



RACIAL AND ETHNIC
FAIRNESS
SUMMIT
SUMMARY
REPORT

SUPREME COURT OF DELAWARE
CRIMINAL JUSTICE COUNCIL
JANUARY 15TH, 2008

REPORT AND RECOMMENDATIONS

DELAWARE RACIAL AND ETHNIC FAIRNESS SUMMIT

September 17-18, 2007

Dover, Delaware

Overview

On September 17-18, 2007, the Delaware Criminal Justice Council and the Delaware Supreme Court co-sponsored a Racial and Ethnic Fairness Summit, an event described as “the first state-wide Summit of criminal justice and community leaders in the United States [to] focus on strategies for improving racial and ethnic fairness in a state criminal and juvenile justice system.”

More than 70 key stakeholders in the state participated in the summit, including leadership from state government, courts, corrections, law enforcement, prosecution, defense, and community organizations. Presenters at the summit included national and state experts engaged with addressing racial fairness in the criminal justice and juvenile justice systems. The summit was facilitated by staff of The Sentencing Project, a national non-profit organization engaged in public policy research on criminal justice issues.

A key theme of the summit was that achieving racial/ethnic fairness is important for three reasons. First, because democratic societies should strive to maximize fairness in all institutions. Second, to the extent that the system is perceived as fair by all citizens, it will be better able to gain the trust and confidence of the public and thereby develop effective public safety initiatives. And third, as noted by the American Bar Association’s Kennedy Commission, even a perception of unfairness may itself “lead to crime, disrespect for the law, and even a willingness to nullify or subvert the law.” To achieve these goals, Summit participants focused on developing recommendations designed to enhance fairness in the areas of data collection, training, resources, and policy development

The recommendations prepared by summit participants that are included in this report are intended to serve as a basis for consideration and action by the Criminal Justice Council, state and local policymakers, and practitioners in the justice system. It is the belief of the co-sponsoring organizations that implementation of these recommendations can contribute significantly to enhanced fairness and cooperation between the criminal justice system and communities in the state of Delaware.

Summary of Presentations

Supreme Court Justice **Henry duPont Ridgely** and Chief Judge of the Court of Common Pleas **Alex Smalls** welcomed participants to the summit. Chief Justice **Myron T. Steele** and Lieutenant Governor **John C. Carney, Jr.** emphasized the importance of fairness in the justice system and the history of efforts to enhance fairness in the Delaware courts. All spoke as well about the need to engage in a broad-based approach to addressing these issues, one that involves the justice system and community working together.

Jim Kane, Executive Director of the Criminal Justice Council, provided background and context for the summit. Many communities of color in the state, particularly in Wilmington, have been beset by both high rates of violence and incarceration. Law enforcement agencies in the state have been engaged with developing effective responses to violence and disorder, while also trying to aid communities in developing proactive measures to reduce crime.

Charles “Joe” Hynes, District Attorney of Kings County (Brooklyn), New York, described the range of programs he has established to both diversify his staff and to implement problem-solving processes within the justice system. These include: the Drug Treatment Alternative to Prison (DTAP) program, a program that diverts appropriate defendants into intensive substance abuse treatment as an alternative to prison; the Red Hook Community Justice Center, a community court established to respond to the particular needs of the neighborhood; and, a treatment alternative to incarceration for dually diagnosed defendants. Evaluations of the DTAP program, the longest operating of these initiatives, have documented that participants who complete it successfully demonstrate considerable reductions in future drug use and crime.

Marc Mauer, Executive Director of The Sentencing Project, provided an overview of racial disparities in the use of incarceration. National data demonstrate that African Americans are incarcerated at nearly six (5.6) times the rate of whites, and Latinos nearly double (1.8) the rate. Racial/ethnic disparities in Delaware are similar to the national figures, with Delaware ranked 25th in the nation in its black/white ratio of incarceration and 18th in its Hispanic/white ratio. Mauer also provided an overview of policymaker and practitioner efforts to reduce unwarranted disparities. These include: the recommendations of the ABA’s Justice Kennedy Commission; an initiative of the Annie E. Casey Foundation to reduce disproportionate minority confinement in the Multnomah (Portland), Oregon, juvenile system; a Wisconsin governor’s commission on racial disparity; and, the Minnesota Council on Crime and Justice’s racial disparity initiative.

