between 09/01/10 – 11/30/10.

Criminal Justice Section

BREAKDOWN BY COUNTY

NEW CASTLE DO 52 & DO 56 District Offices

	<u># of VOPs</u>	<u>Percent</u>
Black	473	54.24 %
White	398	45.64 %
<u>Other</u>	<u>1</u>	<u>0.12 %</u>
Total	872	

	<u>Black</u>		<u>White</u>		<u>Other</u>	
<u>Level</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>
Level II	206	23.62 %	197	22.59 %	1	0.12 %
Level III	267	30.62 %	201	23.05 %	0	0.00 %
Total	473	54.24 %	398	45.64 %	1	0.12 %

Percent in this section represents the percentage for a specific race and level compared to the total of all Level II and III VOPs written between 09/01/10 – 11/30/10 in New Castle County.

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Criminal Justice Section

SUSSEX
DO 54, DO 55, & DO 57 District Offices

	<u># of VOPs</u>	<u>Percent</u>
Black	123	40.33 %
White	182	59.67 %
Other	0	0.00 %
Total	305	

	<u>Black</u>		<u>White</u>		<u>Other</u>	
<u>Level</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>
Level II	54	17.71 %	80	26.23 %	0	0.00 %
Level III	69	22.62 %	102	33.44 %	0	0.00 %
Total	123	40.33 %	182	59.67 %	0	0.00 %

Percent in this section represents the percentage for a specific race and level compared to the total of all Level II and III VOPs written between 09/01/10 – 11/30/10 In Sussex County.

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Criminal Justice Section

**KENT
DO 53 District Office**

	<u># of VOPs</u>	<u>Percent</u>
Black	108	45.77 %
White	128	54.23 %
<u>Other</u>	<u>0</u>	<u>0.00 %</u>
Total	236	

	<u>Black</u>		<u>White</u>		<u>Other</u>	
<u>Level</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>
Level II	37	15.68 %	44	18.64 %	0	0.00 %
Level III	71	30.09 %	84	35.59 %	0	0.00 %
Total	108	45.77 %	128	54.23 %	0	0.00 %

Percent in this section represents the percentage for a specific race and level compared to the total of all Level II and III VOPs written between 09/01/10 – 11/30/10 in Kent County.

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Criminal Justice Section

**OUT OF STATE
DO 51 District Office**

	<u># of VOPs</u>	<u>Percent</u>
Black	18	48.65 %
White	19	51.35 %
Other	0	0.00 %
Total	37	

	<u>Black</u>		<u>White</u>		<u>Other</u>	
<u>Level</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>	<u># of VOPs</u>	<u>Percent</u>
Level II	11	29.73 %	11	29.73 %	0	0.00 %
Level III	7	18.92 %	8	21.62 %	0	0.00 %
Total	18	48.65 %	19	51.35 %	0	0.00 %

Percent in this section represents the percentage for a specific race and level compared to the total of all Level II and III VOPs written between 09/01/10 – 11/30/10 for Interstate cases.

AMERICAN BAR ASSOCIATION

Criminal Justice Section

APPENDIX P: INCREASED DISPARITY EMAIL

Cynthia E Jones

From: Calvin C. Johnson [Calvin.Johnson@csosa.gov]
Sent: Tuesday, February 07, 2012 12:38 AM
To: Cynthia E Jones
Subject: RE: Delaware Probation

Hello Cynthia,

Please see below the summary analysis for Levels II and III for each year. Surprisingly, the issue with disparity at level III seems to be waning a bit but still worth further investigating, especially given the number of Black probationers being sent back to jail. Despite the lower numbers of Black probationers being sent back to jail at Level II, the disparity seems way out of whack. The relative risk across the three years is a bit troubling.

Level III Analysis

In 2009, 12.1 percent of Black probationers compared to 8.6 percent of White probationers supervised at Level III were revoked and sent back to jail. Thus, Black probationers at Level III were 41% more likely than their White counterparts to be revoked and sent back to jail.

