

Dane County Office of Equal Opportunity

DANE COUNTY
TASK FORCE ON
RACIAL DISPARITIES IN
THE CRIMINAL JUSTICE
SYSTEM

Final Report

September 2009

Celia M. Jackson and Laurie Mlatawou

Co-Chairs

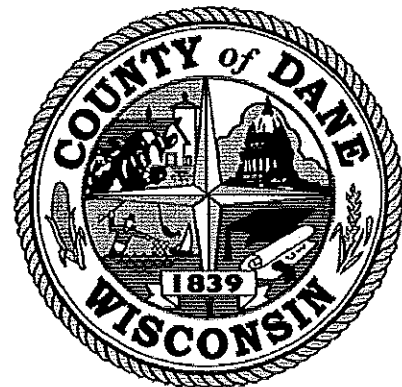




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The Dane County Task Force on Racial Disparities in the Criminal Justice System

Co-Chairs:

Celia Jackson Secretary, Department of Regulation and Licensing
Laurie Mlatawou Attorney

Members:

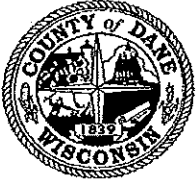
Hon. John Albert Dane County Circuit Court Judge
Pedro Albitar Employment & Training Specialist, DWD/Wisconsin Job Service
Brian W. Blanchard District Attorney, Dane County
Colleen Butler YWCA Outreach and Racial Justice Director
Jule E. Cavanaugh Region 1 Asst. Chief, Wisconsin Dept. of Corrections
Jerome Dillard Program Coordinator, Madison-area Urban Ministry
Catherine Dorl First Assistant, Office of the State Public Defender
Randy Gaber Asst. Chief of Police, Madison Police Department
Detria Hassel Health Chair, NAACP, Madison Branch
Sr. Esther Heffernan Professor of Sociology, Edgewood College
Linda Hoskins President, NAACP, Madison Branch
Linda Ketcham Executive Director, Madison-area Urban Ministry
David Mahoney Sheriff, Dane County Sheriff's Department
Hon. Sarah O'Brien Dane County Circuit Court Judge
Pamela Oliver Professor of Sociology, University of Wisconsin-Madison
Lila M. Schmidt Program Manager, Mental Health Center of Dane County
Capt. Jeff Teuscher Jail Administrator, Dane County Sheriff's Department
Ida Thomas Prison Committee Chair, NAACP, Madison Branch
Barbara Vedder Dane County Supervisor

Staff:

Isadore Knox, Jr. Director, Dane County Office of Equal Opportunity
Colleen Clark-Bernhardt Community Outreach, Dane County Office of Equal Opportunity

Interns:

Eleni Schirmer and Marian Fredal



DANE COUNTY

Office of Equal Opportunity

Kathleen M. Falk
County Executive

Isadore Knox, Jr.
Director

September 21, 2009

Dear Citizens of Dane County,

It is our honor to present to you these recommendations on behalf of the Dane County Task Force on Racial Disparities in the Criminal Justice System. It is our view that racial disparities in Dane County's criminal justice system have reached crisis proportions. With nearly fifty percent of our young African American males either in prison, on probation, or on extended supervision, Dane County consistently ranks as having one of the highest racial disparities in incarceration in the entire nation. We can no longer move forward as a progressive community without addressing this issue.

All members of our community should feel confident that their children will be able to grow up here, be safe, and have the opportunity to develop their talents and abilities. Too many Dane County parents of children of color must now live daily with the fearsome reality that their boys are subject to a fifty-fifty chance of entering our county's criminal justice system when they become adults. This is an untenable situation that we as a community should not accept.

We are proud to say that this report takes into account a wide range of perspectives from Task Force members, and from citizens who came forward to share their experiences. Although there were many times where our different perspectives caused us to view these problems in different ways, this diverse group of Task Force members was able to come together and unanimously approve the vast majority of these recommendations that seek significant changes in the way things are currently done. We have emerged with a report that represents the views of community advocates, law enforcement, social service providers, members of the judiciary, educators, and the legal community. In addition, the voice of the community is heard throughout this report.

We are pleased to share with you a comprehensive set of recommendations that outline an inclusive approach of best practices and bold initiatives to address these disparities. We have spent the past year not only studying our own criminal justice system, but also studying what other communities who have made the commitment to prioritize reducing racial disparities have been doing, and identifying best practices that work.

The first order of business is to have our leaders step forth collaboratively and take on this issue on behalf of the community. It requires a call to action that invites the community at large to participate and become involved. We can no longer afford to sit on the sidelines and leave it up to others to assume responsibility. It is in all of our interests and it is our collective responsibility to ensure that all are treated fairly in our criminal justice

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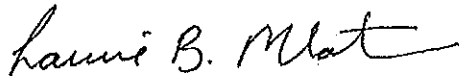
system. We know that public safety is critical to the well-being of our community. Reducing racial disparities and promoting public safety go hand in hand. It is crucial to recognize that racial fairness should not compete with public safety and that public safety increases when the criminal justice system is recognized as being fair.

We urge you to take time to read this report, and look to see where you can become involved and stand behind this issue. In doing so, we seek your support and assistance in adopting and implementing these recommendations so that Dane County may emerge as a leader and model for other communities in Wisconsin and around the country.

Respectfully submitted,



Celia M. Jackson
Co-chair



Laurie B. Mlatow
Co-chair

**The Task Force's Top Ten Priority Recommendations
that will require funding are:**

1. Provide additional funding to diversion programs, p. 31
2. Increase funding to community based organizations to prevent entry or re-entry into the criminal justice system, p. 17
3. Fund a driver's license recovery program, p. 47
4. Establish a restorative justice program, p. 36
5. Support the establishment of the AIM universal inmate screening program, p. 35
6. Vera Institute or Lafollette Institute study of prosecutorial discretion as it affects racial disparities in the DA's office, p. 34
7. Hire a criminal justice grant writer, p. 48
8. Establish a community support program (CSP) for returning offenders in need of mental health treatment, p. 41
9. Create a "Community of Opportunity" by investing in proactive neighborhood-based initiatives in low-opportunity neighborhoods, p. 11
10. Improve and standardize the citizen complaint process for all Dane County law enforcement agencies, p. 17

**The Task Force's Top Ten Priority Recommendations
that may not require funding are:**

1. Hold regular meetings between deferred prosecution and diversion program managers and Criminal Justice Partners, to share program information and racial demographics of referrals, admissions and outcomes, p. 34
2. Conduct testing for employment discrimination based on race and ex-offender status among Dane County employers, p. 43

Top Priorities

3. Sheriff's deputies should not notify immigration (ICE) about inmates booked into the jail for minor offenses, and bailiffs should not notify ICE or detain immigrant residents who come to the courthouse, even if they have an immigration hold, as it is not required by law, pp. 23-24
4. Support efforts in the state Legislature to reduce driver's license suspensions for failure to pay child support, drug violations and unpaid traffic citations, p. 48
5. Increase representation of people of color working in the criminal justice system, including prosecutors, public defenders, court personnel, law enforcement, probation/parole agents and court personnel, p. 15
6. Establish a community education program to teach residents about their rights and about strategies to help those most affected by racial disparities take personal responsibility to keep themselves free of the criminal justice system, pp. 19 and 25
7. Law enforcement should issue enforceable warnings in lieu of arrests for low-level, high discretion offenses, p. 27
8. Develop Racial Impact Statements prior to implementing initiatives, policies or ordinances, p. 20
9. Build routine data collection and assessment of racial/ethnic disparities into all Criminal Justice Partners' processes, and require the collection of Latino/Hispanic ethnicity data, pp. 12-13
10. Call to Action for our leaders to make a commitment and give high priority to reducing racial disparities in Dane County's criminal justice system, p. 11

2009 Recommendations to Dane County Policymakers to Improve Fairness and Public Safety

"We, as a country, are confused about what we are trying to achieve with the criminal justice system. The public needs to be moved away from the idea that the criminal justice system can provide "the" answer to crime. Indeed, our responses to crime often exacerbate the problem. Criminal justice agencies in a local jurisdiction must collaborate to get the proper message to the public and collectively say, "this is what we can do, this is what we cannot do" and then concentrate on improving the system - particularly in the area of reducing racial disparities which result from our collective decision-making."

*-- I. Matthew Campbell, Assistant State's Attorney, Ellicott City, MD.
(Reprinted from the Sentencing Project's 2000 report, "Reducing Racial Disparity in the Criminal Justice System")*

Criminal Justice Partners: Throughout these recommendations, we will refer collectively to law enforcement agencies in Dane County, the District Attorney's Office, the Clerk of Courts, the Dane County Circuit Court, the Office of the Public Defender, and the Department of Corrections Probation and Parole staff in Dane County as "Criminal Justice Partners."

Acknowledgements:

We would like to acknowledge the following people for their support and hard work on behalf of the Task Force:

Dane County Executive Kathleen Falk, Dane County Board Chair Scott McDonell, Gladis Benavides, Richard and Yvonne Harris, Sue Hoffenberg, Marilyn Walczak, John Chisholm, Noble Wray, Lindsey Draper, Elizabeth Lemke Oliver, Anita Arenson, Becky Fry, The Department of Regulation and Licensing, Michelle Goldade, Dane County Citizens who attended our public hearings and sent in written testimony, Dane County Equal Opportunity Commission and EOC Chair Yolanda Woodard for her commitment and vision to make this task force a reality.

Introduction

I. Introduction

In February, 2008 the Dane County Equal Opportunity Commission (EOC) expressed concern to Dane County Executive Kathleen Falk and County Board Chair Scott McDonell about the severe overrepresentation of people of color in the criminal justice system. Their concern was based on the newly released recommendations of the Governor's Commission on Reducing Racial Disparities in the Wisconsin Criminal Justice System, and on other reports that Dane County has one of the highest Black/White¹ incarceration disparities in the nation.

As a result, the County Executive and County Board Chair recommended that the EOC form a Task Force to review the February 2008 report of the Governor's Commission and outline an action plan of specific recommendations and best practices to address and reduce disparities at the various decision points in Dane County's criminal justice system.

In September, 2008 the Task Force began its work. Composed of individuals from different cultural backgrounds and a wide range of disciplines, it includes county residents from law enforcement, service agencies, community advocacy groups, and the court system. The group has met monthly over the last year. It has received presentations from experts in the criminal justice system and listened to members of the community at four public hearings. The group was divided into five sub-groups that met

regularly, each addressing a stage in the criminal justice system.

We have learned many things about ourselves and our community over the last year. We discovered that many people of color move to Dane County to pursue educational and employment opportunities for themselves and their families. Dane County is often ranked favorably as a great place to live and raise a family. However, we heard stories from people of color who came to Dane County to seek a better way of life, away from the violence and challenges of their former neighborhoods, only to be met by a criminal justice system that they feel treats them unfairly.

It should be clearly stated that we all agree that all who choose to live here, for whatever reason, are entitled to the same protection of law.

However, we note that "due to systemic inequality, communities of color get the fewest benefits during economic booms and experience the largest deficits in economic downturns. This economic structure, caused by policies that disproportionately affect people of color, continues to cause gaps in incarceration rates, neighborhood quality, housing affordability, job access, health, retirement and educational attainment. These gaps maintain low economic mobility for entire communities."² These disparities and lack of access to opportunities often impact children of color and influence their ability to succeed as adults. This difference directly affects the racial disparity in the criminal justice system, because race influences access to health care, employment and housing.

The Task Force heard numerous stories of individuals who believed that they were treated

The task that remains is to cope with our interdependence- to see ourselves reflected in every other human being and respect and honor our differences.

--Melba Patillo Beals, 1994

¹ We use the terms "Black" and "African American" interchangeably in this report, with Black being the more inclusive term because it includes people of African descent who are immigrants from other countries, as well as multiracial people.

² 2009 "State of the Dream" report, issued by United for a Fair Economy.

Introduction

more harshly in Dane County because of their race or cultural background than in the challenging and difficult environments they sought to leave behind. One of our own task force members, a person of color, indicated that Whites and African Americans have fundamentally different ways of life, so as long as there is no listening and no understanding, then those in control will use their power to protect themselves, resulting in an unfair system. In essence, she said, "it feels like we have invaded their town and we are not welcome here."

We can debate the degree to which different factors contribute to the disparities. It could be argued that gaps in education, gaps in employment, fear about personal safety, cultural differences, or simply a failure to communicate are the cause; or it could be all of the above. However, there should be no debate that such high disparity is unacceptable and that we should do all that we can to alleviate it.

The primary business of the criminal justice system is to attempt to reduce the risk of harm to victims and potential victims of crime, that is to say, creating and promoting public safety. In order to achieve public safety without disproportionately impacting people of color it is essential that we begin to talk to and learn from one another so that we can effectively build trust and relationships. This is especially true with people of color and the criminal justice system, which includes judges, corrections personnel, court/clerk personnel, police, prosecutors, defense attorneys and others. There is a long history of mistrust on both sides that we must begin to dismantle.

This Task Force is not the first to study and recommend solutions to reduce the racial disparities in our community's criminal justice system, and in fact, some of what this report

recommends is already being undertaken to some extent in Dane County.

We must begin by acknowledging the great deal of work, thought, funding and expertise that has preceded and contributed to this effort in Dane County, which has been a leader for the past ten years in creating and funding a variety of innovative diversion programs aimed at the root causes of crime. (See Appendix for a full list of Dane County's eighteen diversion programs.) Also, please see the Appendix for a summary of Dane County Juvenile Court Administrator John Bauman and others' efforts to reduce racial

disparities in the juvenile justice system, including a link to the 2009 Dane County DMC Solutions Workgroup Report and recommendations.

There have long been efforts underway to address these racial disparities, including a recent agreement by Dane County judges to exhaust other means of fine collection rather than automatically suspending people's driver's licenses. The Madison Police Department has been a leader in proactively implementing best practices and policy changes to directly impact racial disparities. Many agencies have promoted cultural competence and provided high quality training sessions to criminal justice professionals. All of this work has helped to reduce the disparities in Dane County, which in some respects are half of what they were in the mid-1990s. Yet much remains to be done.

This report makes many recommendations, -- some do not require no new funding, and some do. We offer these recommendations with the caveat that those that will require funding, must actually be funded to allow the target agencies to implement them. We have included a section near the end of the report with funding ideas. Our intention is to create real solutions, not unfunded mandates.

The Task Force unanimously approved the vast majority of the recommendations in this report.

Racial Disparity

Several recommendations did not have complete agreement, but were approved by a majority of Task Force members, and the Dane County judges on the Task Force abstained from voting on several issues that may come up before them in future litigation.

Dane County prides itself on being an exceptional place to live. It has a rich history of progressiveness and creating an environment that welcomes people of different backgrounds and lifestyles. This high level of racial disparity is inconsistent with that image. It is with great urgency that we submit these comprehensive recommendations to Dane County leadership to continue to break down those barriers and create communities of opportunity for everyone.

“Issues of race and justice permeate American society, but nowhere are they as profound as in the criminal justice system. Racial and ethnic disparities result from a complex set of factors, many beyond the purview of the criminal justice system. But criminal justice leaders have an opportunity, and an obligation, to ensure that their policies and practices at the very least do not exacerbate any unwarranted disparities.”

-- Marc Mauer, The Sentencing Project

II. Basic Concepts About Racial Disparity

A. The History of Racial Disparity in Dane County

In the late 1990s and early 2000s (the last period for which there is good comparative

data)³, Dane County had an extraordinary Black/White disparity in arrests and imprisonment, and was among the nation’s top five communities with the highest racial disparity – and frequently had the highest disparity in the nation, depending on exactly which measure was used. Blacks in Dane County were roughly 100 times more likely to be imprisoned on a drug sentence than Whites in 1999-2002 – the second highest disparity in the nation (down from 150 earlier in the 1990s when Dane County was the highest); and about 23 times more likely to be sentenced for a non-drug offense, the nation’s highest.⁴

For example, a Black/White incarceration disparity of 25 means that Blacks are 25 times more likely to be incarcerated than whites.

Dane County’s arrest disparities between 1999 and 2002 ranged from 10 to 30, depending on offense, and were also the nation’s highest for violent offenses, theft, robbery and burglary – and ranked fifth for drug offenses. While Dane County did not generally have the highest Black rate of arrest or imprisonment, its black arrest rates have been consistently among the nation’s highest. Other Wisconsin counties often have higher Black arrest rates than Dane. Black imprisonment rates are high in Dane

³ All statistics not otherwise cited in this report have been provided by Task Force member Dr. Pamela Oliver, Conway-Bascom Professor of Sociology at the University of Wisconsin-Madison, and are available at:

<http://www.ssc.wisc.edu/~oliver/RACIAL/RacialDisparities.htm>

⁴ Based on 2002 data, a 2007 article with links to the study is available on the Justice Policy Institute web site at:

http://www.justicepolicy.org/newsitem_show-item=74.htm

Racial Disparity

County, but not as high as those in some other areas.

The Black/White disparity for new prison sentences declined markedly in Dane County after the mid-1990s, but leveled off to about 23 in 2002-2006 (the last year for which we have data). The disparity in prison admissions from revocations also came down from its high in the 1990s but then stabilized at around 40 in recent years. These trends have reduced the disparity gap between Dane and other Wisconsin counties, but Dane still generally has a higher racial disparity than other Wisconsin counties with significant Black non-incarcerated populations (Milwaukee, Rock, Kenosha, Racine, Waukesha and Brown). Arrest trends in Dane County have similarly been relatively stable in the 2000s, except for a steep decline in Black arrests for cocaine sales since 2000. The decline in the extraordinarily high number of arrests and prison sentences for drug dealing since the mid-1990s accounts for most of the decline in the Black/White disparity between the 1990s and the 2000s.

Despite this decline, however, Dane County's disparity in arrest and imprisonment remains very high, generally higher even than in other Wisconsin counties. That is, even though the disparity in the "drug war" has abated, there are still substantial disparities in arrest and incarceration.

B. The Statistics: Disparities, Rates and the Relative Rate Index

Calculating rates: In 2006, there were 201 Whites and 301 Blacks admitted to prison from Dane County. Dividing the white number by the total number of White adults in Dane County (228,683), and then multiplying by 100,000 yields the White prison admission rate, which was 88 per 100,000. The same calculation for Blacks (estimated Black adult population was 13,368) yields a rate of 2,252 per 100,000 in Dane County. The Black rate is the equivalent of

2.25%, i.e. 2.25% of the Black adult population of Dane County was admitted to prison that year. The White rate is the equivalent of 0.08%, less than one tenth of one percent. This was prison admissions: the rates of being in prison in 2006 for people who were sentenced in or expected to be released to Dane County were 7,069 (about 7%) for Blacks and 400 (0.4%) for Whites.

Calculating disparities: The disparity ratio is also called the "relative rate index," and is a calculation used to identify potential differential treatment inside the various stages of the criminal justice system. The Black/White disparity is calculated by dividing the Black rate by the White rate. Using the above example's incarceration rates, dividing 2,252 by 88 yields a disparity of 25.6. This means that, relative to population, Blacks were 25.6 times more likely to enter prison from Dane County than Whites.

While the systemic harm to communities of color comes from the high *rates* of arrest and incarceration, racial *disparities* arise from many factors including potential discrimination within the criminal justice system. A racial disparity measure focuses on equality of treatment, and is especially appropriate for assessing what happens to people after arrest, where it is possible to control for offender conduct.

C. What is Different About Dane County?

What makes Dane County's disparity ratios so high is the combination of high arrest and imprisonment rates for Blacks coupled with low arrest and imprisonment rates for Whites. In addition, Dane County, and Madison in particular, has great income and educational disparities between its white and non-white residents. Madison Police Chief Noble Wray, who chairs the Governor's Racial Disparities Oversight Commission, calls this "the tale of two cities." That is, Dane County's White residents are, on average, highly educated and relatively affluent, while a large proportion of

Racial Disparity

its Black and Latino residents live in poverty, and nearly half of Black and Latino teens do not graduate from high school.⁵

According to Wray, other reasons Dane County's disparities are so much higher than that of other communities include the fact that the non-white population of Dane County is so small that people of color tend to stand out more. In addition, Dane County has become home to people migrating from large urban centers such as Chicago and Milwaukee, and migrations happen between neighborhoods in Dane County as well. This mobile population causes demographic changes in neighborhoods that previously have had few residents of color, which may lead to increased police calls in some areas. Finally, according to Wray, unconscious bias, and to a lesser extent, conscious bias, play a role in the high racial disparities in Dane County's criminal justice system.

According to Black Commentator's "2008's Ten Worst Places to be Black" report,⁶ Wisconsin ranked first, with the highest racial disparities in incarceration in the nation. Significantly, the report explains that the states with the highest Black/White disparities in incarceration have three things in common:

- None are in the South.
- Blacks make up a very small percentage of the population (as in Wisconsin, 6% or less).
- All are adjacent to three of the five largest concentrations of African-

⁵ "The State of Black Madison 2008: Before the Tipping Point," (April 2008). Available at www.ulgm.org.

⁶ Dixon, Bruce. "2008's Ten Worst Places to be Black," Black Agenda Report, (Feb. 2008). Available at: <http://www.alternet.org/story/76843/>

American population in the U.S. –

Chicago, New York, and Philadelphia.

In addressing these issues, it is important to stress several key points. The first is the difference between racial disparity and racial discrimination. As used in this report, a racial disparity is a statistical pattern of racial or ethnic difference at a particular point in the criminal justice system. A racial disparity says there is a problem somewhere, and more detailed statistical analysis can more clearly specify the problem. By itself, the statistical pattern of racial disparity does not prove racial discrimination, which is an illegal act that involves intentionally treating people who are otherwise similarly situated differently on the basis of race. Conscious racial discrimination does happen and it is important to be willing to look for evidence of such discrimination and respond to it. Yet it is just as important to look for evidence of unconscious bias at every point in the criminal justice system.

D. Unconscious Bias

There has been a great deal of psychological research on the brain processes involved in bias. (See bibliography.) Research has shown that there are two different brain systems that can contribute to biased decision-making. One is the thoughts that can be controlled by conscious choice. The other involves the unconscious autonomic brain functioning that works with associations a person has learned from past experience and exposure to media images and other cultural sources. People cannot consciously control this second source of bias and are usually completely unaware of it.

Unconscious bias is more likely when decisions are made rapidly in ambiguous situations on the basis of relatively little information.

Unconscious bias is less likely when decision criteria are clear-cut, when decisions are made more slowly and carefully, and when there is more information. Although people cannot consciously control their autonomic responses,

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they can reduce the impact of unconscious bias by consciously slowing down decisions, drawing their attention to explicit criteria for decisions, and being aware of the possibility of unconscious bias. That is, unconscious bias can to some extent be overridden by conscious thought, but only with effort. Researchers believe it is possible to reduce the effect of unconscious bias through training specifically directed towards it.

All people, regardless of race, have unconscious racial and other biases that arise from their life experience. Members of the White majority are no more likely to have conscious or unconscious biases against those who are culturally different from them than any other group. However, the unconscious biases of the White majority matter more for educational and employment opportunities and criminal justice outcomes because most of the positions of power and authority are held by Whites. These same often-unconscious processes also affect the way that citizens of different racial groups respond to law enforcement and other officials in the criminal justice system.

