

State of Delaware Criminal Justice Council

2015 Public Hearings



February 9, 2016

DELAWARE CRIMINAL JUSTICE COUNCIL

2015 PUBLIC HEARINGS

INTRODUCTION

The Criminal Justice Council (CJC) holds public hearings to fulfill a requirement of its authorizing legislation. According to State of Delaware Code, Title 11, § 8707, “The Council shall hold public hearings annually in each county for the purpose of carrying out its duties...” This report summarizes the topics that were discussed at the public hearings in 2015. The Criminal Justice Council utilizes public comments and suggestions to assist with future planning.

In 2015, the Council sponsored 4 public hearings at the following locations, dates, & times:

New Castle County:

Thursday, October 1, 2015
6:00 pm – 8:00 pm

Canaan Baptist Church
3011 New Castle Avenue
New Castle, DE 19720

Kent County:

Tuesday, October 8, 2015
6:00 pm – 8:00 pm

Dover Police Department
400 South Queen Street
Dover, DE 19904

Sussex County:

Thursday, October 22, 2015
6:00 pm – 8:00 pm

Georgetown Public Library
123 West Pine Street
Georgetown, DE 19947

City of Wilmington:

Thursday, December 10, 2015
6:00 pm – 8:00 pm

Hilltop Lutheran Neighborhood Center
1018 West 6th Street
Wilmington, DE 19805

2015 Public Hearings

A panel of Criminal Justice Council members attended each 2015 public hearing. The 2015 public hearings consisted of public comment, as well as remarks and discussion by the panelists. At the beginning of each hearing, the panelists introduced themselves. Following this, a member of the panel provided an overview of the Council, discussing its members, functions, funding areas, subgranting process, research, and recent developments.

Each member of the public was permitted to speak for up to 5 minutes. Additionally, in several instances, panelists provided responses to public comments and questions, or made general remarks at the end of the hearings.

The 2015 public hearings were attended by a total of approximately 49 members of the public.

Staff support for the 2015 public hearings was provided by Executive Director Chris Kervick and Deputy Director Scott McLaren, as well as Valarie Tickle, Charles Pugh, Maureen Monagle, Jacqui Thornton, Andrew Spruill, Ronald Keen, Amy Herb, Kathleen Kelley, Nicole Sund, Maggie Boone, Daniella Spitelli, and Matthew Rosen. The Criminal Justice Council thanks its staff members for their time and dedication in support of the hearings.

The Criminal Justice Council also offers a special thanks to all of the individual Council member panelists who participated in the hearings. And finally, the Council thanks the participating members of the public for providing valuable input and sharing their concerns about crime and justice in Delaware.

Thursday, October 1, 2015
New Castle County
Canaan Baptist Church

The first hearing was held on Thursday, October 1, 2015 from 6:00 p.m. to 8:00 p.m. at Canaan Baptist Church, 3011 New Castle Avenue, New Castle, DE 19720. There were a total of 11 panelists and approximately 8 members of the public in attendance.

Panelists:

James Liguori, Esq.	Liguori, Morris, & Yiengst
Jay Lynch	Department of Health & Social Services
Colonel Nathaniel McQueen	Delaware State Police
Nancy Dietz	Division of Youth Rehabilitative Services
Kevin O'Connell	Office of Defense Services
The Honorable Alex Smalls	Court of Common Pleas
Perry Phelps	Department of Correction
James Hanby	Justice of the Peace Court
Captain Quinton Watson	New Castle County Police Department
Linda Carmichael	Superior Court
Christian Kervick	Criminal Justice Council

Please note: The opinions and positions expressed in this public hearing do not necessarily reflect the views of the Criminal Justice Council.

Timothy Collins, a member of the public, identified himself as an advocate for people who have been falsely accused of sexual offenses and domestic violence. Mr. Collins claimed that he was falsely accused, and alleged that the Public Defender's Office cannot represent defendants adequately.

James Liguori, a member of the panel, responded and stated that public defenders in Delaware may be overworked, but they are good lawyers.

Mr. Collins added that he has been on the sex offender registry since he was 15. Mr. Collins expressed his belief that there should be a law to allow juveniles who are tried as adults to be

removed from the registry. The current law only allows juveniles who are not tried as adults to apply for removal from the registry.

Mr. Collins concluded by stating that there is too much unreported domestic violence against men. He expressed his belief that about 50% of domestic violence is directed toward men, and that more attention needs to be paid to male victims.

Elliot Margules, a member of the public, asked whether the council has had discussions about providing funding for body cameras for police.

Christian Kervick, a member of the panel, answered that the Council has a subcommittee on law enforcement. Right now, the subcommittee is focusing on developing a statewide policy before they secure funding for body cameras.

Colonel Nathaniel McQueen, a member of the panel, added that the legislature passed a resolution to require law enforcement agencies to develop a consistent policy about how to use body cameras and deal with issues that may arise from their use, such as privacy issues. There has already been some funding for pilot programs for body cameras, and law enforcement agencies have solicited proposals for companies to provide body cameras for these pilots.

Captain Quinton Watson, a member of the panel, added that the New Castle County PD is testing different types of body cameras with officers, and the department will determine which type of body camera it would prefer to use.