In 2010, 11.9 percent of Black probationers compared to 9.3 percent of White probationers supervised at Level III were revoked and sent back to jail. Thus, Black probationers at Level III were 28% more likely than their White counterparts to be revoked and sent back to jail.

In 2011, 8.9 percent of Black probationers compared to 7.3 percent of White probationers supervised at Level III were revoked and sent back to jail. Thus, Black probationers at Level III were 23% more likely than their White counterparts to be revoked and sent back to jail.

Level II Analysis

In 2009, 4.8 percent of Black probationers compared to 2.4 percent of White probationers supervised at Level II were revoked and sent back to jail. Thus, Black probationers at Level II were twice as likely than their White counterparts to be revoked and sent back to jail.

In 2010, 4.0 percent of Black probationers compared to 2.1 percent of White probationers supervised at Level II were revoked and sent back to jail. Thus, Black probationers at Level II were 84% more likely than their White counterparts to be revoked and sent back to jail.

In 2011, 2.8 percent of Black probationers compared to 1.5 percent of White probationers supervised at Level II were revoked and sent back to jail. Thus, Black probationers at Level II were 84% more likely than their White counterparts to be revoked and sent back to jail.

Take care,
Calvin

PS. I am still awaiting a phone call/email back from my contact regarding folk in DE who can assist you with this project.

From: Cynthia E Jones [<mailto:cejones@wcl.american.edu>]

Sent: Monday, February 06, 2012 11:51 AM

To: Calvin C. Johnson

Subject: Delaware Probation

Calvin, I just wanted to follow up on our conversation last week. I hope that you have the time to prepare for me the following:

1. The name of a person or two from Delaware (possibly the Univ. of Delaware) who could consult with the Delaware Racial Justice Task Force on their data and do a statistical analysis
2. A chart that, using the original data provided by Delaware, provides a very simple calculation of the disparity between the revocation rates of Blacks and Whites on Probation at Level II and Level III for 2009, 2010 and 2011. For example:

“In 2009, Black Probationers on Level II probation were revoked and sent back to jail at a rate of 30%, while the revocation rate for White probationers was 15%. Thus African Americans were twice as likely to be revoked on Level II than White probationers.”

It is this plain and uncomplicated level of clarity that I need. I fully appreciate that the analysis is much more complex than such numbers would convey, but as I stated when we spoke, this very basic information (though not adequate standing alone) should be a gateway to getting more information from Delaware probation that can be more fully analyzed by a Delaware social science expert.

Thanks in advance for your prompt attention to these two matters. I look forward to hearing from you later today. Cynthia

Prof. Cynthia E. Jones

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Director, ABA Racial Justice Improvement Project

APPENDIX Q: DELAWARE SUCCESS PARAGRAPH

Delaware Task Force Outcomes as of March 2015

The Delaware Task Force (DTF) was formed in 2010 to identify and address implicit biases leading to racial disparities in the state's violation of probation (VOP) rates. An initial study found a four percent higher rate of VOPs among Black probationers.³³ The DTF set two goals for its work through the Racial Justice Improvement Program (RJIP): to ensure race does not play a part in violations of probation and to implement the Delaware Criminal Justice Council's Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System (the "Declaration").³⁴ In order to accomplish these goals, several changes were made to Delaware's probation system. First, the DTF provided implicit bias training for all supervisors and new hires in the Department of Probation and Parole and modified the Department of Probation and Parole's Data Collection System (DACS) to better manage offender populations by providing to probation officers guidelines for setting sanctions based on predefined objective criteria.³⁵ The DTF also implemented the Declaration, which encourages bias-free decision-making by officers of the state's courts and criminal justice agencies.³⁶ Reactions to the changes to DACS were mixed, with officers reporting that the system was helpful, beneficial, and easy to use, but that the new guidelines did not necessarily make it easier to do their jobs.³⁷