E. The Big Picture

In the United States as a whole, non-Hispanic whites have an unusually high incarceration rate by world standards, a rate that is three to five times higher than that of any European nation, and higher than all but 16 of the world's nations. Part of the devastatingly high incarceration rate for African Americans is attributable to the overall trend of greater punitiveness toward all racial groups in our criminal justice system. Policies that reduce arrests or incarceration across the board if applied even-handedly will help to reduce the high African American rates of incarceration and arrest in Dane County.

It is entirely appropriate to focus on racial disparities in looking for evidence of conscious or unconscious discrimination. However, the racial disparity measure is not just a function of the minority rate of arrest or incarceration, it is

also a function of the majority White rate. This has two implications. First, when considering whether a racial disparity is just or unjust, it is important to ask not only whether the people of color who are arrested, convicted or incarcerated are guilty of the charged offenses, but whether Whites who have committed the same offenses are just as likely to be arrested, convicted or incarcerated.

Second, programs that reduce the disparity in arrest or incarceration will not necessarily reduce the minority arrest or incarceration rates, and vice versa. Dane County has particularly high disparity primarily because its White population is above average in education and income and has very low rates of arrest and incarceration for most crimes (except disorderly conduct and underage drinking). One direct way of reducing the racial disparity would be to arrest and incarcerate more White people, but this would not reduce the problems associated with high arrest and incarceration rates for Blacks and Hispanics.

*Each generation must decide
whether to dig defensive
trenches or to build bridges,
and each of us must choose
whether to participate in that
decision or just let others
decide for us and our children.*

--Christopher Edley, Jr., 1996

III. Public Hearings

The Task Force held four public hearings – designed as listening sessions – in March, April and May of 2009. They were very well attended, with between 50 and 60 participants at all but one of the hearings. In all, over 200 members of the community attended the hearings, and many more submitted written comments to the Task Force. The Task Force held hearings at the Sun Prairie Public Library, The Catholic Multicultural Center/Centro Guadalupe on Madison's south side, the Dane County Parent Council in the Allied Drive

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neighborhood, and the Warner Park Community Center.

The Task Force was struck by the determination of each of the participants to tell their story and to actually be heard by policymakers from Dane County's criminal justice system who are in a position to make a real difference. While the vast majority of speakers had powerful personal stories to tell about how racial disparities in the criminal justice system have impacted them or someone close to them, participants also included defense attorneys, clergy, teachers, social workers, law professors, members of law enforcement, a mayor, a police chief, the Dane County Clerk of Courts, and members of community-based organizations working with offenders and their families. While the faces changed from hearing to hearing, similar stories and patterns emerged.

We begin by stressing the fact that these hearings were listening sessions, where members of the public told us their stories, which reflected their experiences and perceptions about racial inequality in the criminal justice system. As such, we were hearing one person's view of an event, and understood that we were likely not getting the whole story. The following information that we obtained from the public hearing process reflects those perceptions and experiences of Dane County residents most affected by racial disparities, yet does not purport to be objective fact.

"We cannot run society for the privileged and allow a significant proportion of the population to be marginalized. It impacts the quality of life for all of us if we have 'Throw-away People.' A justice system which tolerates injustice is doomed to collapse."

-- Leonard Noisette, Director, Neighborhood Defender Service of Harlem, N.Y. (Reprinted from the Sentencing Project's 2000 report, "Reducing Racial Disparity in the Criminal Justice System")

One of the most common themes that we heard at all four hearings was that African-American families had moved to Dane County from large urban areas, fleeing daily violence and fear for their children's lives, only to find here a different sort of fear for their children – fear of them being caught up in the criminal justice system. Several different people testified that while they lived in dangerous inner city neighborhoods in Chicago, not one of their family members had ever been arrested there – but upon moving to Dane County to seek a better life, nearly everyone they knew became somehow involved in the system. One woman said that all but one of her children, and all of her nieces and nephews had either gone to jail or prison since arriving in Madison from Chicago.

Other major themes also emerged – racial profiling and inappropriate treatment by police officers of various jurisdictions, a skeptical reluctance to file complaints, unnecessary incarceration and exorbitant tickets for non-violent and/or petty offenses, the "revolving door" of revocations to prison from probation or community supervision, and the reportedly minor incidents that lead to such revocations and many more years of incarceration. One person wondered: "Does anyone realize how easy it is to be sent back?" Another person called the extreme racial disparities in incarceration "a new kind of slavery."

One speaker said he firmly believes that if people commit crimes, they should do the time, but also observed that the "laws are so tight" here that people feel like they can't go to the law for help, and "like they are walking on eggshells." A teacher who works with incarcerated people to transition them into college and work, said he was surprised at the petty nature of his students' crimes, and that once people go to jail for such minor incidents, "the cycle continues."

We also heard from several people who believe that Dane County child support policy creates impossible barriers for fathers who have been

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incarcerated. They told us that they were trying to do the right thing and comply with their child support obligations, but that the Dane County child support policy that requires revocation of driver's licenses for non-payment of support makes them less likely to be able to find a good-paying job to support their children, and keeps them one step away from further criminal charges (and possible revocation back to prison) for driving without a license.

We also heard a good deal of testimony from the Latino immigrant community. One long-time Madison resident from Mexico said that he never had a problem with the police until after the large immigrant rights marches of 2006. Since that time, he has been stopped by police in his car four times for what he believes were pretextual reasons.

A defense attorney who represents Latino clients said that her goal is to keep immigrant clients out of jail because she knows the Sheriff's booking deputies will report them to immigration enforcement (ICE) and they may be deported as a result. She also had a young client who went to his plea hearing, only to be detained by a bailiff from the Sheriff's office who told him he had an ICE hold and so he must place him in custody. As a result, she said, a witness in the case refused to go to court to testify because it was not safe for him to do so.

Others reported that ICE agents who claimed to be local police officers knocked on their doors and entered their homes without permission, demanding IDs from everyone inside and taking family members away to be deported. One woman pleaded with us, "My daughter is so afraid to see the police now. Please do something!" She said that she is now afraid to call the police, but came to speak to us because she wants us to understand what immigrants here are going through.

A landlord who owns several apartment buildings in a low income neighborhood wanted us to hear all sides of the issue. He told us about shootings the night before the hearing, and fights breaking out two days before that. He rents to many families of color who are good tenants, but said that there are "some bad apples" who do not respect the police or landlords. He wants the police to enforce the laws no matter what color the skin of the suspect, but does not want drug dealers arrested and then back on the street two days later with just "a slap on the wrist."

One woman spoke of her thirteen-year-old granddaughter who was shopping with friends at the mall. Although she did not say what led to her encounter with the police, it ended with

the officers issuing her a \$425 ticket for trespassing. "My granddaughter's on her way to college," she said, and such severe consequences could hurt her chances of obtaining admission or scholarships.

She recommended that when police officers talk with children, a parent should be called to participate in the encounter.

The Task Force heard several such stories of communications between residents and police officers breaking down, often ending in serious consequences such as arrest or expensive tickets for disorderly conduct or trespassing. As participants spoke about their frustrations with the criminal justice system, a common thread of personal and family responsibility ran throughout. One ex-offender told us that Black boys and men have been conditioned to expect that at some point they will go to jail or prison, and it has become a "rite of passage."

Like several other hearing participants, he recommended a community education initiative to "put the responsibility back on people to stay out of the system." He likened such a program to one he experienced in the Chicago housing project he grew up in – when after several fatal

One ex-offender told us that Black boys and men have been conditioned to expect that at some point they will go to jail or prison, and it has become a "rite of passage."

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police shootings of residents, the NAACP began classes in the neighborhood that taught residents how to avoid the scrutiny of the police and how to deal with a police encounter in a positive manner to get the best result out of that initial contact. In doing so, the NAACP helped to place the responsibility squarely on community members to stay out of trouble and keep themselves free and safe.

A woman who moved to Dane County from Milwaukee confirmed that once Black kids there reach a certain age, they simply expect to go to jail.

She warned us that if we do not address these racial disparities now, that it will soon get as bad in Dane County as it is in Milwaukee. The Black community in Dane County is experiencing a cycle of kids with parents in prison, she said, and teachers without cultural competence to understand how this trauma affects students. She believes there are many children with undiagnosed mental health problems being dismissed as “bad kids.”

One teenage speaker told us that Black students are treated more harshly than White students. She said that teachers do not see the White kids selling drugs in plain sight, but they always seem to see the Black students get into trouble. A teacher at one hearing echoed those comments and said that school districts should mandate that when kids fight and police are called, that parents and other mediators should be given the first opportunity to help resolve problems, before a student – most often a student of color – ends up arrested and entering the criminal justice system.

Despite the fact that at least half of the participants at each public hearing were people of color, we heard frequent comments lamenting the lack of people of color, and notably, established Black and Latino community leaders at the hearings. We heard from several young leaders who told us that

Many other speakers mentioned this “School to Prison Pipeline” and recommended strategies to stop “throwing away our youth of color” to a future doomed by prison and a life-long criminal record.

without strong participation from the leaders of our communities of color, it will be difficult to reduce the racial disparities in the criminal justice system.

Finally, the topic most often addressed by hearing participants was racial profiling, and the regularity with which Black and Latino community members are stopped and questioned by police officers. One man said, “Not every African-American male out here is doing crimes.” Another woman said, “People of color are looked at as problematic for just being here.”

While we heard many stories of extreme incidents that participants had experienced with police officers and probation/parole agents, we understood that we were hearing one side of the story. Nevertheless, hundreds of community members spent at least two hours of their time to get their stories heard. We do not doubt the seriousness of the problem nor the earnestness of the people we heard, and we have certainly gained the understanding that many members of our community perceive our criminal justice system as unfair – which is a serious public safety problem that the following recommendations are designed to address.

IV. Recommendations Spanning the Whole System

A. A Call for Leadership to Make Reducing Racial Disparities in the Criminal Justice System a Top Priority for Dane County

There is a need for the leadership in Dane County, including all of its many municipalities, to come together collectively and declare that reducing racial disparities, while maintaining public safety, is a priority for our community. One of the greatest assets of Dane County is its quality of life. Many people move here because

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our county is safe and beautiful and provides a comfortable lifestyle. However, many people of color have shared experiences that it isn't always a welcoming place. Despite our best intentions, racial discrimination is present in everyday encounters, employment, education, housing, and the criminal justice system. In order to make inroads in reducing the disparity in the criminal justice system, the entire community needs to participate. Declarations by our leaders that this issue is a priority make a bold statement that Dane County is committed to addressing this as a quality of life issue so that all residents can enjoy what it has to offer.

PROBLEM: Different agencies within the criminal justice system have initiated efforts to reduce racial disparities. However, these efforts are not always coordinated with other aspects of the system. This results in progress being made in one venue, only to be lost in another.

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

B. Create a Community of Opportunity

This recommendation is intended to address some of the root causes of crime and racial disparity in the criminal justice system. While all of our other recommendations are intended to improve the current criminal justice system, this recommendation recognizes that if there are disparities outside of the criminal justice system in wealth accumulation and access to opportunities such as safe neighborhoods and housing; childcare; transportation; education; and employment, there will continue to be disparities inside the criminal justice system.

Disparate access to opportunities can determine which children will succeed, and which are more likely to end up in the criminal justice system. This lack of access to opportunities directly impacts the racial disparities in the criminal justice system, because race is an indicator for access to all of these opportunities. In response to many of the disparities mentioned above, the Kirwan Institute for the Study of Race and Ethnicity proposes a model called "Communities of Opportunity." (see Appendix for more details)

PROBLEM: A large proportion of people of color in Dane County live in "pockets of poverty" – isolated semi-segregated neighborhoods with low-quality housing, few job opportunities, high drop-out rates, high crime rates and poor access to public transportation and shopping.

RECOMMENDATION: Dane County should create "Communities of Opportunity" by investing in proactive neighborhood-based initiatives in low-opportunity neighborhoods.

Neighborhoods that are identified as having a higher crime rate than average should be offered additional resources, including training for success in employment and housing, coupled with access to employment and affordable housing opportunities in the neighborhood. Schools that serve these neighborhoods should be encouraged to offer culturally relevant education, and public transportation to these areas should be expanded and improved. (See Appendix for a detailed description of Dane County's Allied Early Childhood Initiative, a partnership with the University and other organizations that provides comprehensive health, employment, economic and other support services for families in one low opportunity neighborhood, and is seeking to expand to two other Dane County Communities.)

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RECOMMENDATION: Neighborhood law enforcement in diverse Dane County communities should continue and expand collaborations with entities in the community to foster a supportive and safe environment for all.

MPD's Community Policing Teams provide an example of how law enforcement can work together with community residents and leaders to create and implement necessary training, programs, opportunities, and community-building events that are supported by the city and county. Having police assigned to and partnering in low-opportunity neighborhoods would:

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

C. Data Collection

PROBLEM: The Task Force repeatedly found that it could not answer fundamental questions about the sources of racial disparities in arrests and imprisonment due to a lack of analyzed data. In Dane County, the highest jump in the disparity arises at the first step (arrest), but there is evidence of some disparity in outcomes after arrest. The following recommendations apply to all parts of the criminal justice system, including law enforcement, the district attorney's office, the public defender's office, the judiciary, the jail, and corrections.

RECOMMENDATION: Assessment of racial/ethnic equality or inequality in the treatment of accused offenders should be built into the routine processes of Dane County Criminal Justice Partners.

- (a) Each agency should consult appropriate resources on best practices for data collection and reporting for that type of agency, as well as consult with other Dane County agencies to permit better integration of information across different data systems. All agencies should have data systems in place that permit them to manage their work flow and track their treatment of accused offenders. All agencies should record information about accused offenders' race/ethnicity to permit assessment of possible racial/ethnic disparity in treatment.
- (b) Leadership teams in each agency should work with appropriate in-house technical staff and external advisors to prepare standard reports on racial patterns in the treatment of accused offenders. The first report should be released within six months to provide a baseline. Annual reports should be released thereafter to provide a basis for monitoring progress.
- (c) Dane County, City of Madison, and relevant state budgets should provide sufficient staff resources for this effort. Dane County agencies should collaborate to eliminate duplication of effort and develop efficient ways of accomplishing this goal. One-time funding for start-up costs for new systems should be provided by the County or solicited from external funders.

RECOMMENDATION: In accord with the recommendations of the Governor's Commission and concerns expressed by many in public hearings, Criminal Justice Partners should collect and report separate data on Hispanics and should distinguish Hispanics from non-Hispanic whites.

As federal Uniform Crime Reports currently do not distinguish Hispanics (and instead group them with other races, usually white), Dane County law enforcement agencies should work with the Wisconsin Office of Justice Assistance to create a format for Wisconsin arrest reports that make this distinction, and should ask OJA to take responsibility for reconciling the Wisconsin report data with federal standards.⁷

RECOMMENDATION: Criminal Justice Partners with IT staff should use existing resources more effectively by cooperating with each other and with IT staff from other agencies in the state, the Office of Justice Assistance, and technical advisors from universities, private or nonprofit foundations, or agencies in other states.

The goal will be to create standardized data collection and analysis protocols and report formats to facilitate the ongoing assessment of sources of racial disparities in the criminal justice system, and progress toward reducing disparities at every step in the system. Criminal Justice Partners, in collaboration with the Office of Justice Assistance, should seek federal or

⁷ The Office of Justice Assistance compiles law enforcement agency crime and arrest reports from around the state and forwards them to the federal government. The model incident-based reporting system form from the Dane County Sheriff's Office includes separate race and ethnicity items: Race categories are White, Black, AmInd/Alaskan, Asian/PacIs, Unknown, while ethnicity categories are Hispanic, Non-Hispanic, Unknown. Collecting data separately this way is desirable, as it permits the race/ethnicity data to be grouped in different ways for analysis purposes.

foundation grants if needed to support this development work.

D. Clear Statements of Policy and Practice

All Criminal Justice Partners need clear statements of policy to guide decision-making. Research generally shows that unconscious bias is most likely when decisions are made quickly and subjectively with few guidelines. (See Appendix for bibliography on unconscious bias research.) Clear statements of policy and clear guidelines for decision-making backed by training and accountability reduce bias. Law enforcement agencies have set an example in response to concerns about racial profiling in traffic stops and arrests, and, in particular, the Madison Police Department has written and implemented policies on such issues as immigration, equal protection, racial profiling, search incident to noncustodial arrest, and police discretion (see Appendix) that reflect "best practice" models. In addition, the Dane County Sheriff's Office has a written policy defining and prohibiting racial profiling, and other written policies to guide officer discretion.

Research generally shows that unconscious bias is most likely when decisions are made quickly and subjectively with few guidelines.

However, the Dane County District Attorney's office does not have written policies to guide the broad prosecutorial discretion allowed by law, and thus prosecutors follow informal policies and practices when making charging decisions, plea offers, referrals to diversion programs, and other decisions. The same holds true for the Public Defender's office, which in part due to its philosophy of client-driven representation, has no written policies to guide its defense attorneys regarding many important decision points, such as whether to recommend that a client waive his or her preliminary

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hearing, or what types of plea agreements to accept or reject in particular circumstances.

Finally, the DOC has many written policies and administrative rules regarding the revocation process and uses a functional response to violations to guide the supervisor and agent in deciding whether or not there is a low, moderate, or high need to control the offender (protect the public), correct the behavior (treatment in a confined setting), and hold the offender to account (not depreciate the seriousness of the violation). Due to concerns about DOC discretion regarding revocations for "Rule 1" – a broad violation category for behavior that is "is not in the best interest of the public welfare or his or her rehabilitation,"⁸ we recommend that the DOC enhance its existing policies to specifically address revocations for Rule #1, to guide its staff's discretion in deciding when and whether a person has acted against "the best interest" of the public welfare or his/her rehabilitation. The task force heard from several public hearing speakers who claimed that Rule 1 revocations can happen for very minor problems that do not involve law violations or public safety risks.

RECOMMENDATION: The District Attorney should establish written policies that will make the charging and plea bargaining processes more transparent and regularized in order to avoid unconscious bias.

The District Attorney should write down the most relevant factors to consider in making critical decisions in the jobs of assistant district attorneys. This should include decisions to charge or decline offenses as crimes or as ordinance violations, decisions to amend or dismiss counts or entire cases, decisions to make various types of settlement offers, decisions to refer defendants to diversion programs, and decisions informing sentencing

recommendations. While there is no set of written protocols or guidelines that can capture the infinite variety of combinations of offense, offender, victim, and context, such written factors should help avoid the effects of unconscious bias and provide reassurance to the community that the same rules apply to all citizens.

RECOMMENDATION: DOC in Dane County should write policies to guide its officers' application of DOC Rule 1, specifically to clarify what it means to do something that is "not in the best interest of the public welfare or [one's] rehabilitation," to insure that the broad sweep of the rule does not result in re-incarceration for problems or issues that do not involve law violations or risks to public safety.

E. Cultural Competence, Training, and Representation

There is a broad social need that the organizations serving the public be staffed by people who are as culturally diverse as the people they serve. There is also a need for everyone serving the public to develop cultural competence – understanding and respecting cultural differences, and basing one's actions on actual knowledge of different cultures within the community, leading to respectful interactions with people from those cultures. Cultural competence allows people to recognize and avoid the tendency to make assumptions or stereotype people on the basis of cultural or racial group.

Racism in American society is well-documented. We are a country of many different cultures, languages, and customs. In Dane County we have an increasingly diverse community, and professionals in the criminal justice system do not always know about or understand cultural differences that can exacerbate cultural miscommunications and disparate treatment. These differences create barriers, such as fear of the unknown, discomfort or inability to

⁸ Wis. Admin. Code § DOC 328.04(3)(a).

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communicate, and lack of experience and exposure, all resulting in the potential for conflict steeped in a lack of understanding.

Despite many valiant efforts, racism is pervasive in our society and in many of our institutions, including the criminal justice system. During our public hearings we heard many stories from African Americans and Latinos who felt they were treated unfairly based on their race. Whites also described their own experiences of how people of color were treated differently.

Among those valiant efforts was the November 2008 three-day training of nearly all Madison Police Department commanders and several UW Police Department officers, presented by the National Institute of Crime Prevention's Lorie Fridell. The Madison Police Department also conducted training for the entire department, including over 400 street-level officers, on unconscious bias in the Fall of 2007, presented by UW Psychology Professor Patricia Devine, a renowned expert in this area. The training sessions were highly acclaimed by participants and focused on unconscious bias as it affects policing strategies and practices. In addition, last year the Dane County Sheriff's Office held its own in-house training on racial bias in policing. While these trainings are exemplary, it is important that other Dane County law enforcement agencies also conduct training on avoiding bias in policing, and that all agencies conduct training regularly, to reinforce the value each department places on rooting out such bias, to promote fair and effective policing.

We all have had experiences that create unconscious biases and prejudices. It is not unusual for any of us to formulate opinions of individuals and circumstances based on a limited number of facts. These unspoken predeterminations can interfere with our best intentions of being fair and impartial. There is an urgent need for people in decision-making positions to raise the level of sensitivity in working with people from different cultures and backgrounds in the criminal justice system. This

requires placing a high value on diversity and learning more about the cultural groups that make up the community. In Dane County, much of the leadership in criminal justice agencies is White. This factor, coupled with the lack of knowledge and skills to work with people from different backgrounds, creates an environment for misunderstanding and miscommunication.

PROBLEM: People of color are seriously underrepresented in the staff of various agencies of Dane County's criminal justice system. Most Criminal Justice Partners employ a very small number of people of color, some as few as one or two, while a large proportion of Dane County residents going through the criminal justice system are people of color. This includes most law enforcement agencies, the District Attorney's office, the Department of Corrections, the Public Defender's office, and court personnel including judges and bailiffs. This lack of representation exacerbates communication problems between system people and community members and contributes to perceptions that the system may be unfair.

RECOMMENDATION: Criminal Justice Partners should continue and expand hiring efforts to increase the representation of people of color, both as legal and support staff, especially those who directly serve the public, such as attorneys, court personnel, law enforcement officers, and probation and parole agents. All leadership in the criminal justice system should implement a vision that places a high value on diversity and emphasizes it as a priority in hiring practices and training programs. In addition, cultural competence should be a requirement for all new hires, regardless of race or ethnicity.

Hiring efforts should include intentional and affirmative outreach to underrepresented groups to increase the pool of applicants, and leaders should emphasize the importance of having a diverse workforce. Department heads should report on these efforts to the Public

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Protection & Judiciary Committee of the Dane County Board, which will then report to the rest of the Board and the County Executive.

RECOMMENDATION: The Madison Police Department has succeeded in hiring a police force that is representative of the community it serves. MPD should share as best practice its methodology for recruiting and retaining highly-qualified officers of color with all other Dane County law enforcement agencies.

The Sun Prairie Police Chief attended a public hearing and spoke about his desire to learn best practices in order to hire more minority police officers that reflect the increasingly diverse community that his department serves.

RECOMMENDATION: All leadership in the criminal justice system should implement a vision that places a high value on diversity and emphasizes it as a priority in hiring practices and training programs.

PROBLEM: There are inconsistent methods throughout the criminal justice system for increasing the cultural competence of existing staff. Many agencies do not have any programming to bridge the gap of understanding with the various cultural groups that are impacted by their work. With an increasingly diverse community, professionals within the criminal justice system need to build strong cross-cultural relationships and explore ways to build rapport and trust with communities of color.

If we could find ways of getting people to work on common projects...racial divisions seem to disappear and friendships occur.