Tuesday, October 8, 2015

Kent County

Dover Police Department

The second hearing was held on Tuesday, October 8, 2015 from 6:00 p.m. to 8:00 p.m. at the Dover Police Department, 400 South Queen Street, Dover, DE 19904. There were a total of 9 panelists and 9 members of the public in attendance.

Panelists:

Linda Carmichael	Superior Court
Robert Coupe	Department of Correction
Maj. Robert Hawkins	Delaware State Police
Robert Harpster	Office of Defense Services
David Henderson	Board of Parole
The Honorable Alan Davis	Justice of the Peace Court
Kimberly Chandler	Department of Safety & Homeland Security
Chief William Bryson	Delaware Police Chiefs Council
Christian Kervick	Criminal Justice Council

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Dr. Kim Warfield, a member of the public, expressed her dismay at the high recidivism rate in Delaware. Dr. Warfield stated that she runs a business that hires ex-offenders. She stated that she has spoken to many released inmates, and they end up back on the streets because they cannot find jobs. She expressed her belief that there needs to be more funding to help these young men find employment.

Christian Kervick, a member of the panel, responded and stated that Valarie Tickle is the reentry coordinator for the Council. The Council receives federal Second Chance Act grants for reentry, and also uses some Byrne Justice Assistance Grant funds for reentry. In some cases, the federal government dictates how funds must be spent, and in some cases, the Council has discretion. Mr. Kervick told Dr. Warfield that if she is interested in applying for a grant, she can go to the Council's web site, log into e-grants, and register in order to get notifications about available grants.

Valarie Tickle, a staff member of the Council, added that the Council will be holding a free grantwriting class, and that there are flyers available with the details.

Troy Walker, a member of the public, stated that he represents the Delaware Repeal project. He asked where the Council stands on the death penalty.

The Honorable Alan Davis, a member of the panel, responded that members of the Council have varying stances on the death penalty, and judges do not take a stance on it at all. The Council consists of law enforcement, the Public Defender, the Attorney General, social service providers, etc. So, there is not a consensus on the issue.

With regard to legislation, the Council often weighs in on legislation. But the Council generally does not issue policy positions up front because it has such a wide array of representatives.

Robert Coupe, a member of the panel, added that the Council's legislation subcommittee reviews relevant legislation and presents it to the council. Then, the Council votes on whether to support or not support, and the legislature will be notified of the Council's position. However, the Council will often take no position.

Major Robert Hawkins, a member of the panel, added that the State Police does not take a position on the death penalty. However, Major Hawkins noted that in his 5 years on the force, they have only sought the death penalty once, as it is reserved for the most gruesome and heinous crimes.

Major Hawkins proceeded to discuss a grant that the State Police receives from the Criminal Justice Council. The grant funds a mounted patrol unit. DSP uses inmate labor to maintain and care for the horses. This trains inmates and helps them to get jobs at racetracks or horse stables when they are released. Kent County Levy Court has provided a stable for the program.

Commissioner Coupe emphasized that reentry is important to the Criminal Justice Council. The Council reports on reentry statistics annually. He added that recidivism statistics can look worse than they really are, since different states measure recidivism in different ways.

Commissioner Coupe added that, in addition to the equine program mentioned by Major Hawkins, the Department of Correction has received funding to convert the cafeteria at Vaughn prison to a culinary arts program. There is a similar, smaller program at Baylor as well. This helps inmates get employment in the restaurant business after their release. The Food Bank and Community Action in Dover also provide culinary trainings for released inmates. The DOC has received funding for an auto mechanic program for inmates as well. The DOC also provides training for HVAC, masonry, carpentry, and flagging.

However, space and resources for these programs are limited due to the high prison population. As such, DOC is collaborating with Chief Justice Leo Strine to develop alternatives to incarceration and reduce the prison population.

Commissioner Coupe also discussed the Department of Correction's Mothers in Reentry program. He explained that judges sometimes incarcerate pregnant women to keep them off the streets and protect the health of the unborn child. Sentencing them to prison puts them in a sober environment with prenatal care. However, prison is not an ideal place to have babies. As such, the DOC started a home in Newark for pregnant women. It holds up to 17 women and provides treatment and counseling. March of Dimes has gotten involved. It is a very supportive environment, and it has been open for almost a year now.

Judge Davis added that he is chairing a committee that is coordinating the Delaware Center for Justice's Smart Pretrial program, a demonstration program aimed at reducing the detainee population in Delaware. Accordingly, the Justice of the Peace Courts have begun using a pretrial risk assessment instrument. It will not only help judges, but it will also help guide police who decide whether to release someone on a summons, or bring them into court.

Judge Davis remarked that cash bail does not protect public safety. It incentivizes offenders to return to court, but it does not protect the public. Even with low-amount bails, cash bail can result in the detention of a low-risk person. But a person who is significantly dangerous and has large amounts of cash can make bond, even though they are more dangerous to the public. So, the program is looking at what type of legislative changes can be made to that.

The program has also been developing alternatives to detention, including the Rick VanStory Center's pretrial program. However, Delaware lacks adequate pretrial services. There are only 14 staff members statewide supervising 500 individuals. No jurisdiction with a successful pretrial program has such a large ratio. Successful jurisdictions have advanced and rigorous pretrial services. Judge Davis stated that he has therefore asked the governor to provide more funding for pretrial services.