The reforms instituted had a more obvious positive impact on probationers, however. Prior to reform implementation, Black probationers accounted for 46.19% of the total number of probationers during the pre-reform time period, while they made up 50.09% of all filed violations.³⁸ In contrast, whites made up 53.36% of total probationer population and only 49.89% of violations.³⁹ This data indicated that white probationers were less likely to receive probation violations than Black probationers.⁴⁰ Following the reforms, probation variations were more equally split between races, indicating a reduction in racial disparities in the VOP process.⁴¹ The point difference between the number of probationers and VOPs was reduced from +3.90 for Blacks and -3.47 for whites to +1.18 for Blacks and -.83 for whites.⁴² Due in part to the

³³See *Delaware RJIP Task Force Report 4* (2013).

³⁴ Press Release, Delaware Recognized for Racial Justice Improvement Project Efforts (Oct. 24, 2011) (on file with author).

³⁵ See Inga James, Delaware State Racial Justice Improvement Project: Implicit Bias in the Probation Violation Process 5-6 (2014).

³⁶ See *Delaware RJIP Task Force Report*, *supra* note 33 at 4.

³⁷ See *id.* at 10.

³⁸ *Id.* at 13.

³⁹ *Id.* at 13.

⁴⁰ *Id.*

⁴¹ *Id.* at 14.

⁴² Note that "[i]f there were no racial disparity in probation violations, the point spread would be [zero] for both [groups], indicating that the percent of VOPS perfectly mirrored the proportion of each racial group in the general population." Therefore, the closer the values are to zero, the more effective the reforms. James, *supra* note 35 at 13.

promising outcomes shown by the DTF's work, the Delaware government will be funding future racial justice initiatives in the state.

Summary of Delaware Task Force

General Jurisdiction Information

Delaware is a small Middle Atlantic State of 1,948 square miles.⁴³ It includes three counties—New Castle, Kent, and Sussex—which divide the state geographically. According to statistics reported by the U.S. Census Bureau, the total estimated population of 935, 614 is 71.1% white, 22.1% Black, and 8.7% Hispanic.⁴⁴

New Castle County includes Delaware's only urban center, Wilmington, which is the largest city in Delaware and represents near 7% of the total population of the state.⁴⁵ It also includes Newark, which, with a population of 31,618, is the location for the University of Delaware's main campus.⁴⁶ The rest of the county consists of small towns and suburban subdivisions. New Castle's total population is 549,223 (67.6% white, 24.7% Black, and 9.2% Hispanic).⁴⁷ Kent County has an estimated total population of 169,562, with 68.5% white, 25.1% Black and 6.6% Hispanic residents.⁴⁸ Kent is the middle county and includes the state capital of Dover, a city of more than 37,000 people, and the Dover Air Force Base.⁴⁹ The bulk of the county is rural. Sussex County is Delaware's southernmost, and geographically largest, county; it includes a series of coastal resort towns, small towns and rural areas.⁵⁰ The total population is estimated at 206,445, with 82.5% white, 12.9% Black, and 9.2% Hispanic residents.⁵¹

Delaware has a unified criminal justice system. All of the courts are within the state structure and each court is represented in each county. The prison system is also a statewide system and there are no jails.⁵² More than 30 police departments enforce Delaware's laws and a

⁴³ United States Census Bureau, Delaware (2010), *available at* <http://quickfacts.census.gov/qfd/states/10000.html>.

⁴⁴ *Id.*

⁴⁵ United States Census Bureau, Wilmington (city), Delaware (2013), *available at* <http://quickfacts.census.gov/qfd/states/10/1077580.html>.

⁴⁶ United States Census Bureau, Newark, Delaware (2013), *available at* <http://quickfacts.census.gov/qfd/states/10/1050670.html>.

⁴⁷ United States Census Bureau, New Castle County, Delaware (2013), *available at* <http://quickfacts.census.gov/qfd/states/10/10003.html>.

⁴⁸ United States Census Bureau, Kent County, Delaware (2013), *available at* <http://quickfacts.census.gov/qfd/states/10/10001.html>.