--Thomas H. Kean, 1997

RECOMMENDATION: Encourage all Criminal Justice Partners to provide annual high quality training to prevent racial bias in policing and other areas of the criminal justice system. Such training should include cross-cultural conflict resolution strategies. Provide funding to bring training, like the November 2008 training of the National Institute of Crime Prevention's Lorie Fridell, back to Dane County every year, and expand it to include more Dane County law enforcement agencies.

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

The IDI is a statistically reliable, cross-culturally valid measure of intercultural competence adapted from the Developmental Model of Intercultural Sensitivity and has been used with law enforcement agencies around the country.

PROBLEM: The task force heard frequent expressions of concern about both the total amount of funding provided for services to help rehabilitate offenders or prevent offending among at-risk people and how funding is allocated among organizations. Concern was often expressed about the lack of funding of organizations that are controlled and staffed predominantly by people of color, and that provide services tailored to address the particular needs of people of color. Due to the scarcity of funding resources, County social service contracts have been concentrated in a few well-funded large providers, staffed by few people of color -- in effect freezing out smaller community-based organizations. As the population of offenders, ex-offenders, and people at risk of offending is disproportionately people of color, it is appropriate to weigh the employment of people of color and the adequacy of programs for specific racial/ethnic groups heavily in making funding decisions.

RECOMMENDATION: Governmental entities in Dane County should increase the overall level of funding to community-based organizations that work to prevent entry or re-entry into the criminal justice system, as well as the level and proportion of funding to smaller community-based organizations staffed primarily by people of color and working specifically with people of color.

Increased weight in funding decisions, according to established procurement processes, should be given to the fit between the ethnic/racial mix of the people providing services and the people requiring those services, to the capacity of an organization to provide culturally-appropriate services, and to past records of success in providing services.

PROBLEM: Speakers at the public hearings testified about the need for police officers in particular to be trained on racial bias in policing and learn more about the diverse cultures that they often find themselves in contact with. For example, one White woman who was the victim of a violent crime testified that although she told the responding officer repeatedly that she did not see her attacker, the officer continued to ask her if the attacker was Black, and asked her to view a line-up of Black suspects.

RECOMMENDATION: Criminal Justice Partners should create an ongoing forum for dialogue on issues around race and culture among staff and members of the community to build bridges and break down barriers of misunderstanding. In doing so, they should collaborate with organizations that work with people of color and invite their participation on decisions that will substantially impact their constituents.

RECOMMENDATION: Encourage Criminal Justice Partners' staff to learn Spanish or Hmong. The county should provide funding to create incentives for those willing to take classes to become bilingual.

F. Better Complaint Resolution Options

During the public hearing process, the Task Force heard many accounts from Dane County residents who felt that they were mistreated by the police or other actors in the criminal justice system. When asked if they filed a complaint about the incident, several hearing participants said that they did not file a complaint because they did not think it would do any good. One person said that a person working for Probation and Parole told him that he can complain as much he wants but that nothing will ever be done. This was a pattern that Task Force members noticed at three out of the four public hearings we held, which led us to investigate best practices in other communities for handling citizen complaints.

PROBLEM: There is a perception in the communities most affected by racial disparities that filing complaints with a police agency or other criminal justice agency will not lead to a satisfactory resolution.

RECOMMENDATION: Improve and standardize the citizen complaint process for all Dane County law enforcement agencies by creating county-wide complaint resolution guidelines.

Such guidelines should include a two-way communication between the citizen and the agency as an informal alternative dispute resolution process, and require agencies to provide complainants with a response summary report, summarizing the agency's investigation and findings, rather than a short form letter informing citizens that their complaint was not sustained. This will allow for a more responsive and positive dialogue, and provide more assurance to the complainant that a thorough investigation was conducted, and that regardless of the final decision, both the complainant and the person/agency complained against have had a chance to tell their story.

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

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

While Madison's 1998 Task Force on Race Relations recommended hiring a criminal justice ombudsman to act as a clearinghouse for all questions and complaints by Dane County residents regarding not just law enforcement, but any aspect of the criminal justice system, this recommendation was never implemented due to budgetary constraints.⁹

Currently, when residents are not satisfied by the agency's response to their complaint, their next option is to file a complaint with the Police and Fire Commission (PFC). However, the PFC only addresses complaints against Madison police officers, not the other Dane County law enforcement agencies. In addition the PFC's

⁹ According to Madison Police Chief Noble Wray, who served on the 1998 Task Force and also chairs the Governor's Oversight Committee that is currently implementing the recommendations of the 2008 Governor's Commission on Reducing Racial Disparities, the ombudsman recommendation was the only recommendation to come out of the Task Force on Race Relations that was not implemented – not for lack of agreement that it would improve the complaint process, but for mainly financial reasons.

formal process can be very intimidating and overwhelming for many people, especially since complainants must go public with their complaint, and are forced to hire an attorney in order to have any chance to succeed against the greater authority of the law enforcement agency, who is represented by counsel.

RECOMMENDATION: The Dane County Board should appoint a group of citizens and criminal justice system representatives to study best practices in reviewing complaints, including the emerging best practice of the Police Auditor -- a permanent external citizen oversight agency that has the authority to audit, monitor, and inspect any aspect of police operations.¹⁰

Like the criminal justice ombudsman, a police auditor would provide independent oversight and investigation of complaints, while instilling confidence in the complaint process through objective review of police/criminal justice agency misconduct investigations and outreach to the community. An independent police auditor is a growing practice around the country that promotes police accountability and strengthens the relationship between police departments and the communities they serve.

Suggestions to improve the citizen complaint process:

1. Investigation of complaints should go beyond the facts of individual cases, or whether or not there was reasonable suspicion or probable cause, and examine patterns of the officer's conduct.
2. MPD's "Early Intervention Program" to track complaints will begin later this

¹⁰ See Walker, Samuel, The New World of Police Accountability, Ch. 6, "The Auditor Model of Citizen Oversight – Police Auditors," SAGE Publications (2005).

year. This automated complaint processing system will trigger intervention when certain patterns are detected. MPD is also planning to provide reports to the public about internal discipline of its officers, while protecting the anonymity of the officers involved. This best practice should be considered by other county law enforcement agencies as well.

3. Put citizen complaint forms on the homepage of law enforcement agencies' websites, not under "Professional Standards" where most people unfamiliar with that term would not naturally look.

G. More Communication Between Criminal Justice Personnel and the General Public

PROBLEM: There is a lack of understanding of the criminal justice system in many communities of color. This results in fear, mistrust and misinterpretations of the role of law enforcement. There is an inability to effectively communicate from both sides, creating a gap of misunderstanding and no place for either side to stand to begin breaking down the barriers.

RECOMMENDATION: Dane County Office of Equal Opportunity should collaborate with legal associations to create a community education program involving a series of classes targeted at communities of color to help people have a basic understanding of their rights.

For example, programs held in neighborhoods or in collaboration with community-based organizations sharing fundamental issues with residents such as arrest, traffic matters, child support, expulsions, probation, court procedures, jail procedures, and access to diversion programs would be discussed in a forum that is not threatening or

confrontational. This can be structured as a bridge-building opportunity to break down barriers between people of color and the criminal justice system.

H. Racial Impact Statements

Racial impact statements are a new innovation and best practice cited by the Sentencing Project as a proactive measure that requires an assessment of the projected racial and ethnic impact of new policies and laws prior to their adoption.¹¹ In 2008, Iowa and Connecticut became the first states to adopt a policy of requiring state legislators to assess any unwarranted racial disparities that may result from new initiatives, and then to consider whether alternative measures would accomplish the same public safety goals without increasing racial disparities. In addition, the Minnesota Sentencing Commission utilizes this best practice to provide information about the racial impact of crime policies and sentencing reform proposals to policymakers.¹² In these states, a racial impact statement is sent

¹¹ The Sentencing Project, Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers. Second Edition 2008.

¹² The Minnesota Sentencing Guidelines Commission noted its policy goals for implementing racial impact statements: "If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota's criminal justice system. Just as with the Commission's fiscal impact notes, the agency does not intend to comment on whether or not a particular bill should be enacted. Rather it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons." (Racial Impact for H.F. 2949, Minn. Sentencing Guidelines Commission, February 2008).

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for consideration to the authors of a bill, committee chairs and staffers for consideration alongside the bill.

According to a recent article in Criminal Justice, published by the American Bar Association, the “premise behind racial impact statements is that policies often have unintended consequences that would be best addressed prior to adoption of new initiatives. In this sense they are similar to fiscal and environmental impact statements.”¹³

PROBLEM: Some law enforcement initiatives and other county ordinances and policies may have the unintended consequence of increasing racial disparities, even while the stated goal is race-neutral. While at least one Dane County police department routinely considers racial impact when planning a police response to a public safety problem, this is currently done informally in conversation.

RECOMMENDATION: Law enforcement agencies, as well as all other decision makers in Dane County’s criminal justice system, legislators and chief executives, should routinely develop written racial impact statements prior to implementing needed initiatives, policies or ordinances.

When a particular initiative or policy is projected to increase disparities, alternatives that may be just as effective in resolving the problem should be preferred. If the agency decides that the most effective strategy would be the one with the greatest racial impact, then the agency should share this information with

¹³ Mauer, Marc, “Racial Impact Statements: Changing Policies to Address Disparity” Criminal Justice, Vol. 23, No. 4, American Bar Association (Winter 2009). (Article includes examples of how racial impact statements are used.)

the affected community and stakeholders before the strategy is set in motion.¹⁴

I. Special Issues Regarding Latinos and Other Immigrants

This year, the Pew Hispanic Center reported that racial disparities among Latino immigrants in federal prison are the highest ever. In 2007, Latinos accounted for 40% of all sentenced federal offenders -- more than triple their share (13%) of the total U.S. adult population. The main driver of this disparity is rapid increases in immigration enforcement, with immigration offenses representing one quarter (24%) of all federal convictions in 2007.¹⁵

Although there is little data on the numbers of Dane County Latinos involved in the criminal justice system because they are counted as White to comport with federal Uniform Crime Report (UCR) requirements, anecdotal evidence from Task Force members who spend significant amounts of time in the Dane County Courthouse indicates that Latino representation in our criminal justice system is out of proportion to their representation in the Dane County population, which is approximately 6%. While the disparity for Latinos in Wisconsin has declined in recent years, it is still at 15:1 for

¹⁴ Possible legislation to require Racial Impact Statements could be patterned after Environmental Impact Statements (EIS) currently mandated by the Wisconsin Environmental Policy Act, Wis. Stat. § 1.11. DNR regulations define an EIS as “an environmental analysis which is prepared to inform decision-makers and the public of a proposed action’s effect on the environment, and develops, describes and evaluates alternatives...” Wis. Admin. Code § NR 150.02(11).

¹⁵ Lopez, Mark Hugo and Gretchen Livingston, “Hispanics and the Criminal Justice System: Low Confidence, High Exposure.” Pew Hispanic Center, Washington, D.C. (April 7, 2009).

drug offenses and 5:1 for other offenses.¹⁶ It is possible that some of these decreases in state numbers are due to routing offenders to the federal system through immigration enforcement.

Public Defender Partnership with New Community Immigration Law Center

PROBLEM: Federal immigration laws are extremely complex, and require deportation of non-citizens, even those who are in the country legally, for certain criminal violations, especially those related to illegal drugs. However, public defenders specialize in criminal law, not immigration law, and are therefore not able to provide advice to their clients regarding the potential immigration consequences of accepting a particular plea agreement, remaining in custody, or taking a case to trial. Currently the state public defender's office is able to collaborate with immigration attorneys only on the most extreme cases, and the vast majority of low-income immigrant defendants must go without expert legal advice regarding the effect their criminal case may have on their immigration status.

RECOMMENDATION: The State Public Defender's office in Madison will partner with the Community Immigration Law Center in Madison to provide expert legal advice from local immigration attorneys to public defenders representing immigrant clients.

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

In order to comply with Title VI of the Civil Rights Act of 1964, certain documents, informational brochures, complaint forms, and

¹⁶ Oliver, Pamela, "Racial Disparities in Dane County Criminal Justice," University of Wisconsin. (October 2008).

other written materials that inform people of their rights and duties regarding the criminal justice system, should be translated by a professional translator into Spanish and Hmong, and posted in those languages on all Dane County law enforcement and criminal justice agency websites.

PROBLEM: Lack of professional translation services has caused a brochure on "Jail Diversion Programs" to be translated into Spanish to say, "Dane County Jail Fun Programs" (Dane County Jail Programas de Diversión). Currently, many Dane County law enforcement and criminal justice system agencies ask Spanish-speaking employees or acquaintances to translate documents and forms, if they are translated into other languages at all. It is important for agencies' credibility with the communities they serve, as well as for maintaining professional standards, to use professional translation services to perform this important function.

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

Increase Availability of Interpreters for Law Enforcement

PROBLEM: A defense attorney at the Centro Guadalupe public hearing testified that her clients who speak Spanish often do not get interpreters when interacting with police officers, even when they ask. If they show even a little bit of English, officers take this to mean that the person understands them well enough, and do not call for an interpreter. Law enforcement officials confirm that there are not enough Spanish-speaking officers to provide interpretation for every encounter with a Spanish-speaker. When no interpreter is

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available, officers sometimes call a telephonic interpretation service.

RECOMMENDATION: Dane County law enforcement agencies should create stronger and more consistent policies that determine when an interpreter should be called, or telephone interpretation services should be utilized, for a person with limited English ability.

Policies should require that when a person has trouble understanding English, even if they try to communicate with a few words of English, an interpreter or telephone interpretation service should be called to ensure that the person fully understands his or her encounter with law enforcement.

New Routes (Nuevas Rutas)

New Routes is a Dane County-funded diversion program based at Centro Hispano, that connects with Spanish-speaking defendants who are scheduled to appear in court in order to prevent incarceration, reduce sentence time, prevent issuance of bench warrants, and work with the criminal justice system and social service agencies to assist defendants. This program began in response to a study that found over-representation of Latinos among persons issued bench warrants for failing to appear in court. The Dane County Clerk of Courts sends a letter in Spanish to defendants with Spanish surnames informing them of their duty to appear in court, and refers them to New Routes.

New Routes helps to assure clients' compliance with bail, hearing dates, and sentences, and provides social service and legal referrals, and follow-up. The program tries to help clients navigate the criminal and civil justice process for cases including alcohol and drug-related charges, battery, disorderly conduct, domestic abuse, sexual assault, retail theft, prostitution, driving without a license/while revoked, and small claims court cases. In 2007, 454 cases were handled, more than double the target of

200. Of clients served in 2005, 83% had no further charges as of 2008.

PROBLEM: Currently only one staff member provides these services to more than double the expected number of clients with an extremely low budget, and has limited legal training. Even so, the Program Coordinator has shown that by simply helping an immigrant navigate the criminal justice system and teaching him or her about the laws and how they are enforced, the vast majority of New Routes clients follow the law after their initial violation.

RECOMMENDATION: Dane County should continue to support New Routes, and consider increasing funding commensurate with the increase in the numbers of clients served successfully. We recommend a funding increase to add a staff member who is a legal professional to provide legal information services to Latino community members. Increased funding would also allow for additional legal training/education for the Program Coordinator.

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

PROBLEM: Many Latinos in Dane County are new immigrants who speak little English, and are not familiar with our laws and legal system. Increased federal immigration enforcement in Dane County has many immigrants afraid to open their doors and become a part of the larger community. Several public hearing speakers shared their experiences of U.S. Immigration and Customs Enforcement (ICE) agents who knocked on their doors claiming to be the local police. One speaker said she teaches her children to respect and be helpful to the police and so she opened the door, only to find ICE agents who proceeded to detain and later deport the children's father. This stepped up federal enforcement has created a panic situation in the Latino community, which may

be impacting immigrants' trust of the local police, who in turn depend on the community's trust to help them fight crime and promote public safety.

RECOMMENDATION: Dane County law enforcement agencies should model an outreach program similar to the Madison Police Department's Amigos en Azul to work to build the trust of Latinos in Dane County.

Efforts should include community education initiatives using Latino media outlets such as *La Movida*, *La Comunidad News*, *La Voz Latina*, *Madison en Vivo* (TV), WORT, and community events. This should include more than just staffing an information table, but be an active effort to teach the Latino immigrant community about the laws and how they are enforced, what to do when they are stopped by the police or involved in a traffic accident, and how to access Spanish-language interpretation and legal assistance when a person has a contact with the criminal justice system.

Dane County Sheriff's policies regarding communication with U.S. Immigration and Customs Enforcement (ICE)

While the Dane County Sheriff's Office (DCSO) has consistently refused requests by ICE officials that it participate in raids and round-ups of undocumented immigrants in our community, the DCSO communicates voluntarily with ICE in at least two ways that create a disparate impact on Latinos and other immigrants in Dane County. Neither is required by law.

1. **DCSO Jail ICE notification policy:** The Sheriff's policy requires Dane County Jail booking deputies to send an email notification to ICE for every immigrant booked into the jail, regardless of immigration status or severity of the alleged criminal activity. The email includes the person's name, date of birth and offense, and serves as an invitation for ICE to place an immigration hold on the person. During the first six months of 2009, DCSO made 188 notifications to ICE, and 73 immigration holds

resulted. In all, DCSO turned over 42 people to ICE officials from the jail.

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

RECOMMENDATION: The Dane County Sheriff should narrowly tailor the ICE notification policy so that DCSO does not notify ICE about inmates being booked into the Dane County Jail who are charged with minor offenses, such as those charged with driving without a license, or other minor ordinance violations.

The broad sweep of the current policy, while removing some dangerous offenders from the community, also leads to deportation of hardworking immigrant residents who are here to make a better life for themselves and their families. This recommendation would prevent non-criminal immigrants from being uprooted and forced to leave their families without support, while allowing the Sheriff to continue to protect public safety.

2. **ICE notification in the Dane County Courthouse:** The second voluntary communication that the DCSO initiates with ICE occurs when law enforcement requests that 911 dispatchers check the national crime database (NCIC) for some individuals, including

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immigrants, when they are scheduled to appear at the Dane County Courthouse. After this check, if the dispatcher finds that the person has an immigration hold, the DCSO bailiff will place the person in custody when they arrive at court, and notify ICE to pick them up later. The DCSO believes that it is mandatory to detain a person who has an immigration hold due to a violation of federal immigration laws. However, the U.S. Attorney General has published a binding opinion stating that it is merely voluntary for local law enforcement to detain immigrants accused of being in the country without documentation, not mandatory.¹⁷

PROBLEM: Social service providers and defense attorneys who work with Latinos report that some of their clients are now refusing to go to the courthouse for any reason, including to testify as a witness in a case, or to assert their rights in family court or small claims court, for fear that the DCSO will notify ICE and detain them.

RECOMMENDATION: DCSO should not alert ICE when they find that a person appearing at the Dane County Courthouse has an immigration hold, and they should not detain the person, because it is not required by law.

¹⁷ See U.S. Attorney General's Office of Legal Counsel April 3, 2002 memorandum: "Non-preemption of the authority of state and local law enforcement to arrest aliens for immigration violations." See also, National Council of La Raza v. Department of Justice, 411 F. 3d 350 (2nd Circuit, 2005) (Citing then-Attorney General John Ashcroft explaining that the 2002 OLC memo should be interpreted to mean, "when state and local law enforcement officers encounter an alien ...who has been listed in the NCIC database for violating the [Immigration and Nationality Act], they may arrest that individual and transfer him to the custody of the INS. The policy and the authority are no broader than this, and the narrow, limited mission that we are asking state and local police to undertake is a voluntary one."

The current policy has a chilling effect on immigrants who no longer feel safe to use the courthouse to assert their rights in civil or criminal court proceedings.

V. Recommendations for Particular Stages of the System

The first point at which there is systematic data on racial disparities is for arrests and traffic stops. There is no direct way to tell whether racial disparities in arrests or traffic stops are due to differences in the rate of offending or to differences in police responses to offending. Studies comparing arrest and crime victimization data generally conclude that there is a closer correspondence between rates of offending and rates of arrest for more serious crimes than for less serious crimes.¹⁸ Changes over time in rates of arrest for public order, alcohol and drug offenses, and less serious property crimes (especially retail theft) are often due to policy decisions about where to concentrate police resources rather than changes in the rate of offending. The Black arrest rate in Dane County is equivalent to 31% of the Black population, compared to 13% for White adults.¹⁹ Data in the Appendix show substantial Black/White differences in adult arrests across offense groups, with the largest disparities for robbery and opium/cocaine sales. These data come from the Uniform Crime Report, which groups Hispanics with Whites and summarizes arrests across all Dane County agencies.

¹⁸ See e.g. Hindelang 1978; Hindelang, Hirschi, Weis 1979; Cohen and Land 1984; Elliott and Ageton 1980; O'Brien, Shichor, and Decker 1980; Bogges 1997.

¹⁹ "Racial Disparities in Dane County Criminal Justice," Pamela Oliver, October, 2008.

A. Interventions to Prevent Offending: Community Education

During our public hearings we heard from many speakers about interactions with police officers that ended up in the person's arrest or receipt of many hundreds of dollars in tickets, when the encounter became confrontational. Other public hearing speakers spoke about the need for members of Dane County's African-American and Latino communities to be educated about how to best handle an interaction with police officers so that the best possible outcome may result. Others spoke about community education programs they have been involved in that were effective in teaching members of communities most affected by racial disparities how to take personal responsibility for keeping themselves free of the criminal justice system.

PROBLEM: *Nearly half* of Dane County's African-American young men, ages 24-29 are either in jail or prison or on probation/parole. This stark reality leads some to believe that young African-American males in our county simply expect to be imprisoned at some point, and consider it a "rite of passage." Due to perceptions among some African-Americans that Dane County's criminal justice system is unfair and biased against them, and that so many have actually witnessed family members arrested and incarcerated, there is a tendency for hostility to bubble up during police encounters, which can lead to negative outcomes.

RECOMMENDATION: Collaborate with African-American, Latino and Asian community leaders, professional legal organizations, community-based organizations and churches, Dane County school districts, and higher educational institutions, to create a community education program targeted at members of the communities most affected by disparities in the criminal justice system. This program would focus on teaching strategies to help people take personal responsibility to keep themselves free of the criminal justice system and to ensure that their legal rights are protected.

This will include methods to avoid coming under the scrutiny of the police, such as not engaging in illegal activities, as well as teaching positive communication techniques such as "verbal judo," to use when a person finds themselves in contact with a police officer, that will help ensure that he or she leaves that encounter a free person. In this way, members of the affected communities may take responsibility for their own role in reducing racial disparities, and not place the full responsibility on members of the criminal justice system itself.

B. Policing Practices

1. Open Records Request

The Task Force requested traffic stop and arrest data from all twenty-four of the law enforcement agencies in Dane County, including the Dane County Sheriff's Office, the Capitol Police, the UW Police, Madison Police and the police departments of twenty other municipalities. Most of these agencies readily complied with the open records request, five agencies ignored it, and a few required several reminders before finally submitting data. Preliminary results show a continuation of Dane County's high Black/White disparities, and the less severe yet still high Hispanic/White disparities. The data do not show disparities for Asians or Native Americans.

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Although we have not broken the data down by offense category due to discrepancies in reporting methods among the agencies, the vast majority of citations for both Blacks and Whites was for Operating After Revocation/Suspension of a driver's license and vehicle registration violations. A description of the preliminary findings of the open records request, an analysis of what we learned from requesting Hispanic ethnicity data, and the data tables, are in the Appendix.