Thursday, October 22, 2015
Sussex County
Georgetown Public Library

The third hearing was held on Thursday, October 22, 2015 from 6:00 p.m. to 8:00 p.m. at the Georgetown Public Library, 123 West Pine Street, Georgetown, DE 19947. There were a total of 8 panelists and 23 members of the public in attendance.

Panelists:

David Hume	Department of Justice
Robert Robinson	Office of Defense Services
Michelle Brogden	Division of Youth Rehabilitative Services
Lt. Col. Monroe Hudson	Delaware State Police
Chief William Bryson	Delaware Police Chiefs Council
The Honorable Alan Davis	Justice of the Peace Court
Robert Coupe	Department of Correction
Christian Kervick	Criminal Justice Council

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M. Sturges Dodge, a member of the public, recommended that the members of the panel read the book *The New Jim Crow* by Michelle Alexander. The book theorizes that the drug war and racial disparities in the justice system have recreated a system of racial segregation similar to that in the Jim Crow era in the South.

Robert Coupe, a member of the panel, responded by discussing the problem of the overpopulation of Delaware's prison. He explained that he is collaborating with Chief Justice Leo Strine on the Access to Justice Commission, which is meant to reduce Delaware's prison population, as well as racial disparities in the justice system.

JoAnn Paulson, a member of the public, asked how a person can enroll in I-ADAPT.

Commissioner Coupe responded by discussing how inmates who are being released from prison can enroll in the program.

Janet Orlando, a member of the public, also asked about the Civil Citation program, mentioning that only a small percentage of juvenile offenders appear to be eligible.

Commissioner Coupe responded by discussing which juveniles are eligible for the Civil Citation program. There are restrictions that limit who may participate.

Charlotte King, a member of the public, identified herself as a Board member for The Way Home. Ms. King expressed her concern over Delaware's high incarceration rate and the racial disparity within the state's inmate population. She recommended that Delaware pass legislation to reform sentencing, limit solitary confinement, expand eligibility for criminal record expungement, and reinstate the possibility of parole in certain cases.

In addition to her spoken comments, Ms. King submitted a written statement, which is appended to this report.

Eric Kafka, a member of the public, identified himself as a psychologist for The Way Home. He expressed his dismay at the lack of adequate legal representation for criminal defendants, as well as issues with over-charging and plea bargaining. He also expressed his disappointment over the cuts in funding to The Way Home.

Lynne Betts, a member of the public, identified herself a member of the Society of St. Vincent DePaul. She expressed her belief that the state is failing to adequately rehabilitate offenders and treat drug addiction. She stated that drug counselors in the Delaware have excessive caseloads, and that there needs to be more funding for detox, mental health, and prevention.

Member of the Public #6 commended the Division of Youth Rehabilitative Services for doing a good job of providing youths with the opportunity to change.

Member of the Public #7 advocated for ending the death penalty, stating that it would save money for the state.

Member of the Public #8 identified herself as an employee of the Division of Family Services. She stated that childhood trauma is causing long-lasting harm to youths, and that the system is not doing a good job of intervening and helping kids who are coping with trauma.

Thursday, December 10, 2015
City of Wilmington
Hilltop Lutheran Neighborhood Center

The fourth hearing was held on Thursday, December 10, 2015 from 6:00 p.m. to 8:00 p.m. at the Hilltop Lutheran Neighborhood Center, 1018 West 6th Street, Wilmington, DE 19805. There were a total of 9 panelists and 9 members of the public in attendance.

Panelists:

Inspector Elmer Harris	Wilmington Police Department
Christopher Klein	Bureau of Prisons
Kathleen Jennings, Esq.	Department of Justice
James Hanby	Justice of the Peace Court
Major Melissa A. Zebley	Delaware State Police
Captain Quinton Watson	New Castle County Police Department
Alan Grinstead	Department of Correction
Darryl Dawson	Division of Youth Rehabilitative Services
Christian Kervick	Criminal Justice Council

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Timothy Collins, a member of the public, identified himself as an advocate for people who have been falsely accused of sexual offenses and domestic violence. Mr. Collins stated that there is a house near where he lives that is clearly a drug house, but the police are not shutting it down.

Mr. Collins also expressed his opinion that the payment arrangements for traffic violations are excessive, as the fees for paying on installments are too high.

Mr. Collins also discussed his girlfriend's drug problem, and stated his belief that the criminal justice system did not adequately deal with her problem. Mr. Collins was also dismayed that he was not notified when she was released from incarceration, even though he was a victim of a crime by her.

Councilman Jea Street, a member of the public, asked for an explanation of what the Council does.

Christian Kervick, a member of the panel, explained that CJC is a statewide planning agency that manages federal funds to support criminal justice functions in Delaware, such as juvenile justice programs, domestic violence shelters, law enforcement initiatives, reentry programs, defense and prosecution, and many other programs, functions, and initiatives. All in all, the Council funds over 220 programs.

Member of the Public # 3 stated that in Browntown, her neighborhood, there has been a series of break-ins, and all the residents know who is doing them, and even have surveillance footage. The residents keep reporting it to the police, but the detective says he does not have time for it. She stated that the perpetrators are not experiencing any consequences for what they are doing.

Inspector Elmer Harris, a member of the panel, said he will speak with the appropriate supervisor, and will follow up with her afterward.

Member of the Public #4 stated that it does not seem that adequate rehabilitation is occurring among prison inmates, and that inmates are usually unprepared to resume with their lives when they reenter the community. She asked, what programs are being implemented to help them and their families?