⁴⁹ United States Census Bureau, Dover, Delaware (2013), *available at* <http://quickfacts.census.gov/qfd/states/10/1021200.html>.

⁵⁰ United States Census Bureau, Sussex County, Delaware (2013), *available at* <http://quickfacts.census.gov/qfd/states/10/10005.html>.

⁵¹ *Id.*

⁵² State of Delaware Department of Correction, Mission Statement (last visited June 11, 2015).

number of municipalities have their own police departments, as does New Castle County.⁵³ The Delaware State Police has overall jurisdiction in the state.

Despite a small population and numerous police departments, Delaware has an overall crime rate 8% higher than average.⁵⁴ As a result of the growing crime rate,⁵⁵ the corrections system has also grown, with an estimated 1 in 26 Delawareans actively in the corrections system.⁵⁶ Delaware self-reports that an estimated 66.8% of males convicted of crimes in 2005 were Black or Hispanic, and that 71.2% of those sentenced to incarceration were also Black or Hispanic.⁵⁷ Along with such an involved and full corrections system comes a significant financial burden, with over 6% of the 2008 budget going to corrections.⁵⁸ It is estimated that 1 day in a Delaware prison has the same cost as 22 days on probation or parole.⁵⁹ With three times the amount of Delawareans on parole or probation as are in prison, there is potential for the prison population to significantly expand if parolees or probationers violate their conditions and are ordered to prison.⁶⁰ The DTF targeting probation violations as their proposed area of reform has helped not only to address racial disparity in VOPs, but has also helped to address the financial costs of prison, along with the societal costs of so many Delawareans potentially being imprisoned.

Racial and Ethnic Fairness Summit

In September 2007, the Delaware Criminal Justice Council and the Delaware Supreme Court co-sponsored a Racial and Ethnic Fairness Summit (the “Summit”), which included more than 70 key stakeholders, including leadership from the state government, the courts, corrections, law enforcement, the Department of Justice, the Office of the Public Defender, and community organizations. The Summit was facilitated by staff from Washington D.C. based the Sentencing Project and included various presentations from national and state experts on racial fairness. Summit participants focused on developing recommendations designed to enhance fairness in the areas of data collection, training, resources, and policy development. The Summit resulted in the release of a final report and recommendations.

Subsequently, the Racial and Ethnic Fairness committee, co-chaired by Justice Henry duPont Ridgely of the Delaware Supreme Court and Chief Judge Alex J. Smalls of the Court of

⁵³ See Brian A. Reave, *2008 Census of State and Local Law Enforcement Agencies* 4, 15 (US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics 2011).

⁵⁴ Mark A. Levin, et al., *Criminal Justice Policy in Delaware: Options for Controlling Costs and Protecting Public Safety* 1.

⁵⁵ See *id.* (From January 2005 to 2009 crime increased over 12% in Delaware).

⁵⁶ See *id.*

⁵⁷ The Delaware Statistical Analysis Center, *Race and Incarceration in Delaware A Report to the Delaware General Assembly* 14 (June 30, 2011) available at http://cjc.delaware.gov/pdf/Race_Incarceration.pdf.

⁵⁸ See *id.*

⁵⁹ See *id.* at 2.

⁶⁰ See *id.* at 1.

Common Pleas, continued the recommendations identified at the summit. Follow-up planning sessions resulted in the creation of the Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System in Delaware (the “Declaration”), which was adopted by the Delaware Criminal Justice Council on April 19, 2010. The Declaration exemplifies the serious and unwavering commitment to racial and ethnic fairness by all partner agencies participating in, and contributing to, its adoption.

Background on the Proposed Area of Reform

Participation in the American Bar Association’s Racial Justice Improvement Project (RJIP) was identified as a way to continue the overall goals established at the Summit, and reiterated in the Declaration, to provide training, data collection techniques, and technical assistance to state agencies in order to promote racial and ethnic fairness in the criminal justice system.