David B. Mitchell, Secretary of the Department of Safety and Homeland Security, described law enforcement strategies to address racial profiling. While previously head of the Maryland State Police, Mitchell had been engaged in responding to a lawsuit filed by the ACLU alleging racial profiling on state highways. In response to a court decision upholding the plaintiffs’ claims, Mitchell developed strategies for data collection,

analysis, and training designed to promote oversight and a means of balancing appropriate law enforcement objectives with non-biased policing.

Wayne McKenzie of the Vera Institute of Justice’s Prosecution and Racial Justice Program, provided an overview of the organization’s efforts designed to assess the role of race in prosecutorial discretion and decisionmaking. Vera is collaborating with prosecutors in three jurisdictions – Milwaukee, San Diego, and Mecklenberg County (Charlotte), N.C., to establish information management systems that can aid in assessing the extent to which racially disparate decisions are being made at various stages of prosecution. Vera’s approach is a collegial one, working with prosecutors to assess decisionmaking and to develop strategies to address any unwarranted disparities that may result.

Dr. Pamela Casey and **Madelyn Herman** of the National Center for State Courts provided an overview of website resources and a tool kit for enhancing fairness in the court system. The Center has been engaged in outreach and documentation with court systems as part of its *National Campaign to Ensure the Racial and Ethnic Fairness of America’s State Courts*. The Campaign has identified a broad range of programs regarding diversity, training for unbiased behaviors, projects to improve court access for limited-English-proficient persons, and system-wide improvements to reduce racial and ethnic disparities in criminal, domestic violence, juvenile, and abuse and neglect cases.

The presentations and/or overhead displays of the speakers are attached as an appendix.

Assessment of the Problem

Summit participants devoted significant time to breakout sessions focused on identifying problems and proposing solutions. These covered each stage of the criminal justice process, as well as exploring the relationship between the justice system and the community. One breakout group focused on the juvenile justice system while the others analyzed the adult system.

1. Identifying Factors That Affect Fairness

The first session was devoted to identifying factors that contribute to unfairness or the perception of unfairness in the justice system. Participants explored a range of issues that affect these dynamics, which included the following:

Data

- Statistics regarding disparities in use of incarceration document high rates of minority involvement in the system, and may be interpreted in different ways by various constituencies

Leadership

- Lack of sufficient diversity within criminal justice agencies, despite recruitment efforts

Relationship with Community

- Targeted policing strategies may be viewed as unfair by community members
- Victims may not trust the system to hear their concerns
- Immigrant fear of law enforcement whether “legal” or not

Media and Communications

- “Bleeding and leading” on the news contributes to fear and sensationalism
- Coverage of high profile cases such as Rodney King and Jena 6 can drive public perceptions, public trust, and confidence in the system

Policy Decisions

- “Drug free” zones incorporate large sections of urban areas and thereby result in higher proportion of minority offenders being subject to harsh penalties

Resources

- Large caseloads on juvenile probation limit individualized attention
- Concern over limited public investments in education, housing, and other institutions in low-income communities

2. Responsibilities for Addressing Fairness

The second session focused on the respective roles of the justice system, the legislature, and the community in promoting fairness. Key themes developed by participants in these areas included the following:

Policing

- Need emphasis on proactive, as opposed to reactive, law enforcement
- Need to define models of community policing in cooperation with community

Courts

- Availability of specialized courts to address problem areas (e.g. drug court, reentry) and provide ongoing support

Corrections

- Provide a range of reentry models

Legislature

- Policy should be proactive, not reactive based on a single atypical situation
- Provide support for focus on wellness, healthy communities
- Impact of legislation that can move more cases into the justice system rather than addressing them in schools or other institutions

Community

- Community mistrust of police related to historical perception of unfairness, police not coming from local community
- Schools should encourage greater tolerance and appropriate use of discretion among personnel to deal with behavioral issues
- Need to coordinate respective roles of community and government in assigning responsibility for addressing problems