2. Police Discretion and Policing Strategies

While most people think of the police function as protecting public safety by arresting all those who commit crimes, few understand the complex, varied and discretionary nature of the police role in society. The reality is that police are called and respond to a minority of all crimes that are committed each day. Nationally, only half of all violent crimes and one third of all property crimes ever get reported.²⁰ Yet, when a person calls in to report a problem, the police must respond to the call – even if it is an anxious resident concerned about a few African-American young men bouncing a basketball on the corner.

Police officers, by necessity, exercise discretion in deciding whether or not to arrest people for violations of the law, whether to pull a vehicle over, whether to stop and question a person, and countless other minute-to-minute discretionary decisions such as how to resolve the many conflicts between individuals they are called upon to address. Because police officers are literally on the front lines of many of society's unsolved problems, and are granted broad discretion in deciding how to deal with

those problems, they clearly play a central role in determining who enters the criminal justice system. Policies and training on the use of police discretion with an awareness of the possibility of racial bias and the need for equal protection become a critical component in lessening racial disparity.

There has been an increasing awareness that policing strategies associated with the "war on crime" – such as "zero tolerance," police "sweeps" and the "broken windows" approach in high crime low income areas, with arrests for minor as well as serious offenses -- have resulted nationally in both high arrest and imprisonment rates and high racial disparities. Milwaukee District Attorney Chisholm in his presentation to the Task Force noted that 67% of all the charges by his office involve Blacks who make up only 33% of Milwaukee's population, while most of the racial disparities involve arrests for lower level crimes.

In Madison and Dane County, as Chief Noble Wray noted, there is a "tale of two cities" with low arrest rates for the relatively affluent and more highly educated White residents, while the Black and Latino residents, with much higher arrest and imprisonment rates, tend to live clustered in poorer neighborhoods with only about half of their teens graduating from high school. These recommendations include the implementation of a "best practice" model whose purpose is the reduction of overt public drug markets destructive of poor neighborhoods, while recognizing the often deeply rooted racial tensions that accompany drug enforcement. Recommendations also encourage police agencies to adopt policies to guide officers' broad use of discretion, and propose the use of discretionary diversion to appropriate treatment, community service or restitution programs for lower level crimes that tend to be more visible in highly policed areas.

PROBLEM: Many law enforcement experts believe policing strategies emphasizing large numbers of arrests contribute to racial disparity and may not be the most effective ways to

²⁰ This information comes from comparing the number of reported crimes from the FBI-administered Universal Crime Reports (UCR) with the results of the National Crime Victimization Survey administered by the U.S. Department of Justice.

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reduce serious crime. Most arrests are for low-level offenses, such as disorderly conduct, retail theft, and "other except traffic." Police are necessarily deployed more heavily in high-crime areas and some of the racial difference in arrest rates, especially for lower-level offenses, are due to police deployment patterns.

RECOMMENDATION: Adopt alternate strategies for addressing the problem of illegal drug dealing that have worked well elsewhere, such as the High Point Model.

The Madison Police Department is seeking funding to implement a program based on the High Point Model, in which community pressure is brought to bear on drug dealers as an alternative to prosecution. Details about this program are given in the Appendix.

RECOMMENDATION: Law enforcement should be encouraged to issue enforceable warnings in lieu of arrests for low-level, high discretion offenses, such as disorderly conduct, traffic violations, minor retail theft, drug use and prostitution.

The intent is to integrate pre-arrest diversion options with existing post-arrest diversion programs, such as Deferred Prosecution Unit, RESPECT, the Drug Treatment Court, the Pathfinder program, New Routes, Cool Choices, and the Treatment Alternative Program (TAP) as well as the Time Bank and other restitution and community service programs.

RECOMMENDATION: Encourage all Dane County law enforcement agencies to seek training on any new programs that are developed to offer alternatives to arrest, and provide County funding for such trainings.

This training must include information regarding police discretion, an understanding of when officers can access alternatives to arrest, and a thorough explanation of the different options available to them.

RECOMMENDATION: All Dane County law enforcement agencies should adopt clear policies to guide police officers' broad use of discretion in their day to day duties, including guidelines on proper and improper factors to consider regarding when and whether to make arrests and write citations, such as the policy written by UW law professor Michael Scott, which was adopted in 2009 by the MPD. (See Appendix)

RECOMMENDATION: Law enforcement agencies should create policies to reduce the use of multiple citations for relatively minor violations such as disorderly conduct, underage drinking, loitering, and trespassing, which when added together can total over \$1,000 for a single incident.

Such use of multiple citations places an extreme burden on low-income people who cannot afford to pay the fines and may set off a downward spiral leading to a bad credit report, inability to obtain housing or employment, or arrest for failure to pay the fines.

RECOMMENDATION: All Dane County law enforcement agencies should require officers to explain to motorists why they were stopped, and to individuals why they have been stopped and frisked and to always provide them with a business card that includes the officer's name and a contact phone number. Officers should be provided with enough cards to be able to give one to every person they stop or otherwise initiate contact with.

3. Racial Profiling: Traffic and Pedestrian Stop Data Collection

The decision of an individual police officer to stop a pedestrian or a vehicle is arguably the most discretionary and least transparent decision point in the criminal justice system. When one drives the roads of Dane County, it is

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obvious that almost every vehicle engages in some sort of illegal activity. Speeding is the most obvious example. Police officers make countless decisions regarding which vehicles will be stopped.

This Task Force heard from many people at the public hearings relating to racial profiling. Citizens expressed concern that the police stop and harass people of color more than Whites. One person stated, "I have to defend myself against the people who are supposed to protect me." Another person stated that this type of police action "breaks people's spirit."

In addition to citizen comments, local law enforcement recognizes that there is both a perception problem relating to this issue, and an actual problem. The Madison Police Department, for example, has been collecting and analyzing traffic stop data for a number of years. A 2006 report issued by Chief Noble Wray entitled "Traffic Stop Data Analysis Project" states on page 11 that "African Americans consistently maintained the highest levels of disparities, particularly in the area of non-hazardous citations (equipment and vehicle registration)." Many in the law enforcement and legal community refer to these types of stops as pretextual, meaning that officially, the police are stopping people for equipment and registration violations, but really, they have an underlying motive or suspicion that exceeds the official reason for the stop, but cannot form a legal basis to make such a stop.

As an outgrowth of the 1998 recommendation by the Madison Race Relations Task Force to collect, analyze and report traffic stop data, MPD officers began filling out "stop cards" to report race and other data in order to document traffic stops that did not result in citations or arrest. Stop cards are generally, but not always, filled out by Madison police officers, and the data from them is collected and analyzed, along with traffic citation data, to help the department understand what is

contributing to the disparities, and to serve as a basis for "bias-based inquiry."²¹

Recent data collected from Dane County law enforcement agencies by this Task Force show a highly disproportionate number of traffic stops for Black residents that were based upon vehicle registration and equipment violations. While this disproportionality exists for most Dane County police departments that reported this data, as an example, the Madison Police Department's 2007 data show 51 Blacks stopped for equipment violations (such as a broken tail light), as compared with 146 Whites. MPD data also show 110 Blacks stopped for vehicle registration issues in 2007, as compared with 252 Whites. That is, Blacks were stopped for about 25% of equipment violations and about 30% of registration violations, while they make up only about 6% of Madison's population.

RECOMMENDATION: Law enforcement agencies should implement effective data collection systems for all traffic stops and those pedestrian stops that involve a "stop and frisk," which should include the following criteria:

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

²¹ Wray, Noble. "Traffic Stop Data Analysis Project." (March 2006)

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RECOMMENDATION: Dane County law enforcement agencies should not only collect the necessary data, but should plan and implement independent expert analysis of the data once collected.

- Law enforcement should explore developing partnerships with academic, governmental and other qualified institutions to assist with the establishment of internal and external benchmarks and data analysis;
- Results of data analysis should be used by law enforcement in the design and development of officer training programs, office and agency evaluation, and crime prevention strategies and techniques;
- Law enforcement agencies should actively disseminate data and analysis to the public regardless of whether the data analysis indicates racial profiling and/or racial disproportionality.

4. Comprehensive Anti-Bias Policy

Both the Madison Police Department and the Dane County Sheriff's Department have official policies against racial profiling.²² However, Dane County law enforcement agencies should consider the adoption of a county-wide comprehensive anti-bias policing policy. This type of policy has been adopted in other parts of the country, in multi-jurisdictional settings, to unify efforts across police agencies.

In 2008, the Rhode Island Police Chiefs' Association (RIPCA) created an anti-bias policing initiative. This strategic plan includes a series of ten goals and objectives. These include the creation of an advisory board, the development and implementation of model policies, the

²² See Dane County Sheriff's Office Policy and Procedure Manual Section 200.500 and the Madison Police Department Policy and Procedure Manual Section 2-202.

development of comprehensive training programs, standardization of complaint processes, collection and evaluation of stop data, sharing information with the public, development of recruiting practices, early intervention policies, model policies relating to the use of audio/visual recordings, and encouraging departments to create a "Police/Community Advocate" to help ensure the transparency of police practices.

The Federal Government has considered, although not yet adopted, a comprehensive police anti-bias policy as well. The End Racial Profiling Act of 2007 will be re-introduced this fall and, if adopted, would create an anti-bias policy on the national level. It includes:

- A policy prohibiting racial profiling;
- Requirement of training on racial profiling as part of Federal law enforcement training;
- Data collection and analysis;
- Meaningful procedures for receiving, investigating and responding to complaints;
- Policies requiring that corrective action be taken if law enforcement officers are determined to have engaged in racial profiling.

RECOMMENDATION: Dane County law enforcement agencies, individually and collectively, should be encouraged to develop individual and/or county-wide anti-bias policies.

RECOMMENDATION: Strongly encourage all Dane County law enforcement agencies to follow the recommendations in this report, in an effort to achieve consistency and sustainability in addressing racial disparity at the front end of the criminal justice system. Present law enforcement related recommendations at the Dane County Chiefs' Association meeting, and ask the chiefs to adopt the recommendations and create written policies based upon them within their own organizations.

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5. Mental Health and Substance Abuse Arrest Alternatives

Across the country and in Wisconsin, people with mental illness have become a large proportion of those arrested and incarcerated. The Mental Health America Board noted in 2008 that “56 percent of state prisoners, 45 percent of federal prisoners and 64 percent of jail inmates have a mental health problem.” In Wisconsin in 2007, “10 percent of people admitted to prison were assessed as having a serious mental health disorder; an additional 21 percent were assessed as having some mental health need.”²³ In 2001, the U.S. Surgeon General reported that “African Americans living in the community appear to have overall rates of distress symptoms and mental illness similar to whites . . . but the mental health of African Americans cannot be evaluated without considering the many African Americans found in high-need populations whose members have high levels of mental illness and are significantly in need of treatment . . . African Americans with mental health needs are unlikely to receive treatment—even less likely than the undertreated mainstream population.”²⁴

PROBLEM: 46% of people with serious mental illness in Wisconsin who were released to the community from prison in 2005 were re-incarcerated within two years.²⁵ Madison Police Chief Noble Wray and Dane County Sheriff Dave Mahoney note that there is a lack of booking

alternatives in Dane County for people presenting symptoms of mental illness. While Crisis Intervention at the Mental Health Center of Dane County provides 24-hour crisis services for people at risk of committing suicide, there is no such crisis center for those with other severe symptoms.

RECOMMENDATION: Law enforcement officers are the first point of contact with persons who exhibit mental or substance use conditions, and are critical in determining the situation's outcome (whether or not the person will be jailed). We recommend pre-arrest strategies that “rely heavily on helping police become knowledgeable regarding the nature of mental and substance use conditions, and provide tools to de-escalate crisis situations.”²⁶

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

(2) Develop a seamless link in Dane County between law enforcement and community mental health and substance abuse services to support and expand coordinated programs to provide for the 24/7 availability of arrest alternatives, and to provide information for responding law enforcement personnel on community resources for people in a mental

²³ The Council of State Governments Justice Center and the Wisconsin Legislative Council's Special Committee on Justice Reinvestment Oversight, “Justice Reinvestment In Wisconsin: Analyses & Policy Options to Reduce Spending on Corrections and Increase Public Safety” May 2009, p. 5.

²⁴ “Mental Health: Culture, Race, Ethnicity,” Chapter 3. Supplement (2001) to “Mental Health: A Report of the Surgeon General,” (1999).

²⁵ “Justice Reinvestment in Wisconsin,” p. 5.

²⁶ Position Statement 52: In Support of Maximum Diversion of Persons with Serious Mental Illness from the Criminal Justice System, Board of Directors, June 8, 2008
www.mentalhealthamerica.net/go/position-statements/52 (last visited July 18, 2009).

health crisis. (See Appendix for more information on the Memphis Model.)²⁷

C. Prosecution Decisions; Prosecution Diversion and Sentencing Alternatives

1. Deferred Prosecution and Diversion Programs

Dane County is a leader in Wisconsin in creating and funding a diverse and innovative array of jail diversion and alternative programs, spending \$3.5 million per year on eighteen different programs including the First Offenders deferred prosecution program, bail monitoring program, RESPECT, CAMP (electronic monitoring for sentenced offenders), Pathfinders, Cool Choices, SOAR, Community Treatment Alternatives, New Routes, Treatment Alternatives Program, Drug Court Treatment Program, DART, and others. Many of these programs receive referrals from the District Attorney's Office as part of a deferred prosecution agreement in collaboration with defense attorneys, others are sentenced by the court, and some are referred by the Sheriff's Office or self-referred.

(See Appendix for a description of all of Dane County's diversion programs.)

While diverting people through these programs has saved taxpayers millions of dollars, relatively few people of color are referred to or participate in these programs, which provide crucial mental health and AODA treatment and case management services, domestic violence services, housing and employment support, and counseling. These diversion programs provide

needed support, and sometimes electronic monitoring, to allow people to remain in the community, where they are provided with services tailored to address the underlying reasons for their criminal behavior and prevent their return to the criminal justice system.

Drug addiction treatment is cost-effective. For every \$1 invested in drug treatment programs there is a \$12 savings in crime and health care costs.

-- National Institute on Drug Abuse, "NIDA InfoFacts: Treatment Approaches for Drug Addiction" (June 2008)

PROBLEM: Funding for the Drug Court and other diversion programs, such as DART and TAP, is inadequate and does not match public sentiment in favor of these programs. Current funding does not fully cover the treatment needs of program participants. Once admitted to Drug Court or TAP, it can take one to three months to begin the recommended AODA treatment. In addition, people with co-occurring mental health disorders also wait two to three months before they are able to receive an evaluation and be started on appropriate medication. Some end up re-offending while waiting for treatment to begin.

RECOMMENDATION: Provide additional funding to existing diversion programs, such as the Drug Court, DART (Day Report and Treatment Program) and TAP (Treatment Alternatives Program), to eliminate long wait periods to begin treatment after admission to these programs. Increase funding to allow the continuation of culturally-specific case management services, which are significantly under-funded and in serious jeopardy of being unable to continue without additional resources. Further expansion of these programs would also support increased use of diversion services for AODA impaired offenders.

²⁷ See U.S. Department of Justice Practitioner Perspectives, "Memphis Tennessee Police Department's Crisis Intervention Team" July 2000, and "Criminal Justice Primer for State Mental Health Agencies," September, 2002, on the challenge of developing coordinated programs.

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(1) Drug Court Treatment Program – This highly successful diversion program began in 1995 and has about 75 participants at any given time, who receive intensive case-management services, residential or outpatient AODA treatment, and supportive housing and mental health services. It is a post-plea, pre-adjudication alternative for substance abusing criminal defendants, who are offered the program as either a deferred prosecution agreement or an agreement to reduce the severity of crime charged and/or reduce the associated penalty. Participants are required to fully participate in treatment and case management services and regularly attend Drug Court reviews, where the Judge utilizes an individualized response of rewards and sanctions to foster the participant's progress. Case managers hold participants accountable while providing wraparound support services. A strong emphasis is placed on the employment, education and housing needs of participants.

(2) DART – This pre-trial bail monitoring program began in 2007 specifically to address the high risk, high need criminal defendant who was held in custody following arrest on cash bail status, with a specific focus on African American males who are disproportionately represented. DART was specifically designed to address racial disparities in the criminal justice system by offering the DART program to persons who would not qualify for other bail monitoring programs and who would be unlikely candidates for diversion alternative program consideration. DART works with individuals who have a more extensive criminal history, a history of non-appearance and warrant status, who are unemployed, lacking non-criminal community support, and without a Dane County residence or other housing alternatives. Participants receive the full continuum of care (both mental health and

AODA treatment and intensive case management) at a critical time when individuals are experiencing the impact of arrest and withdrawal from drugs and alcohol, and are motivated to receive services.

“Let us realize the arc of the moral universe is long but it bends toward justice.”

--Dr. Martin Luther King, Jr, 1967

This program provides a window of opportunity at the front end of the system for defendants with serious AODA problems to go directly from jail to residential treatment. DART also serves as a fast track to mental health referral and treatment, which is otherwise unavailable because the Mental Health Center stopped accepting referrals in 2007 due to the extensive wait list. DART has been successful in helping participants be considered for other diversion programs and avoiding jail or prison sentences based on their success in the program. A three-year TAD (Treatment and Diversion) grant is in its final year and DART may or may not receive TAD funds in 2010. Dane County should commit to expanding this highly successful program so that more people have an opportunity to turn their lives around.

(3) TAP – TAP is a post-conviction sentence alternative program for persons with substance use problems. Its purpose is to help identify and provide community-based treatment alternatives to persons who have a substance abuse or addiction problem that is related to the crime(s) they are currently charged with. It is a case management model intended to break the offender's alcohol/drug/crime cycle by linking the legal sanctions of the criminal justice system with the therapeutic process of treatment. It is based on a highly successful national model called TASC, Treatment Alternatives for Safer

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Communities. TAP began in 1989 and has 50 participants in the program at any given time receiving intensive case-management services, residential or outpatient AODA treatment, domestic violence treatment, and supportive housing and mental health services. Case managers hold participants accountable while providing wraparound support services. A strong emphasis is placed on the employment, education, and housing needs of participants. When TAP is offered by the criminal justice system, it becomes part of the sentence disposition, where typically there is a reduction in the amount of jail time for persons who participate in TAP and complete the program.

PROBLEM: People of color are underrepresented in Dane County's criminal justice diversion programs. The racial disparity in diversion programs is of great significance because these programs are designed to address the underlying problems that are associated with an individual's criminal involvement and can provide a more effective outcome to the more traditional punitive approach. In 2008 TAP had 25% minority participants, Drug Court 28%, DART 32%, Pathfinders 12%, and CAMP 22%.

RECOMMENDATION: In order to include more people of color in DART, Dane County should provide additional assessment resources that would allow DART staff to meet with individuals referred to the program within one week of receiving the referral rather than 2 to 4 weeks after, as is now the case.

This would provide staff the opportunity to meet with persons who have been referred and explain the program and its potential benefits to them, prior to their decision to post cash bail or have it converted to signature bond at a preliminary hearing, making them ineligible for the program. 62% of the persons making

decisions to post cash bail prior to meeting with DART staff are African American as compared to 38% for Whites.

RECOMMENDATION: In order to include more people of color in TAP, prosecutors and defense attorneys should refer more people who are charged with crimes other than operating under the influence of intoxicants, the majority of which are white males.

Other crimes could include drug offenses, battery, disorderly conduct, and property offenses, where there is a correlation between the individual's substance abuse and the crimes they are committing. This would provide a monitored opportunity to take advantage of the AODA treatment and case management services that the program provides to treat underlying addictions that may be responsible for the person's criminal behavior, while still holding offenders accountable.

RECOMMENDATION: Diversion program managers, the District Attorney, Public Defender, and Dane County judges should evaluate the incentives that are being offered by the criminal justice system for TAP and Drug Court to see if they are sufficient to encourage defendants to participate in treatment diversion programs and treat their underlying addictions, rather than serve their sentences and return to their previous lifestyle.

One of the reasons some African Americans referred to Drug Court reject the offer may be related to the perceived value of the legal incentive. If someone already has a prior drug conviction, a dismissal on another case may not seem valuable in terms of employment, education or housing opportunities. Since the main legal incentive for TAP is a reduction in jail, this may not seem to be a good alternative if the person has only a small amount of jail time to serve. Perhaps TAP could be offered with a suspended jail sentence as an alternative to probation or a reduced term of probation. Some individuals believe they don't receive an

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offer of TAP because they failed on probation and are seen as having had a chance. Instead of county jail time they are sentenced to prison.

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

RECOMMENDATION: Collect and analyze data on diversion programs to determine whether there is a racial disparity in prosecutors' referrals of defendants to diversion programs and, if so, why it is occurring. In particular, track prosecutors' offers of diversion and offenders' responses to these offers.

The District Attorney's (DA) office should collect and analyze data regarding when community based diversion programs were offered as part of a plea bargain based on the charge(s) and race/ethnicity of the defendant. A simple check off list may be useful to limit the amount of time needed to record the data by prosecutors, which could then be handed in for data entry by another party. The purpose of this data collection is to identify potential racial disparities in referrals to diversion programs, and to help ensure that diversion options are in the mix of considerations for all prosecutors and defense attorneys at this stage of the legal process. The DA's office would require funding for sufficient staff to implement this recommendation.

PROBLEM: There is a strong need for a better understanding of deferred prosecution and diversion programs by all actors in the courthouse: prosecutors, defense counsel, judges, and probation agents.

RECOMMENDATION: Have semi-annual meetings between representatives of deferred prosecution and sentencing alternative diversion programs and the staff of the DA's and Public Defender's offices, as well as the private defense bar and the DOC, to provide educational information on available programs, review racial demographics of referrals and admissions, and discuss outcomes and service development.

This will further develop a collaborative relationship between the community-based programs and prosecutors and defense attorneys, and ensure that all parties have updated knowledge on available alternative programs.

2. Study Prosecutorial Discretion

PROBLEM: Currently there is very little analysis of the large amount of data that is accumulated by the DA's office, which makes it difficult if not impossible to identify where changes in the system may need to occur to address racial disparity. The data that would need to be collected exists in electronic and paper files, but there is a shortage of staff to collect and manage this data in a productive manner.

RECOMMENDATION: The Dane County District Attorney's office should conduct a study of prosecutorial discretion with attention to the role that criminal history plays, as it affects racial disparities in prosecution, with the assistance of either the UW-Madison LaFollette Institute for Public Affairs or the Vera Institute Prosecution and Racial Justice program.

The Vera Institute's program is widely cited as a best practice in reducing racial disparities in criminal justice, and has worked with the Milwaukee District Attorney's office, as well as the District Attorney's offices of Charlotte, North Carolina and San Diego, California. The program works to develop sustainable data and

management systems that enable prosecutors to identify evidence of possible racial bias in prosecutorial decisions and respond appropriately if such evidence is found. The Vera Institute helps district attorneys to collect and analyze data about their offices' structures and processes, which they can then use to take corrective action when necessary.

3. Universal Screening

PROBLEM: The only information available to Dane County prosecutors, court commissioners and judges at the time that prosecutors are making their decision of whether or how to charge a person accused of a crime, is the police report written by the officer on the scene. It is also the only information available in the first days after charging when bail decisions, initial settlement offers and other critical events take place. In addition, defense attorneys can talk to their clients, but are not provided with objective screening information to help them focus on their clients' strengths and support systems.