In Delaware, any person convicted of a non-class A felony may potentially be eligible for probation.⁶¹ Additionally, following release from an incarceration for a period of more than one year, a minimum of 6 (six) months at Level II, III, or IV supervision is required to transition back into society.⁶² Based on a probation officer’s discretion, an offender will be taken into custody and given a hearing to establish any violation, with the potential for probation to be revoked or a less restrictive sanction, such as placement on a temporary higher level of supervision, imposed.⁶³

Early on in the project, the DTF identified violations of probation as the potential area for racial based criminal justice reform, since a significant percentage of the population of the Department of Corrections is incarcerated for violations of probation. Delaware’s system of sanctions includes probation Levels I – III, progressing from unsupervised probation at Level I to intensive probation supervision at Level III.⁶⁴ To assess disparity issues, the Division of Probation and Parole collected data for nine months, from June 2010 to February 2011, which compared violations of probations (VOPs) to Level II and III probation population by race. During that period, there were approximately 4,500 VOPs. A great deal of manual work was required to make the information available in a way which showed the racial make-up of probationers at different levels. An initial analysis of the data revealed a 4% variation by race in the data on VOPs. Additional review of the data was performed by the Delaware Criminal Justice Council (CJC) through the Statistics Analysis Center.

⁶¹ See 11 Del. C. § 4204.

⁶² See 11 Del. C. § 4204(l).

⁶³ See 11 Del. C. § 4334.

⁶⁴ See 11 Del. C. § 4204(c).

Relative Rate Indices for Black and White Probation Violations

VOP rates in the table below are calculated as the number of VOPs per 1,000 probationers from the average number of probationers. The Relative Rate Index (RRI) is calculated by dividing the black VOP rate by the white VOP rate.

Level	VOP Rate (VOPs/1,000 Probationers)		RRI
	Black	White	
II	301.2	256.9	1.17
III	454.7	416.3	1.09
II and III	378.2	326.1	1.16

Data collection for the DTF initiative revealed weaknesses within the Department of Probation and Parole's Data Collection System (DACS). There was no method in DACS for tracking probation officer decision-making relating to graduated sanctions. The DTF identified that modifications to the DACS system were necessary so that the imposition of graduated sanctions could be tracked to include the following information: the number of past violations, the type of graduated sanctions imposed by the Officer prior to the submission of the VOP report, and the recommended supervision Level from the submission of the VOP report. Furthermore, the proposed modifications would enable a DACS report to be generated from this information to review the types of graduated sanctions being utilized on offenders prior to the submission of the VOP reports.

Initially, the DTF planned to use grant funds to make the technological modifications necessary to generate the requisite data. As part of planning the reform, the DTF reviewed various decision-making models for probation officers and visited the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) to learn about the graduated sanctions model they use. However, following the release of the Final Report by the Delaware Justice Reinvestment Initiative (JRI), another state-wide task force which was created by the Governor to recommend reforms to Delaware's justice system, the DTF determined that the proposed system changes fell within the purview of, and had been partly incorporated, into legislative initiatives flowing from the much broader JRI. Therefore, the DTF decided that it would determine if a portion of the data collection modifications could be accomplished outside the scope of the JRI initiative.

The Delaware Department of Corrections (DDOC) retained CNT Infotech as their technology vendor for designing and developing the enhancements to DACS that were necessary to aid in the tracking of violations of probation. The modifications, enumerated under "implementation,"

were completed in February 2013 and were rolled out to staff over the course of the next two months. The modification to the DDOC's case management system enables officers to manage and track both probation violations and the type of sanctions that are implemented on probationers as a result of the violation. The implementation of these new functions provides the department with a tool to better manage its offender population and will allow the probation officers to have guidelines that drive the sanctions imposed, which will be based on predefined and objective criteria. The hope is that this evidence-based approach to guide probation officers' discretion in imposing graduated sanctions for probation violations will assist the DDOC with both addressing potential racial disparity and reducing the number of violation reports to the court or Board of Parole.