Christopher Klein, a member of the panel, stated that the Department of Correction is working on visitation technology to provide video visitation for juveniles with incarcerated parents. The DOC is also working on educational, religious, vocational, and substance abuse programs.

Mr. Klein stated that the DOC can be part of the solution, but it is incumbent on the community to also get behind efforts to help these people. Once inmates are released from prison, DOC will do its best to ease their transition. But the gaps need to be filled in on the community side too.

Alan Grinstead, a member of the panel, discussed several programs that the DOC runs for inmates, including a fatherhood program and culinary arts training. DOC has also started a trauma-informed program at the Plummer Center. Mr. Grinstead remarked that the DOC is always looking to solve problems, but at the same time, there are limitations to available space and resources.

Kathleen Jennings, a member of the panel, praised the Achievement Center in Wilmington for its excellent reentry work. Inmates go straight from the Plummer Center to the Achievement Center, where they receive a lot of help with health, employment, job training, transportation, and other services.

Member of the Public #5 remarked that there is a 5-year substance abuse program for individuals with disabilities that is coming to an end. So, what is going to happen to individuals with substance abuse problems once this program goes away? She stated that she cannot remember the name of the program.

Mr. Grinstead responded that the DOC is not eliminating any programs. Gateway is relocating, but it is not going away. DOC is trying to introduce more evidence-based programs, and to work to help people with drug addictions.

Mr. Collins expressed his dissatisfaction with domestic violence prevention posters in Delaware. He stated that the posters are focused only on female victims, and that sends the wrong message that women are the only ones being abused. Mr. Collins contended that men are victims of domestic violence, too.

Councilman Street remarked that he is the director of the Hilltop Lutheran Center, and he appreciates what CJC has done for the Center. A CJC grant has allowed them to hire an education coordinator who acts as a liaison between the teachers, parents, and kids. The Center has financially struggled, but CJC has helped keep it afloat. Funding for prevention programs like the Lutheran Center and other prevention programs is desperately needed. There is a need to keep these kids in the Center, and off the streets, so that they can go to college and succeed. The kids who come to the center are excelling academically.

Councilman Street expressed his concern about kids transitioning from Ferris back to school. The public schools do not want them, so they have to go to alternative schools. But even the ones who succeed are kept out of Del Tech because of their record. They cannot get financial aid. So, they cannot get an education, and they cannot get employment. As a result, they go back to selling drugs and living on the street.

Ms. Jennings responded that a person should be punished for his or her behavior, but they should not be punished for the rest of their lives. Recently, Delaware stopped taking away people's drivers licenses for drug offenses. But Delaware also needs to take a closer look at laws that limit housing, employment, and education. Delaware needs to do a better job of making it possible for people to get an education and get back to work.

Misty Seemans, of the Office of Defense Services, remarked that probationers are often set up to fail. They often cannot get jobs because they need to regularly check in with officers, or they have curfews. Nobody will house them because they do not want visits from Probation & Parole. They are rejected or waitlisted for public housing. So, it becomes a community issue that needs to be fixed systemically. Ms. Seemans remarked that she has seen people try their best, and they still cannot meet the basic requirements of probation or pay their court costs. Often, this leads to probation violations and further court costs.

Member of the Public #6 asked, if a police officer breaks down your door to search your house, why is it that the people who own the house need to pay to get it fixed?

Inspector Harris answered that a search is based on probable cause, with a court order from the judge. If the police have a search order, they are not responsible for replacing the door. But the Wilmington PD tries its best not to cause damage. Officers knock when possible, but if there are drugs in there that can be flushed, they will not knock. However, if they break down the wrong door, the police department will pay for it.

Member of the Public #3 asserted that there needs to be more community policing and more respect for people among police officers. She stated that she often sees officers disobeying the law by speaking on their cell-phones while driving.

She added that complaints about officers to the police department tend to have no results. She explained that she tried to make a complaint at the Wilmington PD station one time, but they could not take her complaint. She had to wait 2 hours until the right person came in to take the report. She stated her belief that if someone has a complaint, it should be respected.

Ms. Jennings asked, how can police rebuild trust with the community?

Member of the Public #3 responded that when police are not busy, they should be stopping by the community center and talking to kids, figuring out what the kids need, and helping them out. It seems that many officers do not think highly of Wilmington residents. Police should be getting out of their cars. They should be conversing with the people whom they are supposed to be serving. If the only interaction people experience is the police busting their friends and neighbors, they are not going to have a good opinion of the police.

Member of the Public #7 stated her opinion that there needs to be more training programs for youths in the summer. These kids are smart and have potential, but they just hang around and

commit crimes. There needs to be programs to reach out to these hard-to-reach kids. People do not want to deal with the hard-to-reach kids.

Member of the Public #8 stated that he is a student at DuPont High School. He stated that students are bringing in drugs and selling them. He asked why there are not scanners to catch these students. Also, there are fights in school, and the administrators are never out there to stop the fights. He expressed his opinion that there needs to be more police in the school.

Major Melissa Zebley, a member of the panel, responded that there is a School Resource Officer there. She stated that she can follow up and see what is going on at that school, and whether there is anything that can be done to improve safety there.

Member of the Public #6 stated that he has seen a police officer curse at young kids who were causing trouble and call them names. He expressed his opinion that an officer should not be doing that- the officer can ask nicely, and not use disrespectful language.