For defendants who have enough resources to hire an attorney immediately after arrest, the attorney provides additional information to the prosecutor either before, or more often after, a charging decision is made, which can often result in less severe consequences for the defendant. For poor defendants, most of whom are people of color, much less information is typically made available to the prosecutor in those critical first days after an arrest to inform the charging decision and other decisions early in the life of a case. The prosecutor, court commissioner, judge, and defense attorney often base their early decisions primarily on what police are reporting, which does not always include the most objective or complete information.

RECOMMENDATION: Set as a county priority and support the establishment of a system, such as the AIM program currently being developed in Dane County, that would use a validated risk assessment instrument and face-to-face interviews with every new inmate booked into the Dane County jail to obtain valuable information about each defendant that can be considered by decision-makers at every point in the system

Such universal screening²⁸ would provide decision-makers throughout the criminal justice system with information on the defendant's criminal, family, educational, employment and treatment histories, the nature and severity of the offense, and also identify other risk/need factors such as mental health and substance abuse problems, homelessness, under-employment, educational level, family composition and other available community supports.

This information would follow the person through each stage of the system, and help identify those people best suited for release on their own recognizance (rather than setting a high cash bail), those eligible for diversion or deferred prosecution programs, and those in need of pretrial interventions such as the DART program, which is run by the court and contracts for services with Mental Health Center of Dane County. It would also provide

²⁸ See, "The Transformation of Pretrial Services in Allegheny County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment," Pretrial Justice Institute, October 9, 2007. In addition, Milwaukee County has created a Risk Assessment Tool and has completed a proposal for a universal screening program, which they expect to cost at least \$2 million per year. They have applied for a federal grant to fund the program, which has not yet been implemented while awaiting news on whether it will be funded.

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information to inform decisions about sentencing, alternatives to incarceration and alternatives to revocation of probation and parole.

4. Restorative Justice

PROBLEM: Overall there is severe racial disparity in Dane County's criminal justice system, and disparities show up at each stage of the criminal justice system. There is perception among some community members of unfair and differential treatment of racial and ethnic minorities by schools, police, prosecution, corrections and courts. There is recognition that public disorder, property crimes and traffic in controlled substances weaken and destabilize neighborhoods. The primary reliance on punitive sanctions as a response to these types of offenses is expensive and not particularly rehabilitative. There is a need to build bridges and increase communication between the formal criminal justice system and communities of color. There is also a need to restore relationships between all of the communities in Dane County across racial and cultural lines.

RECOMMENDATION: Establish restorative justice programs in areas that are experiencing racial and cultural tensions that involve the criminal justice system.

A small task force composed of a representative group of stakeholders should be appointed and have the responsibility of working out the details on identifying the funding and implementing the program.

The whole barrier exists because most people never come together and sit down at a table... join together, break bread together, and celebrate their differences and the likenesses.

--Oprah Winfrey, 1998

The program would consist of the following components:

- **Neighborhood assistant district attorney (ADA)**
This is modeled after the Milwaukee County District Attorney's Office where assistant district attorneys are assigned to neighborhoods, usually associated with police districts. The ADA would work with professionals from other systems in the area, including schools, social services and the police department. The ADA along with a paralegal or social worker would be responsible for the development and implementation of a community conferencing program.
- **Community conferencing program**
This program is designed to offer qualifying offenders of low-level misdemeanor and felony offenses the option of having their case reviewed by a group of community members under the supervision of the District Attorney's office. The ADA would be responsible for recruiting and training volunteers to participate in restorative circles in which offenders are given an opportunity to repair the harm with the community and victim for their offense. The prosecutor and paralegal would hold preliminary meetings with both the victim and offender to ensure their willingness to take part in this type of process. The circles would be led by trained facilitators. The victim's needs and concerns are paramount in a restorative process; however, the conference can occur without their participation. The offender must agree to abide by the recommendations agreed upon amongst the community conferencing circle members.
- **Community Policing**
Neighborhood policing has been implemented in Madison neighborhoods and has been quite effective. Neighborhood officers would work with the prosecutors, paralegals

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and community members in carrying out the mission of the restorative justice model.

- **Data Collection**
The program would need to keep routine records on the disposition of the outcomes of participants by race and ethnicity in order to assess its impact on racial disparity.
- **Mentoring Component**
A critical element for the success of an offender and restoration of a victim in such a program is the implementation of a support mechanism. There will be a need for community members to volunteer to support both the victim and the offender on important issues impacting their lives.

D. Jury Selection

The Task Force's public hearing at Centro Guadalupe included a lively conversation among participants and task force members about the significant underrepresentation of people of color on Dane County juries. Dane County Clerk of Courts Carlo Esqueda stated that he has been working on this issue for some time, but is limited by law to only summon potential jurors from the Department of Transportation (DOT) list of everyone with a current driver's license or state ID card. There are many problems with this system that create extreme underrepresentation of people of color in jury pools. First, members of minority communities in Dane County tend to be very mobile and often people do not change their address with the DOT when they move, so the summons would go to the wrong address. In addition, many people of color, some estimate up to half, do not have a current driver's license. Esqueda also said that many of the people of color who are summoned for jury duty do not report. He is considering imposing civil penalties on people who fail to report for jury duty in an attempt to force compliance and consequently create more diverse juries.

Esqueda serves on the Jury Implementation Committee, chaired by Judge Colas, which is designed to encourage greater participation of people of color on juries in Dane County. There is good news in that African American reporting rates have increased from 1.74% in 2008 to 2.76% in 2009, but this is still significantly less than the approximate 6% of Dane County residents who are African American.

PROBLEM: During the first eight months of 2009, 3,690 jurors reported for duty at the Dane County Courthouse. Of those, 93.9% were White, 2.8% were African American, 1.9% were Asian, 1% were Hispanic, and .4 % were Native American/Pacific Islander.

RECOMMENDATION: Support the Jury Implementation Committee's efforts to arrive at best practices for diversifying Dane County jury pools to ensure juries whose ethnic composition reflects that of Dane County as a whole. This can be done by increasing funding for the committee's outreach efforts.

E. Re-Entry: Community Supervision, Probation and Parole

There is a need for more alternatives to incarceration. Prison is expensive and often does not aid rehabilitation. For all felonies prison is an option, but it is only required for a few of the most serious offenses. Most who are sentenced to prison will return to the community. There are many offenders whose crimes do not necessarily require imprisonment or who have completed their prison sentences who are nevertheless not prepared to live in the community, or who have mental health or other problems that are beyond their families' ability to accommodate.

Alternatives to revocation could serve as a way for individuals to get the treatment they need while remaining in the community and maintaining contact with their families who provide a base of support. Community

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alternatives are less expensive than incarceration and frequently more effective in promoting rehabilitation and preventing recidivism. Programs that offer halfway houses, electronic monitoring, and treatment are a less expensive alternative to prison and help to transition an individual back into the community. There is a need for more programs that provide this type of support, both as an alternative to prison and for those returning from prison.

The majority of convicted offenders in Dane County are under community supervision, not incarcerated. These include people who have been given a sentence of probation as an alternative to a prison or jail sentence, and people who were sentenced to prison and have been released to community supervision.

1. Disparity in Revocations

PROBLEM: While the purpose of community supervision is to help offenders rehabilitate so that they do not commit future crime, there is evidence of unequal treatment by race in the way offenders are supervised. In addition, there is a large racial difference in the likelihood of revocation from probation. Revocation is known by some as “the revolving door,” or as one public hearing speaker called it, “the installment plan.”

In Wisconsin, nearly one-half of the people revoked back to prison from extended supervision with no new prison sentence (those revoked for violation of supervision rules, NOT for new law violations) receive a revocation sentence that is longer than the confinement portion of their original prison sentence.²⁹

²⁹ “The 2008/2009 Study of Probation and Parole Revocation,” Page 74, by Kit Van Stelle and Janae Goodrich, University of Wisconsin Population Health Institute. Prepared for the Department of Corrections (June 2009). Available at: <http://www.wi->

Thus, if a person commits a crime and is sentenced to five years of prison confinement with five years of extended supervision, and completes the confinement and all but a few months of the extended supervision, and THEN breaks a rule of supervision (not a law), under Truth in Sentencing,³⁰ this person may be revoked back to prison for five more years. Public hearing participants expressed frustration about how difficult it was to avoid “the revolving door.”

“...[M]any of our white brothers...have come to realize that their destiny is tied up with our destiny and their freedom is inextricably bound to our freedom.”

--Dr. Martin Luther King, Jr., 1963

Task Force member Pamela Oliver performed a special analysis of DOC data on revocations for people on community supervision in Dane County through April 30, 2007. (See tables in Appendix.) Of those on community supervision in Dane County in 2006, 69% were on probation and 31% were on post-prison supervision (extended supervision).

doc.com/PDF_Files/Revocation%20Study_Full%20Report%20-%20FINAL.pdf

³⁰ This bifurcated sentencing system was enacted in Wisconsin in 2003 as “Truth in Sentencing,” and requires an offender to serve his or her entire period of confinement, with no credit for “good time,” and then upon release from prison or jail, the person must then serve a period of community (extended) supervision, from which they may be revoked back to prison for either a new law violation or a violation of one or more rules of supervision. The 2009 Revocations study found that offenders in Wisconsin have an average of at least 30 rules of supervision that they must follow, or else face revocation back to prison. (Id. p. 158).

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Revocations from supervision that involve new prison sentences are assumed to be evidence that rehabilitation failed to prevent new crime. Revocations from supervision that do not involve new prison sentences are more ambiguous, as there is no systematic data on the reasons for these revocations.

PROBLEM: Due to the lack of available information on the reasons for revocations that do not involve new prison sentences, the Wisconsin Racial Disparities Oversight Commission commissioned a study of revocation decisions to determine their reasons. The results, while inconclusive about reasons for revocation disparities, confirmed that “a higher proportion of Blacks than Whites are admitted to prison with no new sentence.”³¹ The study found that in DOC Region 1, which includes Dane County, Blacks were twice as likely as Whites to be revoked back to prison for rule violations.³²

PROBLEM: For people on post-prison supervision, Blacks in Dane County were at least 30% more likely to be revoked with no new prison sentence in both the two-year and five-year comparisons by Dr. Oliver. In addition, in Dane County there is a large racial difference in the likelihood of revocation from probation.

- For those on probation for felonies, Blacks were 50% more likely than Whites to be revoked with no new prison sentence in the two-year comparison and 90% more likely to be revoked in the five-year comparison;
- Blacks were also 50% and 60% more likely than Whites to be revoked with a new prison sentence.

- Although revocation to prison from a non-felony probation is very rare, it is 400%-500% more likely for Blacks than for Whites in Dane County.

RECOMMENDATION: Dane County should collaborate with the DOC to analyze corrections data to determine whether the racial disparities in revocations not involving new prison sentences are due to unequal treatment in supervision.

RECOMMENDATION: The Dane County Board’s Public Protection and Judiciary Committee should monitor the efforts within the DOC to review additional rules of supervision for appropriateness and for nexus between rules and the criminal behavior they are trying to prevent, and should provide input to the DOC regarding the impact of these rules from the perspective of other agencies, such as social services, law enforcement or the public defender’s office.

Feedback should similarly be provided regarding the implementation of DOC Rule 1 (Wis. Admin. Code § DOC 328.04(3)(a)) – a broad rule for when an offender does not act “in the best interest of the public welfare or his or her rehabilitation.”

RECOMMENDATION: Dane County should encourage the DOC to conduct a weekly review by the DOC regional office of all who are on probation holds and in custody to determine whether an intermediate sanction could be implemented (rather than revocation) and review to determine whether timelines are being met. Staff cases as necessary.

Currently, supervisors and agents staff all custodies and determine whether or not revocation is appropriate. The DOC Regional Office reviews revocation packets after a waiver has been secured or approximately 10 days prior to the administrative hearing with the Division of Hearings and Appeals. This recommendation would allow the Regional

³¹ “The 2008/2009 Study of Probation and Parole Revocation” (June 2009) (See note 30).

³² *Id.*, p. 113.

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Office to review basic information on all holds on a weekly basis and, for those cases facing revocation, the Regional Office can determine whether sanctions other than revocation would be appropriate.

RECOMMENDATION: The DOC should send a weekly audit to all field supervisors identifying custody timelines/due dates with the expectation that field supervisors will review and make sure necessary actions are taken.

Currently, Dane County field supervisors are expected to follow their own tracking process to monitor timelines and due dates associated with custody and the revocation process. We recommend that the DOC send weekly audits to allow field supervisors to compare their own tracking to the Offender Active Tracking System (OATS) database. The Regional Office would then set the expectation that this audit be reviewed weekly and that the Field Supervisors review all custodies to ensure timelines are followed and that continued custody remains appropriate.

RECOMMENDATION: Dane County should ask the DOC to provide training to all Dane County probation and parole agents on resources available for Alternatives to Revocation (ATRs) and the continuum of non-incarceration intermediate sanctions.

Currently, Region 1 DOC staff is aware of major ATR programs such as halfway houses, transitional living placements, drug court, DART, and institution ATRs. However, each individual agent must stay abreast of other potential alternatives in the community through individual community service providers. We recommend that DOC Region 1 staff have regular training, through unit meetings or other methods, to share resource information and receive information from service providers. We also recommend that, if funding and resources are available, DOC Region 1 have a resource manual available to all staff.

2. Lack of access to mental health and AODA treatment

The Wisconsin Legislative Audit Bureau found that in 2008, 24% of the state's Black inmates suffered from mental illness, while 39% of white inmates were mentally ill.³³ William Greer, Executive Director of the Mental Health Center of Dane County, believes that there is a serious under-identification of Black inmates with mental illness in Wisconsin. In fact, the Legislative Audit Bureau's report admits that its numbers do not include inmates at the Milwaukee Secure Detention Facility, who are mostly Black, but for whom little mental health information was available.³⁴

PROBLEM: In Dane County, approximately 346 people with mental illness will leave prison and return to re-make their lives in Dane County between July 2009 and the end of 2010.³⁵ According to Greer, many people who receive mental health treatment while incarcerated return to the community with a prescription and a two- to four-week supply of medication. Most do not have health insurance or money to buy the expensive medications. While DOC contracts with one psychologist in Dane County to provide treatment to a limited number of returnees who are on probation, the majority are simply left without access to needed mental health services and medications. Due to a lack of funds, in 2007 the Mental Health Center closed its wait list to adults seeking mental health treatment, and it

³³ Wisconsin Legislative Audit Bureau, "An Evaluation: Inmate Mental Health Care." Report 09-4, March 2009.

³⁴ *Id.*

³⁵ This is an estimate provided by the Department of Corrections, and includes people with varying levels of mental illness. Approximately 33% of all returning offenders to Dane County during this time period will have some mental health need, ranging from mild to severe.

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remains closed to this day. Greer says this has resulted from a funding gap between the DOC's mental health spending and that of DCDHS, and that nobody has stepped in to say that returning ex-offenders should get priority. As one person said to Greer, "The only way I can get my medication is to commit a crime and go back in."

RECOMMENDATION: To allow for continuity of care for returning offenders being treated with psychotropic medications, the DOC in Dane County should require returning offenders to apply for the new BadgerCare Plus state-funded insurance program for adults with no dependent children who earn up to 200% of the federal poverty level.

The DOC should provide assistance with the application process and, if needed, the \$60 application fee. BadgerCare Plus provides limited coverage for people to see a psychiatrist only, and pays for medications. Currently the DOC in Dane County has overused its mental health purchase orders, so connecting ex-offenders with BadgerCare Plus will help to reduce the number of ex-offenders who may need DOC-supported mental health services.

RECOMMENDATION: Dane County and the DOC should fund a community support program (CSP) that is devoted solely to the population of returning ex-offenders in need of continuing mental health treatment in order to avoid behaviors that will likely result in their return to prison.

The program need not be created from scratch, but could be a step-down program from the highly successful and proven Community Treatment Alternatives CSP run by the Mental Health Center for the past 18 years.³⁶ In

³⁶ CTA currently has 81 clients, but the real need is at least double, according to David Delap, CTA Director, and MHCDC Executive Director William

addition, there should be a strong AODA component to such a program as part of the total wraparound services it would provide to meet all the needs of its participants.

RECOMMENDATION: DOC and Dane County Department of Human Services should engage in a joint effort to bridge the funding gap between their agencies to allow for more referrals by the DOC to mental health treatment providers and increase local capacity to prioritize returning offenders with mental illness, thus avoiding the closed wait list and obtaining needed services to avoid re-incarceration.

RECOMMENDATION: Dane County Human Services should seek collaborative relations with the DOC to ensure continuity of care for re-entry of people on mental health and other medications. This should include comprehensive release planning by the DOC, and increased funding for the Mental Health Center of Dane County to help relieve the severe shortage of mental health services and medications for people with mental illness re-entering the community from prison.

Lack of access to needed treatment and medications increases the risk of revocation to prison.

RECOMMENDATION: Dane County prosecutors and judges should encourage the use of Dane County Drug Court Treatment Program as an alternative to revocation for people on community supervision, probation or parole who have new drug charges.

Greer. The program serves only those with serious and persistent mental illness and those who are conditionally released from Mendota or Winnebago Mental Health Institutes and found not guilty due to "mental disease or defect." 36% of CTA participants are Black.

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Drug Court combines AODA treatment and case management with the coercive power of the court to impose sanctions and other consequences for failure to meet expectations. People on community supervision, probation, or parole, with the help of their case managers, are expected to obtain and maintain employment or education, stable housing, and freedom from drugs and alcohol. Statistics in Dane County and elsewhere show that addicts who complete drug treatment courts are more likely to maintain sobriety and less likely to commit new offenses than addicts who undergo treatment alone or criminal sanctions alone.

3. Ex-offenders' challenges with employment and housing

Property crime and trafficking in illegal substances is often motivated by the lack of availability of well-paying jobs and offenders' inadequate job-readiness. Some ex-offenders have been in trouble since their teens and lack education and job skills. They do not know how to fill out job applications or have the support structures in place to maintain employment. If they need to earn money to support themselves and their families and the only available job is drug trafficking, they may turn to drug trafficking. Job programs and job-readiness and adult education programs have lost funding. The economic downturn has led to increased unemployment even among those who are employable. There is a huge need for programs and services to prepare offenders for employment and to help them find and keep jobs. Controlled studies in other places show that racial discrimination is a reality in the private job market.

PROBLEM: Ex-offenders returning to the community after prison face great difficulty obtaining stable housing, employment, support, and treatment. Research shows these four factors are instrumental in avoiding re-

incarceration.³⁷ People may leave prison determined to make a new life for themselves, only to become very frustrated when they are unable to find housing or a job despite their best efforts. Existing programs are inadequate to meet these needs.

RECOMMENDATION: Dane County should form a joint committee of representatives from Dane County EOC, the Courts, community-based organizations such as Madison-Area Urban Ministry and the United Way, and the community at large to create and support a mentoring program that has a connection to the labor market enabling individuals to get access to a full panoply of services such as drug treatment, remedial education, employment-readiness and skills development, and other programs to help returning offenders break the cycle of crime and move into legitimate employment.

RECOMMENDATION: Open Community Development Authority's and Dane County Housing Authority's low-income and Section 8 housing programs to people re-entering the community from jail or prison. Pass an ordinance, if necessary, to allow DCHA and CDA to bypass the current two-year ban for a person convicted of a crime to be able to apply for public housing. Federal HUD regulations allow for agencies to exercise discretion regarding whether to bar applicants with recent criminal convictions from public housing.

The Madison Department of Civil Rights has done housing discrimination testing in the past by sending applicants of different races to apply for housing. Although employment testing is much more difficult, it is worthwhile to not only conduct employment testing around arrest and

³⁷ Further information on these factors and their importance in re-entry can be found at www.usdoj.gov.

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conviction issues, but to advertise that they will be doing so as a way to alert prospective employers to the requirements of the ordinance and the importance of compliance with the requirements.³⁸

RECOMMENDATION: Dane County OEO should collaborate with other agencies, such as the Madison Department of Civil Rights, to conduct controlled studies to test for racial discrimination and discrimination based upon a person's criminal record in the Dane County job market.

PROBLEM: Offenders are among those hardest hit by current unemployment and economic disparities. With more job seekers than job openings, offenders and people transitioning back into our community from jail are often overlooked by employers. The ability to support oneself and one's family with a legitimate job is a huge component of staying out of the criminal justice system. In spite of Madison's aggressive

³⁸ Madison General Ordinance §39.03 permits an employer to ask about a person's arrest record. However, an employer cannot use the information to deny you employment unless you are "subject to a pending criminal charge and the circumstances of the charge substantially relate to the circumstances of the particular job." Madison General Ordinance § 39.03(8)(i)3a. Similarly, an employer may not terminate an individual's employment only because of the fact that the employee is arrested unless the "pending criminal charge and the circumstances of the charge substantially relate to the circumstances of the particular job." Madison General Ordinance § 39.03(8)9i)3a. The ordinance does not provide protection for absenteeism due to a new arrest, so long as the employer is consistent in the application of its absenteeism policy. An employer is also permitted to ask about a prospective employee's conviction record. However, the employer cannot use the information to deny the person employment unless the circumstances of the offense "substantially relate to the circumstances of the particular job." Madison General Ordinance § 39.03(8)(i)3b.

ordinances that prevent discrimination against individuals with arrest and conviction records, such discrimination is common. Thus, there is a need to be creative in getting this population into the workforce.

RECOMMENDATION: The DOC and Dane County Job Center should promote the state's new Transitional Jobs Program to offenders, which creates temporary, subsidized jobs that provide participants with a source of legitimate income, support services, and work experience as they return to the community.³⁹

This program was just introduced in Milwaukee and is similar to the state Department of Children and Family Services' "Subsidized Private Sector Employment Program" for W-2 enrollees under which, instead of getting a welfare-like cash grant, they are hired into transitional jobs created by non-profit organizations. This would allow people to perform useful work, receive minimum wage pay, pay taxes, and qualify for the Earned Income Tax Credit.

RECOMMENDATION: Dane County should take the lead with incentives and encouragement of employers to hire offenders by opening more Alternative Selection positions for county jobs, and introducing this process to those who do business with Dane County.⁴⁰

³⁹ For more information on Wisconsin's new Transitional Jobs Program, enacted with the 2009-2011 state budget, see: http://ca-ppi.org/about/documents/Community_Advocates_PI_NewsRelease_Wisconsin's_Transitional_Jobs_Program.pdf

⁴⁰ The federal government also provides a \$5000 bond to an employer who hires an ex-offender to protect the employer against losses caused by the employee (See <http://www.dwd.state.wi.us/jobservice/taxcredit/default.htm>)

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RECOMMENDATION: Dane County should partner with the Center on Wisconsin Strategy (COWS), which is a key player in designing and implementing policy experiments in Wisconsin's major metropolitan areas, including "high-road economic and workforce development" strategies.

RECOMMENDATION: Dane County OEO should maintain information on employers who hire offenders, by the race of the offender.

RECOMMENDATION: DOC Region 1 staff should track whether individuals on community supervision in Dane County are employed.