3. Collaborations to Promote Fairness

Summit participants then developed ideas for addressing ways in which the justice system and the community can collaborate to promote fairness. These included:

Data

- Collaborate to get access to data for joint analysis

Law Enforcement

- Address issue of officer promotion affecting community policing strategies, as new officers need to establish relationships

School/Juvenile System

- Better collaboration for youth who are expelled
- Engage families to become involved with probation supervision responsibilities

4. Key Decisionmaking Points

Participants examined each stage of the justice system – arrest, charging, sentencing, incarceration, community supervision – to determine the most significant decisionmaking points and issues that can affect fairness and the perception of fairness?

Arrest

- Where to deploy officers, and where and when to conduct an arrest
- Officer use of discretion – securely detain, leave in community with supervision, work with parents regarding juvenile behavior
- Demeanor and behavior of arresting officer
- Use of force and appropriateness
- Discretion in charging of drug crimes; e.g. intent to sell
- Importance of community policing
- No matter which racial/ethnic groups are arrested, there will be comments made to officers that groups in other parts of the city are not being arrested

Charging Decision

- Whether to charge as misdemeanor or felony
- Plea offers
- Number of charges to bring
- Decisions made at station house, bail hearing
- Availability and use of diversion options, including drug treatment and mental health programming
- Bail decision related to drug quantity, community ties, prior record, warrants, and other factors
- Charge “stacking” not well understood by public; where did the charges go after plea negotiations?
- Are charging decisions subject to being standardized, or are they inevitably individualized by prosecutor or office?

Sentencing

- Issues of public safety and flight risk at bail-setting
- Perception of risk
- Prison vs. community sanctions
- Availability of presentence reports
- Judicial discretion to receive information about and incorporate considerations of living circumstances and family environment
- Important not to set defendants up for failure
- Diagnostic evaluations

- Victim and community perception of justice
- Media coverage of sentencings
- Judge may not know defendant's prior program history and outcomes
- School zone drug offenses are subject to harsher penalties
- Who attends court with defendant, support system; how do we "level the playing field?"

Incarceration

- Access to services and programs; program eligibility
- Release decisions, sentence modification requests, early release (DUI programs)
- Adequacy of program slots
- Utilize incarceration time to provide individuals with skills to stop "revolving door"

Community Supervision

- Administrative decision to "flow down" between levels
- Violation decisions and consequences
- Conflict between PO role as law enforcement and social worker

Action Plan to Improve Fairness in the Justice System

During the course of the Summit a variety of issues and strategies emerged that hold the potential for enhancing fairness in the justice system. Participants concluded that a comprehensive approach involving data analysis, training, resource allocation, policy reform and other measures is critical to achieving the objectives of the Summit. Following is an overview of key measures developed at the event that will constitute the action plan for moving forward.

Data Collection

- The justice system should work toward developing a comprehensive system to track all decision points from arrest to disposition (including diversion). Comprehensive, ongoing data collection would aid in developing strategies to address unwarranted disparities.
- Agencies in the justice system should strive to foster collaboration among themselves in order that data may be shared among all members of the justice system and the community. The sharing of data is critical to any dialogue one and analysis of any racial disparities in the justice system.
- The Juvenile Justice system should expand its data collection practices to include information on first contact (including truancy) by race and gender.
- The justice system should work to develop a system of tracking the proportion of youth in the juvenile justice system who move on to the adult criminal justice system.

Assessment and Training

- The justice system should consider the need for a system-wide assessment of policies relating to bias and ethnic fairness in the criminal and juvenile justice systems.
- The justice system should work to develop internal system-wide trainings for criminal justice and juvenile justice practitioners.
- The justice system should work toward developing comprehensive strategies for outreach concerning any perception of racial unfairness in the justice system.

Resources

- The justice system should work toward requesting funding for recruitment of new staff as well as the retention of existing staff in order to assure diversity in staffing and leadership.
- The justice system should work toward developing or requesting resources for enhancing data collection practices.
- The adult criminal justice should work to adopt the model of disproportionate minority contact reporting that is used in the juvenile justice system.
- The justice system should work toward developing and funding racially competent programming for adult and juvenile offenders.