Inspector Harris responded and stated that unfortunately, some officers do not think before they speak. He remarked that if officers do not respect kids, then kids will not respect the officers.

Member of the Public #6 asked why the officer's partner stood there and did not intervene.

Inspector Harris stated that it is possible that it was a probationary officer who was afraid to speak up. In those circumstances, though, the officer can still complain to management. Inspector Harris stated that he will try to figure out which officer used the offensive language and speak to him about it.

Member of the Public #5 asked, when the force gets complaints, what are the repercussions for the officers? How do they ensure that the officers do not repeat the behavior?

Inspector Harris responded that if a complaint is found valid by the Office of Professional Standards, the officer will receive discipline. But to address a problematic incident, citizens need to step up, report it, and record it if possible. That way, the department can make sure that it takes appropriate action. Inspector Harris explained that on the city's web site, there is an online process for making a complaint to the department. If a complaint is filed, the captain will follow up with the complainant within 72 hours.

Captain Quinton Watson, a member of the panel, stated that the process in the county is the same. And the department will not just discipline an officer. They will also retrain the officer to ensure that the officer changes his or her behavior. Captain Watson emphasized that it is critical for citizens to provide feedback to the police department so that it can improve.

Captain Watson added that the most important thing is for officers to have respect. Even though getting arrested is always a negative situation, the suspect can come out of the interaction with respect for the police, if the police treat the suspect with respect. And the police departments need to have the respect of the community. The police need to be building trust every day. That way, if there is any controversy, or an instance when the police needs to ask for the community's patience and understanding, they will only get that if they have built up respect.

Ms. Seemans added that if a person has a negative experience with an officer, they should get the officer's badge number and name, and the names of witnesses. This will be helpful when making a complaint against an officer.

Member of the Public #8 asked why there are not enough police officers around to stop the shootings in Wilmington.

Captain Watson responded that there are simply not enough officers to put one on every block. But the County Police use the TAPS system to map and monitor when problems in a community are developing. That information is used to strategize and deploy officers. Once a pattern begins developing, police officers are sent into that area.

Member of the Public #9 lamented that there are so many drugs in Delaware's prisons. Inmates are saying there are more drugs in prison than on the streets. Why is that?

Mr. Klein responded that there are numerous ways that inmates can get drugs. Some inmates get creative when it comes to bringing in drugs. For example, they can liquefy the drugs, so that they can spray them on paper, or put them on postage stamps. The Bureau of Prisons tries to attack the problem from different angles- but the drug smugglers are resourceful, and they will keep figuring out new ways to get drugs. The Bureau has caught and prosecuted members of the public, as well as staff, who try to bring in drugs to the prison. But, even with intensive efforts, it is not possible to catch all the drugs. Everyone who enters the prison, including staff, are thoroughly searched. In fact, the Bureau has stepped up psychological evaluations for staff to make sure that these officers are responsible and that they are role models for the inmates.

A.J. Roop, of the Department of Justice, identified himself as the head of the Department of Justice's Crime Strategies Unit. He explained that the unit is only 18 months old. But it is expanding and more resources are being devoted to it. Mr. Roop explained that his staff is going out into the community to make connections with people in the community.

Mr. Roop emphasized the importance of speaking up when a problem is occurring in a neighborhood. If some people are not comfortable speaking with the police, they can anonymously share information with the Crime Strategies Unit. Such information is useful and can lead to solving the problem.

Mr. Collins claimed that he was recently a victim of terroristic threatening, and the Attorney General was not willing to communicate with him. He said he called repeatedly, but was not provided with information about the case.

Councilman Street remarked that he has seen the Attorney General's Office give its full support to many victims of crimes, and they have done an excellent job of helping victims get through difficult situations.

ADDENDUM

**Statement to the Criminal Justice Council
at its Sussex County Hearing – October 22, 2015**

**Presented by Charlotte King on behalf of
The Southern Delaware Alliance for Racial Justice and
The League of Women Voters of Delaware**

Good Evening. My name is Charlotte King. I am Chair of the Southern Delaware Alliance for Racial Justice (SDARJ), Immediate Past President of the League of Women Voters of Delaware (LWVDE) and a current member of the League of Women Voters of Sussex County.

SDARJ grew out of a study group co-sponsored by the League of Women Voters and the Lewes-Rehoboth Association of Churches that wanted to act after reading *The New Jim Crow* by Michele Alexander. Our Mission states: *The Southern Delaware Alliance for Racial Justice is a non-partisan organization educating, informing, and advocating for racial justice, equality, and fair opportunity.*

One of the fundamental principles of the League of Women Voters set forth in our national public policy document called *Impact on Issues* is that “no person or group should suffer legal, economic or administrative discrimination.” At both the national and state level we have worked actively for years to implement that principle. In particular, at both levels, we have called for judicial independence and have opposed mandatory sentencing and its resulting inequities as well as other means to ensure justice for all.

Our overarching concern. The *News Journal* on Tuesday (October 19) reported that “More than 200 children are locked behind bars in Delaware – and 76 percent of them are black. In Delaware’s prisons, African-Americans make up 56 percent of inmates. Yet only 22 percent of the state’s population is black.”