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

Analysis of Revocations. Cases Supervised in Dane County⁴¹

Non-felony probation. Proportion revoked to prison. *=Minority/White difference is significant at .05 level. Five-year rate is for spells beginning 1999-2002, Two-year rate is for spells beginning 2001-2005.

| | White | Black | Disparity | Hispanic | Disparity |
|-----------------------------------|-------|-------|-----------|----------|-----------|
| Proportion revoked within 5 years | .008 | .030 | 3.8* | .018 | 2.3 |
| New prison sentence | .004 | .017 | 4.3* | .018 | 4.5* |
| No new prison sentence | .003 | .012 | 4.0* | 0 | 0 |
| % no new sentence | 37% | 40% | | 0% | |
| Proportion revoked within 2 years | .005 | .026 | 5.2* | .012 | 2.4 |
| New prison sentence | .003 | .011 | 3.7* | .008 | 2.7 |
| No new prison sentence | .002 | .012 | 6.0* | 0 | 0 |
| % no new sentence | 40% | 46% | | 0% | |

Felony probation. Proportion revoked to prison. *=Minority/White difference is significant at .05 level. Five-year rate is for spells beginning 1999-2002, Two-year rate is for spells beginning 2001-2005.

| | White | Black | Disparity | Hispanic | Disparity |
|-----------------------------------|-------|-------|-----------|----------|-----------|
| Proportion revoked within 5 years | .19 | .33 | 1.7* | .23 | 1.2 |
| New prison sentence | .11 | .18 | 1.6* | .18 | 1.6 |
| No new prison sentence | .08 | .15 | 1.9* | .05 | 0.6 |
| % no new sentence | 42% | 45% | | | |
| Proportion revoked within 2 years | .09 | .16 | 1.8* | .13 | 1.4 |
| New prison sentence | .06 | .09 | 1.5* | .07 | 1.2 |
| No new prison sentence | .04 | .06 | 1.5* | .06 | 1.5 |
| % no new sentence | 44% | 38% | | 46% | |

Felony post-prison supervision. Proportion revoked to prison. *=Minority/White difference is significant at .05 level. Five-year rate is for spells beginning 1999-2002, two-year rate is for spells beginning 2001-2005.

| | White | Black | Disparity | Hispanic | Disparity |
|-----------------------------------|-------|-------|-----------|----------|-----------|
| Proportion revoked within 5 years | .40 | .45 | 1.1 | .40 | 1.0 |
| New prison sentence | .20 | .20 | 1.0 | .17 | 0.9 |
| No new prison sentence | .19 | .24 | 1.3* | .21 | 1.1 |
| % no new sentence | 48% | 53% | | 53% | |
| Proportion revoked within 2 years | .33 | .37 | 1.1 | .33 | 1.0 |
| New prison sentence | .18 | .18 | 1.0 | .14 | 0.8 |
| No new prison sentence | .15 | .19 | 1.3* | .19 | 1.3 |
| % no new sentence | 45% | 51% | | 58% | |

⁴¹ Too few Asians and Native Americans are supervised to permit statistical comparisons, and the number of Hispanics is small enough that the differences are not statistically significant, except for revocations with new sentences in the 5-year comparison.

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VI. Other social/economic issues that contribute to racial disparity

A. Employment Discrimination

A lack of legitimate employment is a major contributing factor to crime, especially property crime and drug dealing. In Madison, the unemployment rate for Black adults is 2.5 times that of the community at large.⁴² Some of the difference is due to racial/ethnic differences in education, as less educated people (particularly those who did not graduate from high school) have higher rates of unemployment. Covert or unconscious racial discrimination in hiring is also a factor. Although there has been no study of racial discrimination in employment in Dane County, systematic controlled studies of hiring practices elsewhere typically find covert racial discrimination by many employers, enough to seriously impact people's job opportunities.

In addition to educational disadvantage and racial discrimination, having a criminal record makes it even more difficult to obtain employment. The combination of being Black and having a criminal record is especially devastating. Devah Pager's controlled audit study in the Milwaukee job market sent Black and White testers out to apply for entry-level positions and found that Whites who reported a prison record were half as likely to be called back as those with no criminal record, that Blacks with no criminal record were actually called back less often than Whites who said they had been in prison (the difference was not statistically significant), and that Blacks who said they been in prison were almost never called back.⁴³

⁴² "The State of Black Madison 2008: Before the Tipping Point," (April 2008) Available at www.ulgm.org.

⁴³ Pager, Devah. 2003. "The Mark of a Criminal Record." *American Journal of Sociology* 108:937-975.

RECOMMENDATION: Modify Dane County employment applications to permit the County to ask potential employees about pending charges or convictions only to the extent an employer is permitted, under City of Madison ordinances, to consider criminal history in deciding who to employ.

This would require the application for a particular position to list offenses where circumstances of the charge substantially relate to the circumstances of the particular job. The applicant could only be asked if he or she had a conviction or pending charge in those categories.

B. Housing

RECOMMENDATION: Expand availability of clean and sober living situations like Oxford House, working with CDA and DCHA to utilize available housing.

Oxford House is a concept in recovery from drug and alcohol addiction. In its simplest form, an Oxford House describes a democratically-run, self-supporting and drug-free home. Parallel to this concept lies the organizational structure of Oxford House, Inc. This publicly supported, non-profit 501(c)3 corporation is the umbrella organization which provides the network connecting all Oxford Houses and allocates resources to duplicate the Oxford House concept where needs arise.⁴⁴ The members of Oxford House pay rent. Therefore this would be an excellent use of vacant housing, whether owned by the City or by the private sector.

⁴⁴ Source: http://www.oxfordhouse.org/userfiles/file/purpose_and_structure.php

C. Public access to criminal history through CCAP

The Task Force had extensive discussions on the problems that unlimited public access to the CCAP circuit court database poses for people who have entered the criminal justice system. Currently the criminal history of nearly all adult residents of Wisconsin is readily accessible to any member of the public. There is evidence that employers and landlords are routinely checking CCAP for job and housing applicants and that people with any record, including a charge that was dismissed, are discriminated against based upon this information. Drafting an access policy that properly balances competing interests in providing the information to the public and protecting people from misuse of the information, will be an important step in addressing the racial disparities in Dane County's criminal justice system. CCAP is controlled by the Wisconsin Supreme Court, not Dane County, although counties have the ability to "opt out" of participation in the public database, or otherwise restrict public access to information.

RECOMMENDATION: Create a cross-jurisdictional task force whose mandate is development of recommendations for CCAP access that would minimize the potential for frivolous or discriminatory uses of CCAP while protecting access for legitimate purposes. Dane County leaders should take the initiative in seeking the formation of such a task force.

The task force should include representatives from the Wisconsin Court System, judges, prosecutors, public defenders, representatives from impacted constituencies including ex-offenders and those who work in offender re-entry programs, victim advocates, employers, landlords, and law enforcement.

"Real community is based on reciprocity of emotion and relation between individuals sharing a common vision of the possibilities and potentialities of man..."

--Lerone Bennet, Jr., 1964

D. Driver's license recovery

It has become increasingly recognized that the loss of driver's licenses is a serious problem in Wisconsin that has substantial impact on racial disparity. A high proportion of Wisconsin residents have lost their driver's licenses for a wide variety of reasons, including drug convictions, failure to pay fines, and late child support. Some have never had a valid license due to the imposition of penalties of license suspension for various municipal and other offense violations even before they were eligible to obtain a license.

African-Americans and Latinos are more likely to lack a valid license than Whites. A valid driver's license has become a virtual prerequisite for employment.

PROBLEM: There are a large number of people of color who do not have a driver's license in Dane County due to suspensions and revocations for failure to pay fines, child support and other violations. This has a direct impact on their ability to obtain employment.

RECOMMENDATION: In collaboration with the City of Madison, Dane County should fund a comprehensive effort to reduce the number of unlicensed drivers through the support of a community-wide driver's license recovery and employability resource center based on the successful model created by Justice 2000 Inc. in Milwaukee.

Implementing this program in Dane County could help to both prevent arrest and to reduce the racial disparity in the criminal justice system. This is a curative and preventive

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program to assist people in obtaining their driver's license. By providing two direct service components, Intake/Triage/Case Management and Legal Services, Justice 2000 has been able to help deter low income people from the criminal justice system and to increase their employability.

RECOMMENDATION: Dane County should support efforts in the state legislature to reduce the number of driver's license suspensions imposed as a result of failure to pay child support, drug violations and unpaid traffic citations.

Recent efforts by Justice 2000 resulted in the passage of a bill to end automatic license suspension for drug convictions impacting over 11,000 low income residents. (See Appendix for details.)

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

For example, the Dane County judges recently voted to exhaust other means of fine collection rather than automatically suspending a person's license. However, the Dane County Child Support Agency also revokes driver's licenses as a sanction for failure to pay child support.

RECOMMENDATION: Dane County should form a work group consisting of various stakeholders including child support enforcement, court personnel, advocates for fathers, the Dane County Corporation Counsel, and the Public Defender to determine how license suspension for non-payment of child support can be reduced.

This group would also be responsible for identifying a measurable goal within its first year to assess progress. This information should be tracked by the Clerk of Courts, the Child

Support Agency, and the Department of Corrections (probationers/parolees).

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

VII. New Ideas about Funding

We recognize that this task force is making recommendations to address an extremely serious social inequality at the same time that local governments are struggling with the tightest budgets they have ever seen. We have worked hard to recommend possible solutions to the unacceptable racial disparities in Dane County that require little or no funding, while at the same time not ignoring more costly changes that will need to happen if our county is really serious about tackling this issue. The following reflects some of the research we have done on alternative funding strategies and options, in the hopes that drastic budget cuts across every department in Dane County will not doom these recommendations and the hope they hold for Dane County's future.

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

RECOMMENDATION: Dane County Office of Equal Opportunity and the Madison Department of Civil Rights should apply now for grants from foundations that seek to reduce racial disparities and promote social justice, such as:

1. Soros Foundation- Open Society Institute

Mission: The Open Society Institute works to build vibrant and tolerant democracies whose governments are accountable to their citizens. To achieve its mission, OSI seeks to shape public policies that assure greater fairness in political, legal, and economic systems and safeguard fundamental rights. On a local level, OSI implements a range of initiatives to advance justice, education, public health, and independent media. At the same time, OSI builds alliances across borders and continents on issues such as corruption and freedom of information. OSI places a high priority on protecting and improving the lives of people in marginalized communities.

U.S. Programs invests in the capacity of organizations to work for long-term social change through policy reform and shifting public debate. Its initiatives support progressive immigration and national security policies, innovative reentry programs and alternatives to incarceration, structural election reform to ensure that every vote counts, fellowships and public education that encourage critical thinking, and economic policies that give everyone a fair chance.

2. W.K. Kellogg Foundation

The W.K. Kellogg Foundation focuses its investments and grantmaking to help create conditions in communities for children and families to be successful.

Race and Place as Critical Factors in Children's Success: Achieving racial equity will mean taking actions designed to remove present day barriers to equal opportunities. This may be

accomplished through different strategies including – but not limited to – eliminating institutionalized discriminatory policies and practices, and working in neighborhoods of concentrated poverty to improve opportunities for quality education, health, safety, and economic security.

No deadlines, accept applications year round. The preferred method for grant submissions is the Foundation's online application at www.wkkf.org/ApplyOnline.

W.K. Kellogg Foundation – Community Based Racial Healing and Racial Equity Grant (Deadline 9/30/09)

Racial Equity refers to principles of fairness and justice. Racial equity work describes actions designed to address historic burdens as well as to remove present day barriers to equal opportunities. This is accomplished by identifying and eliminating systemic discriminatory policies and practices. Specific remediating strategies, policies, and practices are also required. These actions address the effects of historic injustice and prevent present and future inequities. Their approach to racial equity is inclusive. We will focus on priority concerns for vulnerable African American, Native American, Latino/Hispanic American, Asian American, Pacific Islander, Native Hawaiian, Arab American, and European American children and families within the context of their communities.

This grant opportunity seeks to strengthen and bolster community-based approaches for racial healing and racial equity efforts targeting vulnerable and marginalized children. The Kellogg Foundation anticipates awarding grants up to \$400,000 (they can fund multi-year grants; however, the total amount funded cannot exceed \$400,000).

RFP located at:
http://wrm.wkkf.org/uWebRequestManager/UI/Racial_Equity_RFP_Final.pdf

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3. Herb Block Foundation

The Herb Block Foundation is committed to defending the basic freedoms guaranteed all Americans, combating all forms of discrimination and prejudice and improving the conditions of the poor and underprivileged through the creation or support of charitable and educational programs with the same goals.

The Herb Block Foundation seeks proposals to safeguard the basic freedoms guaranteed in our Bill of Rights, and to help eliminate all forms of prejudice and discrimination and to assist government agencies to be more accountable to the public. Anti-discrimination projects which involve joint efforts of two or more organizations are encouraged. The Herb Block Foundation will also consider contemporary societal issues that may arise.

Letters of Interest due October 8, 2009, Full Proposals due December 15, 2009.

Grants in the range of \$5,000 to \$25,000 will be considered. At this time, grants will be considered for one year's funding.

4. Wisconsin Court System/Federal Funding Opportunities

- Adult Criminal Justice Treatment Grant, <http://www.samhsa.gov/> Contact: kathleen.sample@samhsa.gov
- Adult Drug Court Discretionary Grant Program, Contact: timothy.jeffries@usdoj.gov
- Initiatives Grant, <http://www.ojp.usdoj.gov> Contact: Byrne.Discretionary@usdoj.gov
- Family Drug Courts Program, <http://www.ojdp.ncjrs.org> Contact: jennifer.tyson@usdoj.gov

- Justice and Mental Health Collaboration Program, Bureau of Justice Assistance, Contact: rebecca.rose@usdoj.gov

VIII. Implementation of the Task Force's Recommendations

As an example of the coordination and commitment needed to really impact this problem, after the 1998 Task force on Race Relations released its recommendations, then-Madison Mayor Sue Bauman required that all city agencies work towards demonstrating that the recommendations had been adopted and implemented in their departments. Bauman empowered the Madison Equal Opportunities Commission to monitor progress by periodically reporting to the Common Council "until such time as monitoring this report [was] no longer relevant." (Madison Mayor's Race Relations Task Force Final Report, 1999.)

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

RECOMMENDATION: Empower the Dane County Office of Equal Opportunity and Madison's Department of Civil Rights to monitor the implementation of these recommendations and report directly to the County Executive and the Mayors of Madison and other Dane County municipalities.

"Whatever you can do, or dream you can, begin it. Boldness has genius, power and magic in it."

--W.H. Murray

IX. APPENDIX

A. Sources on the Importance of Economic Development and Community of Opportunity

This recommendation is intended to address some of the root causes of crime and disparity in the criminal justice system. While all of our other recommendations are intended to improve the current system, this recommendation recognizes that if there are disparities outside of the criminal justice system in wealth accumulation and access to opportunities such as safe neighborhoods and housing; childcare; transportation; education; and employment, there will continue to be disparities within the criminal justice system.

In the 2009 “State of the Dream” report issued by United for a Fair Economy, they state:

Due to systemic inequality, communities of color get the fewest benefits during economic booms, and experience the largest deficits in economic downturns. This economic structure, caused by policies that disproportionately affect people of color, continues to cause gaps in incarceration rates, neighborhood quality, housing affordability, job access, health, retirement, and educational attainment. These gaps maintain low economic mobility for entire communities. (p. 32)

As they examine the impact of these disparities on children in the “America’s Cradle to Prison Pipeline Report,” the Children’s Defense Fund finds:

From birth through adulthood, millions of these children confront a multitude of disadvantages and risks including poverty and its many stresses: single, teen or unstable families; no or poor health care; lack of early education and enrichment; child abuse and neglect; failing schools that don’t teach them to read, write, or compute; grade retention, suspension and expulsion; questionable special education placements or dropping out; unaddressed mental health problems; absent fathers or incarcerated parents; violent neighborhoods; and disproportionate involvement in the child welfare and juvenile justice systems. These accumulated and convergent risks form a Cradle to Prison Pipeline. (p. 15)

Thus disparate access to opportunities can indicate which children will succeed, and which are more likely to end up in the criminal justice system as adults. This access (or lack thereof) to opportunities directly impacts the racial disparity in the criminal justice system, because race is an indicator for access to all of these opportunities.

In response to many of the disparities mentioned above, the Kirwan Institute for the Study of Race and Ethnicity proposes a model called “Communities of Opportunity.”

The model seeks to bring opportunities into distressed neighborhoods by improving education, stimulating investment, and expanding employment opportunities. The model also advocated affirmatively connecting marginalized populations to regional opportunity structures by improving housing mobility and providing fair and effective public transportation. In addition, the model advocates for managing sprawling growth, in order to reduce the drain of jobs and resources from existing opportunities. The “Communities of Opportunity” model advocates for a

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fair investment in all of a region's people and neighborhoods – to improve the life outcomes of all citizens, and to improve the health of the entire region. (p. 2)

The Children's Defense Fund also proposes a very holistic approach to handling this problem, which they identify as originating from many combined risk factors. Essentially, their focus is on preventing the risk factors that they have identified as contributing to the Cradle to Prison Pipeline. They argue:

Education costs less than ignorance, preventative health care far less than emergency rooms, preventative family services less than out-of home care, and Head Start much less than prisons.

- The average annual per child cost of a mentoring program is \$1,000.
- The cost of providing a year of employment training for unemployed youths is \$2,492.
- The annual per child cost of a high quality after-school program is \$2,700.
- The average cost of ensuring that a low-income family has affordable housing is \$6,830.
- The average per child cost of Head Start is \$7,028
- The annual per child cost for a high quality comprehensive full-day, full-year early childhood education program is \$13,000.
- The average annual per prisoner cost is \$22,650. States spend on average almost 3 times as much per prisoner as per public school pupil. (p. 20)

B. Allied Early Childhood Initiative (ECI) Program

Background: ECI is an innovative home visitation and employment program started in July 2004 under the leadership of County Executive Kathleen Falk. It is designed to improve life outcomes for our most vulnerable families, targeting services and resources to residents of Allied Drive, a high poverty neighborhood located on Madison's southwest side. ECI's purpose is to ensure that our youngest children achieve age appropriate developmental outcomes and live in families that are nurturing and self-sufficient, with income from sustainable employment. In the long term, these children will arrive at school ready to learn and live in families that have the stability and resources necessary to support their path to successful adulthood.

ECI strives to increase families' access to an array of services including:

- Health and developmental screening and assessment
- Prenatal care
- Parenting education and support
- Immunizations and other preventative health care
- Benefit and basic needs resources
- Employment related assistance
- Assistance in finding and sustaining employment through skill enhancement

Services are delivered and outcomes achieved through an Early Childhood Team comprised of 8-10 staff representing several different types of professionals. Staffing for the initiative entails the following: three Family Support specialists deliver home visitation services; a neighborhood Partner hired from the community provides mentoring and other assistance; and Employment and Training Specialist works with parents and caregivers to obtain work and keep them successfully employed; and Economic

Support Worker ensures that benefits related to medical assistance, childcare, food, and economic assistance are quickly accessed and maintained; a Coordinator makes sure that services are appropriately integrated and the project achieves its outcomes. ECI is culturally competent and has Spanish speaking staff. A partnership representing Dane County, Employment and Training Association, The Exchange Center, Dane Count Parent Council, and University of Wisconsin Medial and Social Work schools oversees the initiative.

C. Bibliography of Research on Psychology of Bias

Amodio, David M. and Patricia G. Devine (2006). "Stereotyping and evaluation in implicit race bias: Evidence for independent constructs and unique effects on behavior." Journal of Personality and Social Psychology 91(4): 652-661.

Amodio, David M., Patricia G. Devine, et al. (2005). Changing Prejudice: The Effects of Persuasion on Implicit and Explicit Forms of Race Bias. Persuasion: Psychological insights and perspectives, 2nd ed. Thousand Oaks, CA US, Sage Publications, Inc: 249-280.

Amodio, David M., Patricia G. Devine, et al. (2008). "Individual differences in the regulation of intergroup bias: The role of conflict monitoring and neural signals for control." Journal of Personality and Social Psychology 94(1): 60-74.

Devine, Patricia G., Amanda B. Brodich, et al. (2005). Self-regulatory processes in interracial interactions: The role of internal and external motivation to respond without prejudice. Social motivation: Conscious and unconscious processes. New York, NY US, Cambridge University Press: 249-273.

Devine, Patricia G., Margo J. Monteith, et al. (1991). "Prejudice with and without compunction." Journal of Personality and Social Psychology 60(6): 817-830.

Devine, Patricia G., E. Ashby Plant, et al. (2002). "The regulation of explicit and implicit race bias: The role of motivations to respond without prejudice." Journal of Personality and Social Psychology 82(5): 835-848.

Devine, Patricia G., E. Ashby Plant, et al. (2000). Breaking the prejudice habit: Progress and obstacles. Reducing prejudice and discrimination. Mahwah, NJ US, Lawrence Erlbaum Associates Publishers: 185-208.

Hodson, Gordon, John F. Dovidio, et al. (2002). "Processes in racial discrimination: Differential weighting of conflicting information." Personality and Social Psychology Bulletin 28(4): 460-471.

Johnson, James D., Leslie Ashburn-Nardo, et al. (2008). "The role of Blacks' discriminatory expectations in their prosocial orientations toward whites and blacks." Journal of Experimental Social Psychology 44(6): 1498-1505.

Appendix

D. Open Records Request for Data on Racial Patterns for Traffic Stops and Arrests: Dane County Law Enforcement Agencies' Responses

On July 3, 2009, the Racial Disparities Task Force sent an open records request to all Dane County law enforcement agencies, asking that the following data be provided within two weeks:

- 2007 and 2008 data by race (including Hispanic) on traffic stops resulting in citations or arrests, and traffic stops NOT resulting in citations or arrests
- 2007 and 2008 data by race (including Hispanic) on arrests, by offense type

Agencies were also asked to provide a breakdown of traffic stops by violation type: moving violations, equipment violations, and registration violations.

The initial goal was to provide a picture of traffic stop and arrest disparities in Dane County as a whole, and the secondary goal was to look for variation or consistency among all of the different departments in the manner in which they collect and report this data. While the Task Force was compiling this data, Governor Doyle signed the state budget, which included a provision that requires all Wisconsin law enforcement agencies to collect and report traffic stop data in a uniform manner beginning in 2011, in an effort to track and reduce racial profiling statewide.

This open records request was sent to 24 law enforcement agencies in Dane County. A follow-up request was sent to those agencies that had not replied by July 24. By early August, all but five agencies had responded. All of the agencies that received the request except the Village of Dane had reported arrest data to the Uniform Crime Reports (UCR) program for 2007 and 2008. UCR reports give the counts of arrests broken down by offense (35 categories) and race (four categories), but do not distinguish Hispanics. Table 1 summarizes the responses received.

As Table 1 makes clear, agency responses to the request varied widely. Ten agencies responded in a standard way using the facilities of the New World record management software, generally with the assistance of City of Madison Police Department's information systems coordinator Thomas Dull. This standard response gave counts for arrests and traffic stops by race (White, Black, Asian, Native/Indian, Hispanic, Unknown) and by arrest offense or traffic stop type. In this standard response, arrests were grouped into about 65 standard categories, rather than the 35 standard categories of the Uniform Crime Reports. The offense codes and descriptions would generally make it possible to regroup the offenses into the UCR categories if that were desired. Traffic stops were classified as hazardous and non-hazardous, and non-traffic citations were distinguished from traffic citations. These standard reports apparently combine adult and juvenile arrests, although this was not made clear in the information provided.