CNT was chosen as the vendor to provide these services based on their in-depth understanding of the functionality of the system, as well as the operational aspects of the department. CNT had previously assisted the DDOC with the implementation of DACS modules. Training on the proper use of the modified system, as well as the recent changes to the department's policy on the imposition of graduated sanctions, was completed in the spring of 2013.

Goals of the Delaware Task Force

The DTF collaborated with the DDOC in order to facilitate the necessary changes to DACS and implement a mechanism to manage and track probation violations, as well as the type of sanctions that are imposed on probationers as a result of the violations. The principle objectives of this project were:

- To leverage existing DACS functions and processes to include better tracking of demographic indicators associated with violations, sanctions and outcomes
- To provide probation officers convenient tools and information to make objective and informed decisions
- To provide a systematic guideline for imposing sanctions to offenders when completing a violation report. This includes intake, classification, case management, and other security functions
- To provide the ability to generate statistical reporting on key indicators including gender, race, violations, level of violation, sanctions imposed, and severity.
- Implementation of implicit bias and bias-free decision making training for DOC officers and managers

Implementation Plan

The main focus of the Delaware reform has been to work with probation officials to develop policies and standards that guide the discretion of probation officers in their supervision of

probationers. The DTF took a number of specific steps to address how race might be influencing the discretionary decisions of probation officers. The state of Delaware hoped to reduce racial and ethnic disparities in the probation system by creating a more objective system of responding to probationer infractions and by reducing the extent to which implicit bias can impact probation officers' decision making.

1. Modifications to Department of Probation and Parole's Data Collection System:

Given the specific goals of the DTF, the following modifications were developed in DACS during the reform period:

- The existing Violation Report was modified to include graduated sanctions. The graduated sanctions system recommends possible sanctions to the probation officer, based on pre-defined criteria, including current level of supervision, severity of the violation, and number of previous violations.
- The existing reporting (LSI-R, Progress Reports, Violation Reports and Admin Warrants) was modified to include demographic information including race, gender, and lead charge.
- The existing Violation Report was modified to include the Recommended Level of Supervision on the printed reports.
- The List of Probation Violation Report, List of Progress Reports, and List of Admin Warrants were modified excel downloads to include the case closing method.

The implementation of these functions will provide the Department of Corrections with a tool to better manage its offender population and will enable the implementation of operational efficiencies. Furthermore, these changes will allow probation officers to have guidelines that drive the sanctions based on predefined, objective criteria, thereby reducing the danger of implicit bias influencing probation violation decisions.

2. Implicit Bias Training:

On July 18th, 2011, the DTF held a training event on bias-free decision making in Dover, Delaware. All 42 supervisors from the Department of Probation and Parole were required to attend this training. The following members of the DTF presented: Curt Shockley, Director of Probation and Parole; Justice Henry DuPont Ridgley; and Colonel Robert Coupe, representing the Delaware State Police. Wayne McKenzie (VERA Institute of Justice) and Edwin Burnette (National Legal Aid and Defender Association) served as facilitators.

Implicit bias training has also now been incorporated into the mandatory training for all new probation officers. In addition, the DTF sponsored a train-the-trainer session on implicit bias for the Department of Probation and Parole, as well as judicial staff. Finally, implicit bias training

was provided by to all Judicial Officers in the state of Delaware by Professor Jerry Kang of the University of California, Los Angeles School of Law at the Annual Judicial Conference in October 2012.

Directly resulting from DTF discussions on the important of bias training, an initiative to promote bias-free decision-making was undertaken by the Delaware State Police. This effort involved the development of automated traffic “warnings,” so that information about warnings, in addition to traffic tickets, would be stored electronically and easily accessible for later review.