Legislative Reform and Policy Advocacy

- The justice system should work toward encouraging system-wide collaboration when proposing legislation.
- The justice system should work toward utilizing the Criminal Justice Council as a more proactive voice regarding legislation.
- The justice system should work toward developing a system of review for sentencing legislation that includes a focus on whether there are any unintended racial/ethnic effects of the legislation.

Media and Community Outreach

- The justice system should work toward engaging the community in an ongoing assessment of training needs on racial disparity for criminal justice professionals.
- The justice system should work toward expanding community outreach on racial disparity issues.
- The justice system should work toward developing a process of providing reliable statistical data on racial/ethnic issues in the justice system and encouraging the media to use the reliable statistical data when reporting on the subject.
- The justice system should work toward developing effective means of communication to foster cooperation with the community.
- The justice system should work toward creating community advisory groups on the subject of racial disparity issues and/or consider including this topic with existing community advisory groups.

Diversity

- The justice system should work toward increasing the hiring and retention of minorities.
- The justice system should work toward developing a process to enhance diversity in leadership positions in the justice system.

Recommended Steps Forward

- The Criminal Justice Council Racial and Ethnic Fairness Committee should consider refining this action plan.
- The justice system should work toward drafting recommendations for best practices and strategies for improving racial and ethnic fairness and the perception of fairness.
- The Criminal Justice Council will pursue resources for the implementation of this action plan.

Attachments:

Honorable David B. Mitchell presentation “Racial Profiling in Law Enforcement: Pitfalls and Preventive Strategies

Madelynn Herman and Pam Casey National Center for State Courts Presentation, “State Court Approaches to Addressing & Promoting Racial/Ethnic Fairness”

Honorable Justice Henry duPont Ridgely and Honorable Alex Smalls presentation, “Delaware Race and Ethnic Fairness Summit: Wrap Up & Path Forward”

Racial Profiling in Law Enforcement: Pitfalls and Preventive Strategies

David B. Mitchell, Esq.
Secretary, Safety and Homeland Security
State of Delaware

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“Racially Biased Policing” instead of “Racial Profiling”

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Racially Biased Policing

Racially biased policing occurs when the police inappropriately consider race or ethnicity in deciding with whom and how to intervene in an enforcement capacity...

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Why RBP?

- “Racial Profiling” does not capture the concerns of police and community members
 - RP is a small subset of Racially Biased Policing
 - “Solely” definitions are too narrow in their characterization of the problem
- Community members and police are speaking past each other.

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Extent of the problem

- Is racial profiling real? Most Americans think so. A July 2001 Gallup poll reported that 55 percent of whites and 83 percent of blacks believe racial profiling is widespread.

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Maryland



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MD Example

- Wilkins v. MSP *et al* (1992)
- First Settlement (1994)
- NAACP v. MSP *et al* (1997)
- Second Settlement (2003)

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JFK Highway Barrack

- 35 Troopers patrol I-95 from Baltimore to Delaware
- From 1995 – 2000:
 - 1590 drug arrests
 - \$2.8 million in cash recovered
 - Seized drugs valued at \$22 million
 - DEA EPIC Award in 1997

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The Academic Contributions

- Dr. Lamberth (professor of psychology at Temple) conducted an analysis of police searches along I-95 in Maryland
- Lamberth compared the population of people searched and arrested with those violating traffic laws in Maryland Highways
- He constructed a violator sample using both stationary and rolling surveys of drivers violating the legal speed limit on a selected portion of the interstate
- His survey indicated that:
 - 74.7% of speeders were White
 - 17.5% of speeders were African American

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The Battle of Perception

“...the Maryland State Police are just as guilty of racial profiling as the notorious New Jersey State Police.” –The Sun, Jan 29, 2001

“Despite federal monitoring, African Americans continue to be stopped and searched in Maryland far more often than whites, particularly by troopers from the JFK Barracks” –The Post, May 16, 2001