City of Madison Police provided an email summary of the counts of citations, traffic stops and arrests plus a large multi-page spreadsheet of individual records of adult and juvenile arrests, municipal citations, and traffic citations for 2005 to the present, but provided no grouped summaries. Madison's racial breakouts include White, Black, Asian, Native/Indian, Hispanic, Unknown. Arrest offense codes and citation types in the spreadsheet were the same as the New World reports. The violation code fields for arrests and the codes for citation types were the same as those used in the standard New World reports, so it would be possible for an analyst with access to appropriate statistical software to generate tables comparable to the standard New World reports. Madison also provided counts of the total number of traffic stops by race.

The Dane County Sheriff also provided a large spreadsheet with individual records of traffic stops and warnings which included the statute number only, making it impossible to categorize the arrests or citations without access to a separate lookup file linking statute numbers to offense descriptions or categories. A date of birth field was included which would permit distinguishing adults and juveniles in the data by calculation using the date of issue. The Sheriff also provided a summary table with the total for citations and warnings by race and PDF files of printouts of all arrests and citations, and photocopies of a report categorizing arrests in various ways. The Sheriff does not distinguish Hispanics, and reports the four racial categories only.

The Capitol Police provided paper printouts of all arrests and traffic citations, listing offense description, statute, race, and Hispanic ethnicity. We were able to summarize these data by counting total arrests and citations by race, but more detailed analysis would require spreadsheets or other electronic formats. Waunakee also provided a large stack of paper printouts that also were not categorized as requested by the Task force, which was unable to sort through and make sense of the data in the format provided.

As indicated in Table 1, the other six responding agencies responded in a variety of ways that provided less information than the standard response received from those agencies using the New World system. These agencies generally indicated a willingness to cooperate but difficulty in complying with the request. Fitchburg provided total counts for traffic stops and citations, but was unable to provide information on arrests.

As Table 1 indicates, some agencies track warnings in their databases and were able to provide this information, while others do not. We were told that City of Madison Police does not record warnings. Although warnings are reported by the New World software, three agencies using this software reported zero warnings, suggesting that they do not have a policy of tracking warnings even though their software includes this option. The Dane County Sheriff provided individual records of warnings with statute numbers. The paper printouts from Capitol Police also included warnings.

Racial classifications varied as well. Although older Uniform Crime Reports protocols distinguished Hispanic arrests, since the early 1980s, the Uniform Crime Reports do not enumerate Hispanic arrests. The presumption is that Hispanics are generally counted as White in UCR reports, and many agencies that enumerate Hispanics in their internal report group them with Whites when forwarding data to the UCR. In the 2000 Census, 48% of Hispanics classified themselves as White, 48% classified themselves as either "other" or "two or more races", and the rest selected one of the other racial groups. Due to ongoing concerns about hidden disparities in Hispanic arrests, the Governor's Commission recommended that law enforcement agencies in Wisconsin collect data on Hispanic arrests and traffic stops and forward these data to Wisconsin's Office of Justice Assistance. The Commission also recommended that all Wisconsin arrest reports distinguish Hispanics from other groups.⁴⁵

There is ambiguity about how to treat Hispanics: some protocols treat Hispanics regardless of race as a distinct category, while others first classify people by race and then separately classify them by whether they are Hispanic. City of Madison and the ten agencies using the New World software used the five

⁴⁵ Wisconsin law enforcement agencies submit their arrest reports to the Office of Justice Assistance, which has the responsibility of compiling them and forwarding them to the FBI for inclusion in the Uniform Crime Reports. The Governor's Commission recommended that all law enforcement agencies submit Hispanic breakouts to OJA and that OJA take responsibility for reconciling these reports with the federal categories before forwarding them to the FBI.

Appendix

categories that have become common in most federal reports, although the names given to the categories vary somewhat: White, Black (or African American), Native (or Native American or American Indian or Indian), Asian (or Asian American), and Hispanic (or Latino), with the Hispanic category including all Hispanics regardless of race and the other racial categories excluding Hispanics. Middleton, Fitchburg, Capitol Police and one of the University reports provided data including Hispanics in the other standard way, giving total counts for racial groups and then a separate count for Hispanics. The Dane County Sheriff and Sun Prairie followed federal UCR guidelines and did not enumerate Hispanic ethnicity at all.

Prior analysis of non-traffic arrest patterns from Dane County UCR reports over the years 2000-2007⁴⁶ shows how arrest patterns between agencies vary by offense and race. As Table 2 shows, the City of Madison had about 51% of the adult population of Dane County in 2000; according to the Uniform Crime Reports, the City of Madison Police Department accounted for about 43% of all Dane County adult arrests in 2007. But this varies greatly by offense group and race. Considering Whites + Hispanics + Others (Hispanics and others are counted as White in the UCR), the City of Madison had 49% of the population of Dane County in 2000 while City of Madison Police accounted for 62% of the adult theft arrests, 33% of the adult drug arrests, 37% of the adult arrests for major offenses (murder, manslaughter, forcible rape, robbery, aggravated assault), and 27% of adult public order and other arrests in the years 2000-2007. For Blacks, the City of Madison had 71% of the adult population in 2000 while City of Madison police accounted for 72% of the adult arrests for theft, 66% of the adult arrests for drugs, 62% of the adult arrests for major offenses, and 66% of the adult arrests for public order and other offenses, again summing across the years 2000-2007.

Tables 3, 4, 5, 6 and 7 summarize some of the information we received on arrests, traffic citations, warnings, and other citations. UCR protocols count each person only once in an arrest, even if there are multiple charges (with rules about which offense to report), but it is not clear whether this protocol was followed in the summary tables we received. The citation and arrest records received from Madison Police probably contain multiple records for a person who was charged with multiple offenses. Data are for adults and juveniles combined in some cases, and adults only in others. Policies about whether to record warnings and when to issue non-traffic citations appeared to be especially variable between agencies. Estimates of warnings by the Sheriff were calculated by subtracting traffic citations from traffic stops, although the summary report indicated there were more Hispanics given citations than Hispanics who were stopped.

Some confusion in recording race/ethnicity is to be expected, as classification is inherently ambiguous for many people. Agencies also varied markedly in the proportion of cases for which the race/ethnicity categories were blank or unknown, which would appear to reflect differences in protocols for resolving ambiguities.

Agencies do vary markedly in the racial mix of those they arrest and cite, as well as in the mix of offenses they cite people for and the similarity or difference in the mix of offenses across racial groups. As noted above, it is not possible to draw any conclusions from these differences without more information. It was not possible given the time constraints for this Task Force to do any more detailed analysis of the data provided.

⁴⁶ This information is due to Professor Pamela Oliver's analysis of Uniform Crime Reports data provided to her by the Wisconsin Office of Justice Assistance in an earlier request for a different purpose in which arrest averages were calculated for the period 2000-2007.

1. Hispanics

The City of Madison and thirteen other agencies provided information on Hispanic traffic stops and/or arrests. These reports can be used to provide some estimate of whether there are hidden disparities in arrests due to the practice of reporting Hispanics as White in the UCR.

Combining 2007 and 2008, City of Madison police arrests of adults (as reported in the data they supplied in response to the open records request) across all offense groups were 46% Black, 45% White, 6% Hispanic, 1% Asian, less than 1% Native, and less than half a percent "unknown." Assuming that all Hispanics were counted as White in Madison's Uniform Crime Report, this means that 12% of the people classified as White in Madison UCR reports were actually Hispanic. (Black Hispanics are probably more likely to be classified as Black than as White in a UCR report, but only about 2% of all Hispanics classify themselves as Black.) Of City of Madison traffic citations to adults, 68% were White, 21% Black, 7% Hispanic, 4% Asian, and less than 1% Native or Unknown. In the 2008 Census estimate, Dane County as a whole was 5% Hispanic. Due to uncertainties about the actual Hispanic population in Dane County, it is difficult to say whether Hispanics are overrepresented in arrests and traffic stops relative to population, but it is certainly true that combining Hispanics with Whites in arrest data leads to an underestimate of the Black/White disparity in arrests. Tables 3, 4, 5 6 and 7 make it clear that where Hispanics are separately enumerated, they do account for a significant fraction of arrests and traffic stops. More current population estimates for Hispanics (and other races) are necessary before it is possible to calculate arrest rates and disparities with these data.

Appendix

Table 1 Summary of responses from Dane County Law Enforcement Agencies

| Community | Type | File Type | Format | Traffic | Non-Traffic Citations | Warnings | Arrests | Race/Hispanic categories |
|-------------------------|--------------|-----------------------------|---|---|--|---|---|--|
| Sheriff | County | spreadsheet & PDF files | individual citations + counts | Individual records w/ statute + total citations | No | Individual records w/statute plus total count | Not provided | Race only, no Hispanic |
| Fitchburg | City | PDF memo | Counts | Totals for stops and citations combined (unable to give types) | No | None | unable to retrieve from system, says DCSO has the information | Hispanic counted separately, included in Race counts |
| Madison | City | Spreadsheet + email summary | individual arrests, citations; summary counts | Individual citations w/ offense + hazard/non code | Individual records with statute & description ^* | None | individual arrests with statute and description ^* | Standard*** |
| Middleton | City | spreadsheet | Counts | Moving, Seatbelt & Equip, DL/Reg | Yes | Yes | total arrests & violations (no offenses) | Hispanic counted separately, included in race counts |
| Monona | City | spreadsheet | *counts (NW std) | Hazardous, non-hazardous | Yes | Yes | standard offenses | Standard*** |
| Stoughton | City | | | | | | | |
| Sun Prairie | City | text email | total counts by race only, no types | Combined with arrests | | | combined with traffic | White, Black, Asian, none (no Hispanic) |
| Verona | City | spreadsheet | *counts (NW std) | Hazardous, non-hazardous | Yes | Yes | standard offenses | Standard*** |
| Belleville | Village | | | | | | | |
| Brooklyn | Village | document file | counts: citations + warnings (2008 only) | Hazardous, non-hazardous | Yes | Yes | total citations only | "all white" |
| Cottage Grove | Village-Town | spreadsheet | *counts (NW std) | Hazardous, non-hazardous | Yes | Yes | standard offenses | Standard*** |
| Cross Plains | Village | spreadsheet | *counts (NW std) | Hazardous, non-hazardous | Yes | None reported | standard offenses | Standard*** |
| Dane | Village | email text | "all were white" no numbers given | | | | | "all white" |
| DeForest | Village | spreadsheet | *counts (NW std) | Hazardous, non-hazardous | Yes | Yes | standard offenses | Standard*** |
| Madison | Town | Spreadsheet* | *counts (NW std) | Hazardous, non-hazardous | Yes | None reported | standard offenses | Standard*** |
| Maple Bluff | Village | | | | | | | |
| Marshall | Village | | | | | | | |
| McFarland | Village | spreadsheet | *counts (NW std) | Hazardous, non-hazardous | Yes | Yes | standard offenses | Standard*** |
| Middleton **** | Town | spreadsheet | *counts (NW std) | Hazardous, non-hazardous | Yes | None reported | standard offenses | Standard*** |
| Mt. Horeb | Village | spreadsheet | *counts (NW std) | Hazardous, non-hazardous | Yes | Yes | standard offenses | Standard*** |
| Oregon | Village | spreadsheet | *counts (NW std) | Hazardous, non-hazardous | Yes | Yes | standard offenses | Standard*** |
| Shorewood Hills | Village | | | | | | | |
| Waunakee | Village | paper | Indiv. citations | | | | | Hispanic counted separately |
| State Capitol | Other | paper | Individual citations | | | | | |
| University of Wisconsin | Other | PDF and video | counts and graphs | Total stops by race X Hispanic; total stops by race & clearance type (no Hispanic); citations by race (no Hisp) | No | Counts by race (no Hispanic) | counts by offense & race only (no Hispanic) | Race X Hisp totals, Race only by type of stop |

* Standard response using New World software, presumably combining adults and juveniles. ** Also letter saying "Not collecting data on race" *** Standard race categories: White, Black, Asian, Native/Indian, Hispanic, Unknown. **** Did not receive request, but numbers reported by Town of Madison ***** Traffic hazardous, traffic non-hazardous, non-traffic citations, warnings (all) ^* Physical arrest and citation not distinguished

Table 2
Population in Dane County and City of Madison, 2000 Census

| | Population | | | Racial Mix in Areas | | | Proportion of race in area | |
|----------------------------|-------------|-----------------|----------------|---------------------------|-------------------------------|------------------------------|----------------------------|----------------|
| | Dane County | City of Madison | County Balance | Proportion of Dane County | Proportion of City of Madison | Proportion of County Balance | City of Madison | County Balance |
| Total | 330,271 | 170,793 | 159,478 | 1.000 | 1.000 | 1.000 | 0.517 | 0.483 |
| Hispanic (Latino) | 9,871 | 6,071 | 3,800 | 0.030 | 0.036 | 0.024 | 0.615 | 0.385 |
| Non-Hispanic Racial Groups | | | | | | | | |
| White | 294,598 | 145,250 | 149,348 | 0.892 | 0.850 | 0.936 | 0.493 | 0.507 |
| Black (Afr. Am.) | 10,733 | 7,634 | 3,099 | 0.032 | 0.045 | 0.019 | 0.711 | 0.289 |
| Native (Am. Ind.) | 905 | 515 | 390 | 0.003 | 0.003 | 0.002 | 0.569 | 0.431 |
| Asian + Hawaiian | 10,881 | 9,080 | 1,801 | 0.033 | 0.053 | 0.011 | 0.834 | 0.166 |
| Other (incl 2+ races) | 3,283 | 2,243 | 1,040 | 0.010 | 0.013 | 0.007 | 0.683 | 0.317 |
| | | | | | | | | |
| White + Hispanic + Other | 307,752 | 153,564 | 154,188 | 0.932 | 0.899 | 0.967 | 0.499 | 0.501 |

Table compiled by Pamela Oliver from data downloaded from Census Bureau web sites in 2001.

Appendix

Table 3
 Counts of total arrests by race/ethnicity and percentage distribution of arrests by race within agency.
 Two-year sum except as noted.

| Agency | Arrests 2007-8 | | | | | | Percent of Total | | | | | |
|-----------------------------|----------------|-------|--------|-------|----------|---------|------------------|-------|--------|-------|----------|---------|
| | White | Black | Native | Asian | Hispanic | Unknown | White | Black | Native | Asian | Hispanic | Unknown |
| Sheriff (X) | | | | | | | | | | | | |
| Fitchburg | | | | | | | | | | | | |
| Madison | 6125 | 6269 | 65 | 187 | 871 | 15 | 0.452 | 0.463 | 0.004 | 0.014 | 0.064 | 0.001 |
| Middleton (A, B) | 476 | 213 | 3 | 12 | 32 | 0 | 0.676 | 0.303 | 0.004 | 0.017 | 0.045 | 0 |
| Monona | 497 | 284 | 4 | 12 | 87 | 6 | 0.558 | 0.319 | 0.004 | 0.013 | 0.098 | 0.007 |
| Stoughton | | | | | | | | | | | | |
| Sun Prairie (D) | | | | | | | | | | | | |
| Verona | 239 | 62 | 0 | 5 | 22 | 1 | 0.726 | 0.188 | 0.000 | 0.015 | 0.067 | 0.003 |
| Belleville | | | | | | | | | | | | |
| Brooklyn | | | | | | | | | | | | |
| Cottage Grove | 459 | 63 | 4 | 11 | 7 | 0 | 0.844 | 0.116 | 0.007 | 0.02 | 0.013 | 0 |
| Cross Plains | 70 | 6 | 0 | 0 | 1 | 0 | 0.938 | 0.063 | 0 | 0 | 0.013 | 0 |
| Dane Village | | | | | | | | | | | | |
| DeForest | 328 | 89 | 1 | 4 | 16 | 3 | 0.739 | 0.200 | 0.002 | 0.009 | 0.036 | 0.007 |
| Madison Town | 230 | 335 | 2 | 4 | 10 | 0 | 0.396 | 0.577 | 0.003 | 0.007 | 0.017 | 0 |
| Maple Bluff | | | | | | | | | | | | |
| Marshall | | | | | | | | | | | | |
| McFarland | 255 | 55 | 0 | 2 | 16 | 0 | 0.777 | 0.168 | 0 | 0.006 | 0.049 | 0 |
| Middleton Town | | | | | | | | | | | | |
| Mt. Horeb | 172 | 11 | 0 | 0 | 4 | 3 | 0.905 | 0.058 | 0.000 | 0.000 | 0.021 | 0.016 |
| Oregon city + town | 163 | 17 | 1 | 1 | 15 | 0 | 0.827 | 0.086 | 0.005 | 0.005 | 0.076 | 0.000 |
| Shorewood Hills | | | | | | | | | | | | |
| Waunakee | | | | | | | | | | | | |
| State Capitol | 95 | 77 | 1 | 4 | 16 | 0 | 0.492 | 0.399 | 0.005 | 0.021 | 0.083 | 0.000 |
| University of Wisconsin (E) | 1498 | 204 | 7 | 69 | X | 0 | 0.843 | 0.115 | 0.004 | 0.039 | X | 0.000 |

Table 4
Counts of traffic citations by race/ethnicity and percentage distribution of citations by race within agency.
Two-year sum 2007-8 except as noted.

| | Traffic Citations (hazardous and nonhazardous combined) | | | | | | Percent of Total | | | | | |
|--------------------------------------|---|-------|--------|----------|----------|---------|------------------|-------|--------|-------|----------|---------|
| | White | Black | Native | Asian | Hispanic | Unknown | White | Black | Native | Asian | Hispanic | Unknown |
| Agency | | | | | | | | | | | | |
| Sheriff (A) | 20955 | 2000 | 107 | 404 | X | 314 | 0.881 | 0.084 | 0.004 | 0.017 | X | 0.013 |
| Fitchburg (A) | 3106 | 1265 | 24 | 89 | 704 | 225 | 0.660 | 0.269 | 0.005 | 0.019 | 0.150 | 0.048 |
| Madison | 26131 | 8046 | 113 | 140 4 | 3214 | 228 | 0.668 | 0.206 | 0.003 | 0.036 | 0.082 | 0.006 |
| Middleton (A) | 4945 | 1047 | 22 | 205 | 168 | 0 | 0.795 | 0.168 | 0.004 | 0.033 | 0.027 | 0 |
| Monona | 2999 | 863 | 24 | 82 | 511 | 162 | 0.646 | 0.186 | 0.005 | 0.018 | 0.110 | 0.035 |
| Stoughton | | | | | | | | | | | | |
| Sun Prairie (D) | | | | | | | | | | | | |
| Verona | 3542 | 251 | 18 | 123 | 224 | 233 | 0.807 | 0.057 | 0.004 | 0.028 | 0.051 | 0.053 |
| Belleville | | | | | | | | | | | | |
| Brooklyn | | | | | | | | | | | | |
| Cottage Grove | 876 | 52 | 4 | 23 | 47 | 5 | 0.845 | 0.050 | 0.004 | 0.022 | 0.045 | 0.034 |
| Cross Plains | 481 | 36 | 2 | 6 | 18 | 83 | 0.768 | 0.058 | 0.003 | 0.01 | 0.029 | 0.133 |
| Dane | | | | | | | | | | | | |
| DeForest | 3034 | 198 | 9 | 41 | 106 | 23 | 0.842 | 0.055 | 0.002 | 0.011 | 0.029 | 0.054 |
| Madison | 1505 | 1011 | 16 | 52 | 229 | 120 | 0.513 | 0.344 | 0.005 | 0.018 | 0.078 | 0.040 |
| Maple Bluff | | | | | | | | | | | | |
| Marshall | | | | | | | | | | | | |
| McFarland | 2026 | 238 | 8 | 34 | 193 | 117 | 0.774 | 0.091 | 0.003 | 0.013 | 0.074 | 0.044 |
| Middleton Town | 698 | 36 | 1 | 8 | 15 | 3 | 0.917 | 0.047 | 0.001 | 0.015 | 0.020 | 0.004 |
| Mt. Horeb | 832 | 22 | 0 | 10 | 14 | 27 | 0.919 | 0.024 | 0.000 | 0.011 | 0.015 | 0.030 |
| Oregon | 2785 | 107 | 5 | 41 | 168 | 80 | 0.874 | 0.034 | 0.002 | 0.013 | 0.053 | 0.025 |
| Shorewood Hills | | | | | | | | | | | | |
| Waunakee | | | | | | | | | | | | |
| State Capitol | 697 | 405 | 4 | 23 | 121 | 2 | 0.557 | 0.323 | 0.003 | 0.018 | 0.097 | 0.002 |
| University of Wisconsin (A, E) | 284 | 51 | 3 | 20 | X | 0 | 0.793 | 0.142 | 0.008 | 0.056 | X | 0.000 |

Appendix

Table 5
Counts of warnings by race/ethnicity and percentage distribution of warnings (D) by race within agency.
Two-year sum except as noted.

| Agency | Warnings 2007-2008 | | | | | | Percent of Total | | | | | |
|-------------------------|--------------------|-------|--------|-------|----------|---------|------------------|-------|--------|-------|----------|---------|
| | White | Black | Native | Asian | Hispanic | Unknown | White | Black | Native | Asian | Hispanic | Unknown |
| Sheriff (A) | 617 | 40 | 0 | 9 | X | 2 | 0.924 | 0.06 | 0 | 0.013 | x | 0.003 |
| Fitchburg (C) | | | | | | | | | | | | |
| Madison (X) | | | | | | | | | | | | |
| Middleton (A) | 2658 | 305 | 12 | 106 | 40 | 0 | 0.863 | 0.099 | 0.004 | 0.034 | 0.013 | 0 |
| Monona | 2216 | 233 | 7 | 61 | 113 | 103 | 0.811 | 0.085 | 0.003 | 0.022 | 0.041 | 0.038 |
| Stoughton | | | | | | | | | | | | |
| Sun Prairie (D) | | | | | | | | | | | | |
| Verona | 1004 | 48 | 2 | 25 | 29 | 44 | 0.872 | 0.042 | 0.002 | 0.022 | 0.025 | 0.038 |
| Belleville | | | | | | | | | | | | |
| Brooklyn | | | | | | | | | | | | |
| Cottage Grove | 1580 | 83 | 7 | 44 | 70 | 38 | 0.867 | 0.046 | 0.004 | 0.024 | 0.038 | 0.02 |
| Cross Plains (X) | | | | | | | | | | | | |
| Dane | | | | | | | | | | | | |
| DeForest | 2890 | 187 | 2 | | | | | | | | | |
| Madison (X) | | | | | | | | | | | | |
| Maple Bluff | | | | | | | | | | | | |
| Marshall | | | | | | | | | | | | |
| McFarland | 2525 | 141 | 4 | 71 | 81 | 113 | 0.86 | 0.048 | 0.001 | 0.024 | 0.028 | 0.038 |
| Middleton Town | | | | | | | | | | | | |
| Mt. Horeb | 575 | 17 | 0 | 3 | 2 | 29 | 0.919 | 0.027 | 0.000 | 0.005 | 0.003 | 0.046 |
| Oregon | 3420 | 82 | 1 | 35 | 79 | 80 | 0.925 | 0.022 | 0.000 | 0.009 | 0.021 | 0.022 |
| Shorewood Hills | | | | | | | | | | | | |
| Waunakee | | | | | | | | | | | | |
| State Capitol | 77 | 14 | 0 | 7 | 1 | 1 | 0.77 | 0.14 | 0 | 0.07 | 0.01 | 0.01 |
| University of Wisconsin | | | | | | | | | | | | |