Delaware is not alone. For example, the U.S. Justice Department’s Bureau of Justice (BOJ) reports that in 2014, 6% of all black males ages 30 to 39 nationally were in prison, compared to 2% of Hispanic and 1% of white males in the same age group. ¹

We believe that our leadership at both the national and state levels wants to change that and we want to help make change happen. To that end, we ask that along with other issues we will address this evening, the report coming out of these hearings will include the numbers and percentages of prisoners in Delaware, broken down by age, race, ethnicity, and gender for each of our prisons.

Our priorities. Just last week, SDARJ adopted three priorities that we wish to address tonight. The following day, the LWVDE Advocacy Corps adopted those same priorities for the coming legislative session. There are significant issues outside the criminal justice system that contribute to the racial disparity in our prisons, not the least of which are poverty and institutional racism in our society. However, we believe that addressing the issues we will outline will help reduce that disparity.

¹ U.S. Department of Justice, Bureau of Justice (BOJ) Statistics, September 2015, report entitled *Prisoners in 2014* (NCJ 248955), page 1.

Part A of our first priority is advocacy for major bipartisan federal legislation that has been introduced to address a wide range of criminal justice issues that concern us. The “Sentencing Reform and Corrections Act of 2015” (S. 2123), was introduced on October 1 by Sen. Grassley (R-IA) with bipartisan co-sponsors: Senators Durbin (D-IL), Cornyn (R-TX), Whitehouse (D-RI), Lee (R-UT), Schumer (D-NY), Graham (R-FL), Leahy (D-VT), Booker (D-NJ) and Scott (R-SC). Broad support was expressed at the Justice Committee hearing on the bill earlier this week. But Delaware’s Senators were missing from the bill’s list of sponsors. We will be seeking support from them to ensure enactment of this legislation.

Key provisions of S. 2123 address a wide range of issues that concern us. They include:

- Reduces length of mandatory minimum sentences,
- Reserves mandatory minimum sentences for serious drug felonies and violent crimes,
- Bolsters re-entry programs especially aimed at reducing recidivism such as GED and academic classes, cognitive behavioral treatment, mentoring, occupational and vocational training and certifications, and substance abuse recovery,
- Bans solitary confinement for juveniles,
- Provides for sealing juvenile records and easing expungement of those records,
- Makes parole possible after twenty years for juveniles sentenced to life imprisonment,
- Provides more judicial flexibility.

Part B of that priority is to urge the introduction of and to advocate for Delaware legislation to mirror what is in the federal bill. The federal legislation applies only to federal prisons and prisoners. However, the vast majority of prisoners in the U.S. are in state and local prisons. On December 31, 2014, there were 210,567 individuals in federal prisons, while there were 1,350,958 in state prisons.² Therefore, we believe it is critical that we enact state legislation to adopt the type of approaches in the federal bill to enhance our ability to reduce the incarceration rate and the racial disparity in Delaware.

A particular focus should address minimum mandatory sentences that many students of our criminal justice system believe is a major cause of mass incarceration in America. See the League of Women Voters’ position paper on minimum mandatory in Attachment A.

We note that the number of prisoners in Delaware was reduced by 49 individuals between 2013 and 2014. According to the *Prisoners in 2014* report, total prisoners in Delaware went from 7,004 in 2013 to 6,955 in 2014. The number of women inmates went from 599 in 2013, to 594 in 2014.³ We urge the state to focus on increasing the rate of reduction moving forward.

We did want to note a bar chart in the *Prisoners* report showing that Mississippi had reduced its inmate population much more dramatically than any other state. That state held 3,200 fewer prison inmates at yearend 2014 (down 15% from 2013). This resulted from new policies that encourage supervision of nonviolent offenders in the community instead of in prison. We suggest that you investigate how Mississippi did it to determine what we might learn from their experience.

² BOJ report, *Prisoners in 2014*, Table 1, page 2.

³ BOJ report, *Prisoners in 2014*, Table 2, page 3.

When compared to the number of prisoners per 100,000 population, Delaware ranked eighth in the nation with a total of 861 residents age 18 or older in 2013 and 863 in 2014. Since prisons form one integrated system in Delaware, our ranking is probably higher than it would be if data for other states included local jails. Nevertheless, the First State can and should do better.

As our second priority, we will actively monitor progress of the solitary confinement study required by a joint resolution of the General Assembly and advocate for implementation of its recommendations.

As you know, Amendment VIII to the U.S. Constitution prohibits cruel and unusual punishment. We believe that solitary confinement, in most situations, is cruel and could even rise to the level of "torture." This is particularly true when applied to children and the mentally ill.

Many studies support the view that mentally ill inmates and juveniles are more severely affected by solitary confinement than other prisoners. As such, the solitary confinement of mentally ill inmates and juveniles has been upheld as cruel and unusual in both international and US courts. For example:

Anna Conley, in *Torture in US Jails and Prisons: An Analysis of Solitary Confinement Under International Law*⁴, states that the UN has "expressly prohibit[ed] solitary confinement of juveniles and individuals with mental illness." Within the US legal system, courts have held that the solitary confinement of the mentally ill is, in fact, "cruel and unusual". According to Shira E. Gordon in "*Solitary Confinement, Public Safety, and Recidivism*,"⁵ "every federal court that has considered claims by severely mentally ill prisoners held in solitary confinement has found this treatment unconstitutional."