“Maryland has really been the capital of racial profiling in the United States. The disparities on I-95 match or beat anything documented elsewhere” –The Post, May 16, 2001

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The MSP 2003 Settlement

- Policy prohibition reaffirmed
- Training for ALL troopers and supervisors
- Settlement Coordinator position established
- Citizen Contact Brochure developed

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MSP Settlement Continued

- “Race Based Traffic Stops Act” passed
- Police – Citizen Advisory Committee established
- 24 Hour Toll Free Complaint Line established
- Complaint process reviewed, updated and taught in basic and in-service training

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Delaware State Police

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DSP Actions Taken

- Data Collection Committee formed in 2001
- Data collection began on May 1, 2002
- Policy prohibits "race-based enforcement efforts"

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DSP Actions Taken Continued

- Training on the above for All Troopers
- Partnership with the University of Delaware School of Urban Affairs to analyze collected data.
- In-car video cameras installed in patrol vehicles

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Challenges For Chief Executives

- How to deal with "bad apples"
- How to guide/lead well-meaning officers
- How to ID and fix institutional factors that contribute to the problem....

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"Bad Apples"

- Unlikely to be significantly impacted by policy and training
 - If they were acting within current policy wouldn't be "bad apples."
- Some methods:
 - Early Warning Systems
 - Effective Supervision
 - Accountability through discipline

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Well-Meaning Officers

- Likely many are not fully cognizant of the extent to which race/ethnicity are used in their decision-making
- Policy to guide them on when race/ethnicity are and are not appropriate to use
- Training
 - Of that policy
 - That facilitates an analytical understanding of RBP to promote correct behavior.

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Institutional Factors That Contribute To The Problem

- What policies, procedures, hiring/promotional activities, etc. might be contributing to RBP (or perceptions)?
- "Human Rights Audit" of above

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Other Recommendations

- Sound/receptive complaint system
- Personnel evaluations that address impartial law enforcement, respect for all community members, etc.
- Quality assurance checks (e.g., early warning systems).

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Summary Of What Works

- Collect and analyze traffic stop data
- Implement an Early Warning System
- Hold supervisors accountable
 - Especially First Line Supervisors

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What Works Continued

- Improve screening of Trooper candidates
- Improve basic and in-service training as to appropriate use of discretion
- In-car video recording (audio and visual)
- Quality assurance checks

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Sources

- *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, Lorie A. Fridell, Ph.D.
- *The Delaware State Police Collaborates with Community to Prevent Racial Profiling and Ensure Professional Traffic Stops*, The Delaware Lawyer, LTC Mark Seifert, Delaware State Police
- *The Spartan Project*: Maryland State Police, Captain Leigh Maddox

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State Court Approaches to Addressing & Promoting Racial/Ethnic Fairness

Madelynn Herman and Pam Casey
National Center for State Courts

Racial and Ethnic Fairness in the Criminal
Justice System Summit, Dover, DE
September 18, 2007

Summary

- What is Bias/Fairness?
- Trends
- Progress
- Promising Approaches
- Improving the Perception of Fairness
- Institutionalizing Bias-Free Behavior
- Promising Programs and Practices

What is Bias?

Bias is a conscious or unconscious negative opinion, attitude, or behavior directed toward individuals on the basis of race, ethnicity, gender, religion, disability, age, socio-economic status, or sexual orientation.

What is Fairness?

Perceptual and Emotional Dimensions

- Fairness is the **perception** that one's interest, claims, or rights are recognized, acknowledged and given reasonable weight by significant others.
- Fairness is also a bundle of **emotions** that include, but may not be limited to comfort, security, trust, well-being, and "coherence" (all is right in the world)

Trends

- Higher expectations for efficiency
- Increased demand for transparency and accountability
- Increased expectations of meeting customer needs
- More avenues for dialogue with stakeholders
- Changing demographics
- Systems-wide approach

Progress

- Increase in diversity on the bench
- Increase in court interpretation programs
- Increased awareness of the impact of biased behavior
- Increased recognition of changing demographics and imperative for action
- Increased efforts to meet customer needs