3. Implementation of Delaware Declaration of Leading Practices:

The DTF also oversaw the implementation of the Delaware Criminal Justice Council’s Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in the Criminal Justice System. The Declaration mandates that Delaware criminal justice agencies and the courts adopt policies on bias-free decision-making, use of deadly force, internal and external complaint process, and other areas that will promote racial and ethnic fairness, in order to receive preference to receive grant funding allocated through the Delaware Criminal Justice Council.

The Department of Probation and Parole’s Professional Conduct Policy was amended to expressly prohibit discriminatory decisions by probation officers. The Department of Probation and Parole updated their existing policy manuals on bias-free decision-making as a result of task force efforts. Specifically, Section 1.17 of the Probation & Parole Operations Manual is entitled “Professional Conduct.” This policy now includes language that states “employees will not discriminate against any party based on race, religion, color, sex, disability, ethnicity, financial status, or sexual orientation. Employees will make bias-free decisions related to the supervision of all offenders and while conducting all business of the division.”

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Results of Delaware Task Force Reforms

Summary

In 2011, prior to implementation of any reform, an independent evaluator performed a preliminary evaluation of racial representation in probation violations. Upon completion of the reforms, the evaluator identified that these reforms had an impact on racial representation disparities in probation violations. Officers violated fewer Blacks, proportionately, during the post-reform period than during the pre-reform period. In general, probation officers were satisfied with their ability to impose graduated sanctions on probationers. Most felt that the level of flexibility afforded them was adequate in their supervision practices. In general, they also believed that the DACS is a useful and easy tool. However, in the post-reform phase, officers continued to experience difficulty in utilizing the graduated sanctions protocol within DACS. They felt it was time-consuming and cumbersome and was merely a tool for management.

The reforms instituted had a more obvious positive impact on probationers, however. Prior to reform implementation, Black probationers accounted for 46.19% of the total number of probationers during the pre-reform time period, while they made up 50.09% of all filed violations.⁶⁵ In contrast, whites made up 53.36% of total probationer population and only 49.89% of violations.⁶⁶ This data indicated that white probationers were less likely to receive probation violations than Black probationers.⁶⁷ Following the reforms, probation variations were more equally split between races, indicating a reduction in racial disparities in the VOP process.⁶⁸ The point difference between the number of probationers and VOPs was reduced from +3.90 for Blacks and -3.47 for whites to +1.18 for Blacks and -.83 for whites.⁶⁹ Due in part to the promising outcomes shown by DTF's work, the Delaware government will be funding future racial justice initiatives in the state.

The findings from the evaluation indicate that the reforms implemented by Delaware had at least preliminarily positive outcomes. Further evaluation is needed to determine if people of color are disproportionately represented in probation violations can be reduced with statistical significance.

Sustainability

From the outset, the proposed reforms have enjoyed the full support of all DTF members, consisting of individuals from numerous state agencies across the criminal justice system and at the highest levels of state government. Commitment to the issue of racial and ethnic fairness is evident through the collaboration of these stakeholders beginning with the 2007 Race and Ethnic Fairness Summit, the CJC's adoption of the Declaration of Leading Practices to Protect Civil Rights and Promote Racial and Ethnic Fairness in 2010, through the reforms achieved during this project, as well as all of the deliverables outlined above which touched various agencies across the system. Policy changes have been implemented and programs and systems have been

⁶⁵ See *Delaware RJIP Task Force Report*, *supra* at 13.

⁶⁶ *Id.* at 13.

⁶⁷ *Id.*

⁶⁸ *Id.* at 14.

⁶⁹ James, *supra* note 35 at 13, (Note that "[i]f there were no racial disparity in probation violations, the point spread would be [zero] for both [groups], indicating that the percent of VOPS perfectly mirrored the proportion of each racial group in the general population." Therefore, the closer the values are to zero, the more effective the reforms.).

modified to guide and measure the effects of these reforms. Delaware is committed to continuing its work to promote racial fairness throughout the criminal justice system.

Note on Project Continuation

The Delaware Task Force has concluded its work and has passed the torch of reform with parole violations. The state of Delaware has agreed to fund future racial justice initiatives.