It is commendable that Delaware has begun to address this issue. House Joint Resolution 5 was passed in June and was signed by the Governor on September 3. This resolution replaced HB 36 that was tabled by the House Corrections Committee in January. The synopsis of HB 36 stated that:

This bill would place limits on the use of solitary confinement, a topic which is largely unaddressed in current Delaware law. A growing body of research shows that long-term solitary confinement may contribute to significant mental health issues and reentry problems. Of particular concern is the impact of the practice on juveniles and the mentally ill. Therefore, this Act would limit the amount of time that a person may be ordered into solitary confinement as part of their sentence to 4 weeks, rather than 3 months. Additionally, the bill would not allow the Department of Correction to use solitary confinement as a punishment for disciplinary violations for more than 15 consecutive days or 20 days out of any 60 day period. Finally, this legislation would prohibit the use of solitary confinement as a disciplinary tool for the mentally ill or juveniles.

The synopsis of HJR 5 stated that:

Delaware law is largely silent on the appropriate use of restrictive housing, or "solitary confinement," and little information is publicly available regarding its use in corrections facilities. There is growing concern about the effects of solitary confinement on mental

⁴ Anna Conley, "Torture in US Jails and Prisons: An Analysis of Solitary Confinement Under International Law" published in the *International Constitutional Law Journal* 7.4 (2013)

⁵ Shira E. Gordon, "Solitary Confinement, Public Safety, and Recidivism," published in the *University of Michigan Journal of Law Reform* (2013)

health and reentry. Therefore, this joint resolution authorizes the House Corrections Committee and the Department of Correction to commission an examiner to study and make findings and recommendations concerning the use of restrictive housing in Delaware correctional facilities.

An amendment clarified that the engagement of an expert is subject to the availability of funds specifically appropriated for that purpose and the word "Expert" was substituted for "Examiner."

We plan to monitor implementation of this study and will expect that interim and final recommendations will be made public as soon as they become available.

With regard to problems that led to the substitution of HJR 5 for HB 36, we heard that prison design and capacity are significant factors in our ability to reduce solitary confinement. According to the *Prisons in 2014* report mentioned above, Delaware's "rated capacity", based on the number of beds assigned by a rating official to each facility, is 5,649. Our "operational capacity", based on the ability of the staff, programs, and services to accommodate a certain size population, is 5,210. The original capacity that our facilities were designed to hold is 4,161. But the number of prisoners held in these facilities as of December 31, 2014, was 6,730. This is 161.7% higher than the design capacity and 119.1% of the lowest "rated" capacity.⁶

Here are some questions that we believe need to be considered in the study and an effort to eliminate solitary confinement except in the most egregious situations:

1. What violations are committed that warrant solitary confinement?
2. Who and what determines when a prisoner goes to solitary confinement?
3. How many inmates are being held in solitary confinement and what is the percentage of prisoners, by prison?
4. Are any suspects in pre-trial detention held in solitary confinement? If so, why should they be punished in this manner before being found guilty of a crime.
5. What are the specific conditions of solitary confinement? (Hours per day or week in darkness, restrictions on physical activity, etc.)
6. What is the average and what is the longest time that prisoners spend in isolation?
7. What is the breakdown of prisoners in solitary confinement by prison, age, race, ethnicity, and gender?
8. What percentage of those in solitary confinement are known to be mentally ill?
9. How many juveniles are in solitary confinement?
10. What are the three measures of prison capacity (rated, operational and by design, as mentioned above) and the actual numbers for each prison in Delaware?
11. Is one, or more, of our prisons more significantly over capacity than the others and is that where the most prisoners are in solitary confinement?

⁶*Prisoners in 2014*, Table 8, page 12.

12. What is the status of the study being undertaken in response to HJR 5? What is the timeline for completion and the report being made available to the public?

Our third priority is to advocate for the reduction in the number of inmates held in pre-trial detention.

According to an article in the Columbia University *Human Rights Law Review*,⁷ “pretrial detention is the time period that you are incarcerated between being arrested and your trial. Detention is only supposed to be used to ensure that the person will not flee prior to trial or pose a danger to other people. It is not supposed to be used to punish or rehabilitate that person.”

Department of Correction Commissioner Robert Coupe told three of us in June that 25% of male prisoners and 40% of the women are in pre-trial detention. A young man on our Alliance committee who has experienced prison in Delaware has told us that inmates call pre-trial detention “pre-plead” detention. He described treatment in the prison where he was held was so awful that many plead guilty when they are innocent, just to get out.

This raises the question of whether available resources are so stretched that poor suspects who must depend on overworked, under-paid public defenders and backlogged courts lead to pressure on the system to encourage plea deals rather than give defendants a fair trial.

To address the issue of pre-trial detention, we raise the following questions:

- What percentage of the accused are held because the judge determines that they might flee prior to trial? Please break down by age, race, ethnicity and gender.
- What percentage are held because the judge determines that they pose a danger to other people/the community? Please break down by age, race, ethnicity and gender.
- What percentage are held because they cannot meet bail? Please break down by age, race, ethnicity and gender.
- What percentages are held for other reasons and what are those reasons? Please break down by age, race, ethnicity and gender.
- What efforts are being made to identify ways to reduce the number of the accused who are held in pre-trial detention? If so, what are they and who is undertaking this work?
- Has there ever been a study of the percentage of suspects that are held in pre-trial detention, analyzed by sentencing judge? To what extent are judges understandably influenced by the attitude and demeanor of suspects whose experience with the institutional racism in our society has given them no hope of escaping prison?
- To what extent are individuals counseled on how a plea deal will affect (ruin?) the rest of their lives? By whom? When in the process?