Statistics

- % of Women Justices in Courts of Last Resort
 - 7% (1985), 23% (2001), 27.9 (2005), and 30.5 (July 2007)
- % of Women Chief Justices
 - 28.8% (2005), 35.8% (July 2007)
- % of minority judges increased by 8% from 1997 to 2001
- Consortium for State Court Interpreter Certification increased state membership from 4 (1995), 34 (2005), and 39 (2007)

Promising Approaches

- Mandatory educational programs
- Methods to address and control inappropriate conduct
- Workforce to reflect the population served
- Increase diversity on the bench & juries
- Bias-free recruiting, hiring, and promoting practices
- Codes of Conduct and Ethics

Promising Approaches

- Multi-lingual, multi-cultural staff
- Quality interpreter services
- Multi-lingual forms & instructional packets
- Transparency between agencies on progress made on arrest, bail, and sentencing outcomes
- A customer service approach to services
- Collect data, measure efforts, celebrate success

Improving the Perception of Fairness

- Frank conversations with stakeholders
- A leadership commitment to bias-free behavior
- Create a culture that promotes fairness and equal access
- Become a culturally competent organization, increase transparency
- Meet customer needs
- Increase outreach and collaborative efforts

Institutionalizing Bias-Free Behavior

- Include in strategic plan
- Connect with vision
- Put your commitment to bias-free behavior in writing or on a loudspeaker
- Have a welcoming, efficient workplace
- More effective courtroom practices
- Recruit and hire for attitude
- Monitor and evaluate behavior

What Judges Can Do to Minimize Bias

- Stay motivated to be fair and accurate
- Maximize accountability
- Take ample time
- Minimize distraction and pay attention
- Be conscious of differences
- Confront cultural stereotypes
- Seek out social environments that challenge stereotypes
- Maintain constant vigilance

Use your leadership position to...

- Champion a commitment to bias-free behavior
- Break the status quo barriers to achieving bias-free behavior
- Commit the necessary resources
- Be an inspiration to others

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Promising Programs and Practices

- A National Campaign to Ensure Race and Ethnic Fairness in the Courts—Interactive Database of State Programs.
<http://www.ncsconline.org/ref/index.html>
- Race and Ethnic Fairness Initiative-- Database of Task Force Reports.
http://www.ncsconline.org/Projects_Initiatives/REFI/reb.htm

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Wrap Up & Path Forward

Supreme Court Justice, Hon. Henry duPont Ridgely
Chief Judge, Court of Common Pleas, Hon. Alex Smalls

Goal Statement

- To promote Fairness and the Perception of Fairness in the Criminal and Juvenile Justice system

Action Planning

Common Themes from Breakouts

- Data Collection
- Training
- Resources
- Legislative Reform and Policy Advocacy
- Media Outreach
- Diversity

Data Collection

- Importance of Data Sharing
- One comprehensive system that will track all decision points from Arrest to Disposition including diversion
- Juvenile- Track point of first contact by race and gender (including truancy)
- Juvenile- % of youth going to adult system

Training

- CJ & JJ System wide Assessment of policies relating to bias and ethnic fairness
- Community Outreach – Trainings
- Internal CJ & JJ System-wide Trainings
- Engage community to assess training needs – develop comprehensive communication strategies

Resources

- Funding for Recruitment / Retention Efforts
- Resources for enhanced Data collection
- Fund DMC Reporting for Entire Adult system
- Increase state and federal funding to Racially competent programs

Legislative Reform & Policy Advocacy

- More system wide collaboration when introducing legislation
- Utilize CJC to become more proactive with legislation
- Review Sentencing Legislation

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Media Community Outreach

- Media needs more Data Driven Information
- Effective Communication to promote cooperation with community
- Create community advisory groups

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Diversity

- Increase Hiring and Retention of Minorities
- Diversity in Leadership Positions
- Diversity for those who interact with the public

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Path Forward

- Draft Report from Sentencing Project October 2007
- CJC Racial and Ethnic Fairness Subcommittee will refine Action Plan
- Draft recommendations for best practices and strategies for improving racial and ethnic fairness and the perception of fairness in Delaware
- Pursue Resources for implementation

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