Finally, let me say that we have begun our research on these issues fairly recently and we expect that additional issues will rise to the top of our priorities as we gain an understanding of the overall criminal justice system in Delaware. Attachment A is a list of questions not addressed in the text of our statement. The answers will contribute to our education and, we hope, the final report on these hearings. Thank you for your consideration of our concerns.

⁷ A *JAILHOUSE LAWYER'S MANUAL*, Chapter 34: *The Rights of Pretrial Detainees*, published in the Columbia University Human Rights Law Review



MINIMUM MANDATORY SENTENCING POSITION PAPER

The League of Women Voters of Delaware Supports Abolition of Minimum Mandatory Sentencing and other Improvements in our Criminal Justice System

The top priority for the Justice portfolio of the League of Women Voters of Delaware is the abolition of minimum mandatory sentencing and support for the adjustment of drug sentencing laws to fit the seriousness of the crime. We believe that mandatory sentencing rules handcuff judges and fill prisons with too many nonviolent drug offenders.

The LWVDE position is supported by a national position adopted by the 2012 Convention: **The LWVUS believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime. The LWVUS opposes mandatory minimum sentences for drug offenses.**

Even earlier, as part of an ongoing study of the state's criminal justice system initiated in 1977, LWV of Delaware, in 2003, adopted a position to **Support judicial discretion in making sentencing decisions rather than mandatory sentences imposed in statute.**

Since Congress created mandatory minimum sentences in the "War on Drugs" in the 1980s, our nation's prison population has grown to 2.3 million people behind bars -- more than any other country in the world, according to the International Centre for Prison Studies.

Delaware currently has 6,000 prisoners in Level V and 1,100 in Level IV, at a cost of \$36,232 per year as of the end of FY 2014. In addition, another 15,000 individuals are under the supervision of Probation and Parole officers.

Delaware's judicial selection process is regarded as a model: Delaware judges, in all courts in the state, are chosen through a merit selection process. A unique feature of our system is the requirement for partisan balance within the Delaware judiciary. These features suggest that Delaware's courts are among the best in the nation. Therefore, we should be able to trust in our judges' discretion to make reasonable decisions regarding the severity of sentences they impose.

A recent (March 2015) report from the Brennan Center for Justice suggests that "the idea that someone will choose not to commit a crime because of a specific penalty — is one justification often touted in support of harsh sentences....However, all such punitive policies have proved unlikely to deter, because potential offenders typically underestimate the risks of getting caught and the possible punishments. "

Furthermore, "more incarceration can increase crime. When defendants are sentenced to prison instead of pro-rehabilitation alternatives or longer instead of shorter terms, prison has detrimental effects. For example, incarceration strains relationships with families and communities and diminishes economic prospects, which in turn increases the likelihood of recidivism."

In October 2015, comprehensive bipartisan legislation was introduced in the U.S. Senate to roll back America's punitive criminal justice policies. Among its provisions are reductions in some mandatory minimum sentences.

Criminal justice reform is an idea whose time has come! Let's keep Delaware in the forefront. Let's eliminate minimum mandatory sentences and adjust drug sentencing laws to fit the seriousness of the crime.

**Questions for the Criminal Justice Council submitted jointly by
The Southern Delaware Alliance for Racial Justice and
The League of Women Voters of Delaware**

1. Does the Criminal Justice Council or the Legal system in Delaware have a mission statement that briefly states its focus?
2. Is the mission of the State to punish and/or to rehabilitate?
3. How much is spent on the Criminal Justice system here in Delaware, including the courts, prisons, police, etc.?
4. What percentage of criminal justice system funds come from the federal government?
5. How much comes from charges to prisoners to cover their medical care, etc.?
6. What is the breakdown of how these funds are spent for such categories as medical care, mental health care, basic education such as preparation for GED, any other education purposes, re-entry?
7. What is the percentage with substance abuse issues? (Is a breakdown available on alcohol, drugs, and gambling?) What services are available to them?
8. What is the percentage with mental health issues and what services are available for them?
9. What is the percentage of people in prison on non-violent drug related convictions?
10. Where are young people under the age of 18 held?
11. What are the rates the private contractor charges prisoners for phone calls to family or others? What company has the contract for this service?
12. What other expenses do prisoners incur while in prison?
13. Please provide information on the amount of debt prisoners incur from child support payments built up while the inmate has little or no income during his time in prison?
14. Do the State Prisons all have GED opportunities, how many, and what percentage of inmates take advantage of the GED? How many, and what percentage, graduate? Please break down data by prison, race, ethnicity and gender.
15. Are there any efforts to provide for college-level education in our prisons?
16. What job training opportunities are available to prisoners in each prison and how many prisoners are enrolled in them by prison? Do any of them result in certification or other proof of qualifications required for the jobs for which the prisoner is trained?
17. Is any help given to inmates prior to release to obtain a birth certificate, ID, and Social Security Number?
18. What other services are available to assist in ensuring a smooth re-entry upon release?

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19. How many half way houses are there in the State, by County? Please list.

20. What is the recidivism rate, by prison, race, ethnicity, and gender?