Table 6.
Counts of non-traffic citations by race/ethnicity and percentage distribution of citations by race within agency.
Two-year sum except as noted.

| | Other Citations 2007-2008 | | | | | | Percent of Total | | | | | |
|-------------------------|---------------------------|-------|--------|-------|----------|---------|------------------|-------|--------|-------|----------|---------|
| | White | Black | Native | Asian | Hispanic | Unknown | White | Black | Native | Asian | Hispanic | Unknown |
| Agency | | | | | | | | | | | | |
| Sheriff | | | | | | | | | | | | |
| Fitchburg | | | | | | | | | | | | |
| Madison | 14882 | 6447 | 57 | 392 | 1121 | 107 | 0.647 | 0.280 | 0.002 | 0.017 | 0.049 | 0.005 |
| Middleton (A, B) | 216 | 62 | 0 | 8 | 14 | 0 | 0.720 | 0.207 | 0.000 | 0.027 | 0.047 | 0.000 |
| Monona | 802 | 213 | 1 | 12 | 92 | 104 | 0.655 | 0.174 | 0.001 | 0.010 | 0.075 | 0.085 |
| Stoughton | | | | | | | | | | | | |
| Sun Prairie (D) | | | | | | | | | | | | |
| Verona | 502 | 69 | 1 | 8 | 32 | 126 | 0.680 | 0.093 | 0.001 | 0.011 | 0.043 | 0.171 |
| Belleville | | | | | | | | | | | | |
| Brooklyn | | | | | | | | | | | | |
| Cottage Grove | 400 | 26 | 1 | 3 | 3 | 25 | 0.873 | 0.057 | 0.002 | 0.007 | 0.007 | 0.055 |
| Cross Plains | 208 | 22 | 0 | 3 | 2 | 58 | 0.71 | 0.075 | 0 | 0.01 | 0.007 | 0.198 |
| Dane | | | | | | | | | | | | |
| DeForest | | | | | | | | | | | | |
| Madison | 481 | 370 | 6 | 18 | 30 | 82 | 0.487 | 0.375 | 0.006 | 0.018 | 0.03 | 0.083 |
| Maple Bluff | | | | | | | | | | | | |
| Marshall | | | | | | | | | | | | |
| McFarland | 741 | 33 | 0 | 5 | 19 | 223 | 0.726 | 0.005 | 0 | 0.005 | 0.019 | 0.218 |
| Middleton Town | 71 | 2 | 0 | 3 | 1 | 10 | 0.816 | 0.023 | 0 | 0.034 | 0.011 | 0.115 |
| Mt. Horeb | 721 | 18 | 1 | 2 | 7 | 89 | 0.860 | 0.021 | 0.001 | 0.002 | 0.008 | 0.106 |
| Oregon | 1238 | 64 | 4 | 6 | 48 | 136 | 0.828 | 0.043 | 0.003 | 0.004 | 0.032 | 0.091 |
| Shorewood Hills | | | | | | | | | | | | |
| Waunakee | | | | | | | | | | | | |
| State Capitol | | | | | | | | | | | | |
| University of Wisconsin | | | | | | | | | | | | |

Notes to Tables 3, 4, 5, and 6:

- A) Counts for racial groups include Hispanics in these agencies. Otherwise, racial counts exclude Hispanics.
- B) Middleton separated arrests, violations, and citations; comparability to other agencies unclear.
- C) Fitchburg did not provide data on warnings, but did provide data on total traffic stops.
- D) What a "warning" means appears to vary markedly from agency to agency. Some agencies specifically used the term "written warnings." Others did not. Per footnote F this number is derived for Fitchburg.
- E) 2008 only. White Hispanics distinguished from Other Whites in some tables, which are used to make distinctions in these tables where possible.
- F) Sun Prairie summed arrests, citations and warnings across three years for 24,253 total events, 75% White, 14% Black, 1% Asian, 8% No race. Hispanics not enumerated.
- X) Data not provided.

Appendix

E. 2000-2007 Arrest Data for Dane County

The total arrest rate for Blacks is 31234, the equivalent of 31% of the Black population. However, the same person can be arrested multiple times and people can be arrested in a community without living there, but this is still a very high arrest rate. The total arrest rate for Whites (plus Hispanics) is 13106, the equivalent of 13% of the combined White and Hispanic population. The Asian arrest rate is much lower. For all racial groups, the largest single arrest category is "other except traffic." Other offense categories that account for a lot of arrests are driving while intoxicated (especially for Natives and Whites), public order offenses (i.e. disorderly conduct), and theft. Table 2 shows the proportion of all arrests for a given race that are in a given offense category; an entry of 0.00 means that arrests for that offense are less than half a percent of all arrests for that race. The highest Black/White disparities in arrests are for cocaine sales and robbery, but there are high and significant Black/White disparities for almost all offenses. Asians generally have lower arrest rates than Whites (including Hispanics).

Table 1
Arrest Rates

Dane County 2000-2007 Average Adult Arrest Rates per 100,000 population*, by race and offense group

| Offense | Asian | Black | Native | White |
|-----------------------------|-------|-------|--------|-------|
| Murder/Manslaughter | 1 | 23 | 0 | 2 |
| Rape/Sex Offenses | 10 | 149 | 12 | 35 |
| Robbery | 7 | 371 | 31 | 18 |
| Assault | 95 | 2286 | 320 | 304 |
| Burglary | 50 | 275 | 46 | 71 |
| Theft | 249 | 3790 | 262 | 650 |
| Motor Vehicle Theft | 6 | 358 | 62 | 31 |
| Arson | 1 | 6 | 0 | 5 |
| Forg./Fraud/Emb/Fencing | 15 | 318 | 52 | 136 |
| Vandalism | 65 | 951 | 139 | 220 |
| Weapons | 36 | 409 | 332 | 201 |
| Prostitution | 2 | 108 | 0 | 26 |
| Opium/Cocaine Sales | 1 | 732 | 8 | 25 |
| Marijuana Sales | 7 | 248 | 31 | 32 |
| Other Drug Sales | 0 | 30 | 0 | 5 |
| Opium/Cocaine Poss. | 5 | 433 | 23 | 72 |
| Marijuana Poss. | 43 | 1678 | 185 | 413 |
| Other Drug Poss. | 4 | 184 | 19 | 45 |
| Family Offenses | 4 | 124 | 8 | 36 |
| Driving While Intoxicated | 354 | 2655 | 4206 | 3498 |
| Public Order | 313 | 3453 | 658 | 1486 |
| Other (Exc. Traffic) | 1244 | 12653 | 3874 | 5795 |
| Total (sum of all offenses) | 2512 | 31234 | 10268 | 13106 |

* Arrests from Uniform Crime Report data supplied by Wisconsin Office of Justice Assistance. Population figures from US Census population annual estimates for ages 18 and up

Table 1 shows the average arrest rate per 100,000 in Dane County for the years 2000-2007, by race and offense, while table [disparities] shows the racial disparities and statistical significance by race and offense. These tables were compiled by Pamela Oliver from arrest counts in Uniform Crime Report files supplied by Wisconsin's Office of Justice Assistance and population counts from the 2000 Census. Dane County's arrests are the sum of all arrests reported by each law enforcement agency in Dane County. Uniform Crime Report protocols do not distinguish Hispanics, who are usually counted as white. A cell entry in Table 1 is calculated from the number of arrests divided by the population and multiplied by 100,000.

Appendix

**Table 2
Proportions
Dane County 2000-2007 average proportion of adult arrests in each offense category, by race**

| Offense | Asian | Black | Native | White |
|---------------------------|-------|-------|--------|-------|
| Murder/Manslaughter | 0.00 | 0.00 | 0.00 | 0.00 |
| Rape/Sex Offenses | 0.00 | 0.00 | 0.00 | 0.00 |
| Robbery | 0.00 | 0.01 | 0.00 | 0.00 |
| Assault | 0.04 | 0.07 | 0.03 | 0.02 |
| Burglary | 0.02 | 0.01 | 0.00 | 0.01 |
| Theft | 0.10 | 0.12 | 0.03 | 0.05 |
| Motor Vehicle Theft | 0.00 | 0.01 | 0.01 | 0.00 |
| Arson | 0.00 | 0.00 | 0.00 | 0.00 |
| Forg./Fraud/Emb/Fencing | 0.01 | 0.01 | 0.01 | 0.01 |
| Vandalism | 0.03 | 0.03 | 0.01 | 0.02 |
| Weapons | 0.01 | 0.01 | 0.03 | 0.02 |
| Prostitution | 0.00 | 0.00 | 0.00 | 0.00 |
| Opium/Cocaine Sales | 0.00 | 0.02 | 0.00 | 0.00 |
| Marijuana Sales | 0.00 | 0.01 | 0.00 | 0.00 |
| Other Drug Sales | 0.00 | 0.00 | 0.00 | 0.00 |
| Opium/Cocaine Poss. | 0.00 | 0.01 | 0.00 | 0.01 |
| Marijuana Poss. | 0.02 | 0.05 | 0.02 | 0.03 |
| Other Drug Poss. | 0.00 | 0.01 | 0.00 | 0.00 |
| Family Offenses | 0.00 | 0.00 | 0.00 | 0.00 |
| Driving While Intoxicated | 0.14 | 0.09 | 0.41 | 0.27 |
| Public Order | 0.12 | 0.11 | 0.06 | 0.11 |
| Other (Exc. Traffic) | 0.50 | 0.41 | 0.38 | 0.44 |
| Total | 1.00 | 1.00 | 1.00 | 1.00 |

Table 3 Disparities
Adult Arrest Disparity and Significance, Dane County 2000-2007
(Non-Significant Racial Differences Suppressed)

| | Black | Black | Native | Native | Asian | Asian |
|---------------------------|-----------|-------|-----------|--------|-----------|-------|
| Offense | Disparity | sig.* | Disparity | sig.* | Disparity | sig.* |
| Murder/Manslaughter | 13.1 | 0.000 | | | | |
| Rape/Sex Offenses | 4.3 | 0.000 | | | | |
| Robbery | 20.3 | 0.000 | | | | |
| Assault | 7.5 | 0.000 | | | 0.3 | 0.000 |
| Burglary | 3.9 | 0.000 | | | | |
| Theft | 5.8 | 0.000 | 0.4 | 0.053 | 0.4 | 0.000 |
| Motor Vehicle Theft | 11.5 | 0.000 | | | 0.2 | 0.097 |
| Arson | | | | | | |
| Forg./Fraud/Emb/Fencing | 2.3 | 0.000 | | | 0.1 | 0.000 |
| Vandalism | 4.3 | 0.000 | | | 0.3 | 0.000 |
| Weapons | 2.0 | 0.000 | | | 0.2 | 0.000 |
| Prostitution | 4.1 | 0.000 | | | 0.1 | 0.073 |
| Opium/Cocaine Sales | 29.8 | 0.000 | | | 0.0 | 0.074 |
| Marijuana Sales | 7.7 | 0.000 | | | 0.2 | 0.099 |
| Other Sales | 6.4 | 0.001 | | | | |
| Opium/Cocaine Poss. | 6.0 | 0.000 | | | 0.1 | 0.003 |
| Marijuana Poss. | 4.1 | 0.000 | | | 0.1 | 0.000 |
| Other Drug Poss. | 4.0 | 0.000 | | | 0.1 | 0.022 |
| Family Offenses | 3.5 | 0.000 | | | 0.1 | 0.050 |
| Driving While Intoxicated | 0.8 | 0.000 | | | 0.1 | 0.000 |
| Public Order | 2.3 | 0.000 | 0.4 | 0.006 | 0.2 | 0.000 |
| Other (Exc. Traffic) | 2.2 | 0.000 | 0.7 | 0.001 | 0.2 | 0.000 |

*Significance is the probability that the difference between the White and minority arrest rate is a sampling error in a population where there is no difference. Disparity ratios are reported when the significance is less than .05.

The disparity in Table 3 is the ratio of the minority rate to the White rate. The significance column is the probability that a difference of that size between the White and minority rate could have occurred by chance in a sample of arrests when the White and minority rates are actually the same. Differences are customarily considered to be statistically significant if this probability is less than .05.

The disparity ratios are omitted if the difference is not statistically significant. Dane County's population of Native people is small enough that Native arrest rates are statistically unreliable and thus difficult to interpret; but Native arrests do appear to be high relative to population.

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F. The High Point Model: Multi-faceted Intervention for Neighborhood-Based Drug Offenses

Relative to population, from 2006-2008, Black adults were 34.6 times more likely to be arrested for opium/cocaine sales and 23.4 times more likely to be arrested for marijuana sales than White adults (including Hispanics) in Dane County. During this same time period, Black adults were 5.8 times more likely to be arrested for opium/cocaine possession and 10.6 times more likely to be arrested for marijuana possession than White adults. (Source - Wisconsin Uniform Crime Reports (2008 unofficial), calculated by University of Wisconsin Professor Pamela Oliver)

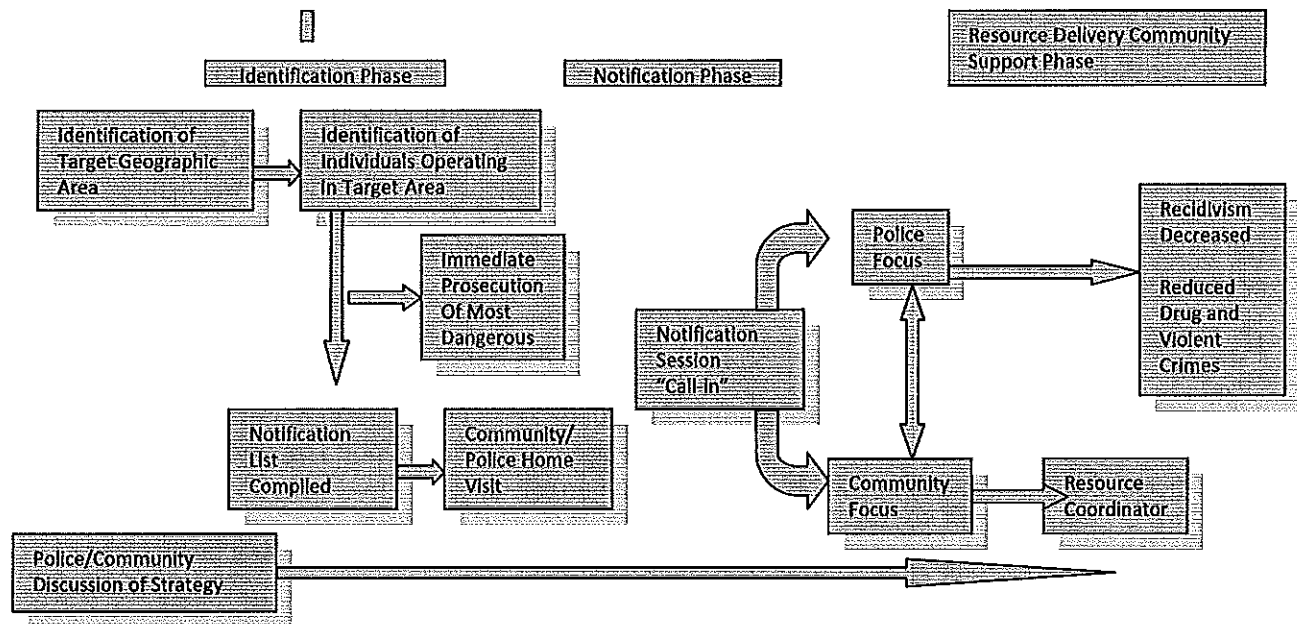
Given this information and recognizing the impact of overt public drug markets within neighborhoods, as well as the often deeply-rooted racial tension that accompanies drug enforcement, Dane County should lead and support local governments in establishing a pre-arrest alternative model for dealing with drug offenses that include multi-faceted collaborations. These collaborations should bring together all stakeholders, such as offenders, law enforcement, other government agencies (District Attorney, US Attorney, Department of Corrections, etc.), community members, service providers, and offender family members. This alternative model would be in lieu of immediate arrest and would instead offer the offender the opportunity to cease the illegal activity while offering support and services such as mentoring, treatment, education, employment, etc.

An example for this recommendation can be found in the work done by High Point, North Carolina in dealing with eliminating overt drug markets. This is known as the "High Point Model." The goal in employing this model was to not only "reduce the full range of harm associated with overt drug markets (i.e. violence, disorder, prostitution, economic devastation and disinvestment), but also to address the damage done to race relations associated with the usual frameworks on drug issues, and the individual and community harms created by traditional drug enforcement." This in turn is likely to have a positive impact on the disparity of arrests of minorities for drug offenses.

In doing their research, the High Point Police Department discovered only a small number of offenders drove the problem and while formal sanctions mattered, informal sanctions mattered even more. It was through careful identification of offenders and then identifying "influentials" in the offender's life that produced desirable results. Once police made a case against the most problematic offenders in a given neighborhood and "influentials" were identified, they would make contact with the offender where he/she would be notified that probable cause existed for their arrest and that an opportunity to avoid arrest and prosecution would be discussed at a call-in that would take place at a specific place and time in the near future. The offender would also receive a letter from the Chief of Police inviting them to the call-in with the promise that no one would be arrested that night.

At the call-in, offenders would be given strong messages from the community, family members, law enforcement and other stakeholders about their illegal activity, the impact it had and the consequences if the behavior did not cease. Offenders were immediately offered services and resources that would help them turn their lives around.

Below you will find a flow chart of the High Point Model:



As a result of their work in High Point, violent crime and drug crime in a targeted west end neighborhood were reduced 36.4% and 31.4% respectively from 2004 – 2005, while city-wide violent crime decreased 6% on average over the same two years – 2004-05. (Source – *Focused Deterrence and Overt Drug Markets: High Point, North Carolina*)

It is our recommendation that Dane County should support a similar model to that of High Point, North Carolina and prioritize funding for those services that would provide a more holistic approach in dealing with offenders and reducing illegal and unwanted drug-related behavior in the community.

G. Sample Police Discretion, Racial Profiling, and Equal Protection Policies (of the Madison Police Department)

Police discretion clearly plays a role in determining who enters the criminal justice system. Police Officers, through necessity, exercise professional discretion in deciding whether or not to arrest citizens for violations of the law. Law enforcement policies and procedures are designed to give clear direction to officers on the use of discretion and on a number of issues related to properly performing their job. The lack of appropriate policies related to issues such as racial profiling, equal protection and police discretion could contribute to improper direction to officers, and racial disparity during arrests. Recognizing that there are many factors that contribute to racial disparity at the arrest stage, law enforcement agencies should provide guidance and direction to officers in these areas.

It is strongly recommended that all law enforcement agencies create and maintain policies on police discretion, racial profiling and equal protection (model policies from the Madison Police Department are included below). These policies should guide officers by providing factors to consider when deciding whether or not to make an arrest. These policies should also provide direction on factors that are improper for officers to consider in deciding whether or not to make an arrest.

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While it would be difficult to measure the effect of these policies on reducing the racial disparity numbers, having these policies in place would allow for greater clarity of expectations for officers and would provide the ability to gauge compliance through the assessment of policy violations incurred within law enforcement agencies. The number of violations, or lack thereof, could provide insight to the effectiveness of having policies in these areas. It is critical that law enforcement agencies commit to these policies, adequately train all of their officers on the content, and hold individual officers accountable for their actions when they are not supporting the policies or direction of the department.

The following policy was written by University of Wisconsin Law professor Michael Scott, and adopted by the Madison Police Department in 2009.

1. 2-400 POLICE DISCRETION

Police officers, of necessity, exercise professional discretion in deciding whether or not to arrest citizens for violations of the law. Other specific laws, department policies, or orders of a supervisor may further limit officers' discretion and direct an officer to effect an arrest.

In general, police officers, using sound professional judgment, may take the following factors into consideration when deciding whether or not to arrest a citizen:

1. The seriousness and nature of the offense (generally, the more serious the offense, the more likely arrest is the preferred course of action);
2. The potential that arrest will effectively resolve a conflict;
3. The availability of legal alternatives to arrest that would adequately resolve the conflict or problem;
4. The likelihood that the citizen will be deterred from future violations by warning and education;
5. The officer's belief that the citizen made an honest mistake in violation of the law;
6. The victim-witness's interest in prosecution;
7. The likelihood of formal prosecution of the offense;
8. The potential that arrest will create more serious breaches of the peace or other problems (e.g., inciting riot);
9. Legitimate competing priorities for police resources.

The following factors are among those that are improper for a police officer to consider in deciding whether or not to make an arrest:

1. The citizen's economic status, race, ethnicity, gender, or other status for which the law prohibits legal discrimination;
2. The revenue likely to be generated by fines or penalties imposed upon conviction;
3. The personal or professional relationship that the citizen has to the police officer or to other influential citizens;

4. The personal advantage to the officer for processing or avoiding processing of the arrest (e.g. overtime compensation, desire to finish tour of duty, avoidance of paperwork, etc.)

2. 202 - PROHIBITION AGAINST RACIAL PROFILING

It is the policy of the Madison Police Department to expressly prohibit any officer-initiated actions that rely upon racial profiling. Specifically, officers of MPD are trained and directed to engage only in those law enforcement activities that are driven by articulable behavior, or information that leads the police to a particular individual (or individuals) who are engaged or have been engaged in criminal activity.

During the performance of their duties, members of the Madison Police Department shall not use racial or ethnic stereotypes as factors in selecting whom to stop, cite, arrest or search. An officer may use race or ethnicity when it is relevant as to whether a person matches a specific description of a particular suspect(s).

3. 203 - EQUAL PROTECTION

Members of the department shall not act in such a manner as to deprive any member of the community of the equal protection of the laws, and shall not evidence bias in the performance of their duties.

This regulation is intended to prohibit omissions, as well as specific actions which are based on citizens' race, color, sex, age, handicap, national origin, sexual orientation, political or fraternal affiliation, or economic status. Equality of treatment requires uniform and fair treatment of all individuals.

This regulation is also intended to prohibit officers from being involved in enforcement decisions, follow-up investigations, assisting in prosecutions or any other law enforcement functions that involve a family member, relative, friend, or important relationship. The purpose of this regulation is to prevent even the appearance of bias on the part of the officer.

H. The Memphis Model: Diversion alternatives when police respond to calls involving persons who exhibit behaviors linked with mental illness or substance abuse

The Mental Health America Board noted in 2008 that "56 percent of state prisoners, 45 percent of federal prisoners and 64 percent of jail inmates have a mental health problem." The Mental Health America Board cited the Surgeon General's report that "showed that disparities existed in mental health systems for persons of diverse populations and that mental and substance use conditions exacted a greater toll on their overall health." They concluded that while there are few, if any, differences in the nature and scope of crimes committed by persons of color in comparison to their white counterparts, their rates of arrest, prosecution, and incarceration, as well as the length of sentences, are substantially higher."

As a consequence the Mental Health Board supports pre-arrest strategies that focus on law enforcement officers who are the first point of contact, since "their initial interactions with persons with mental or substance use conditions are so critical in determining the situation's outcome (whether or not an individual is to be jailed)." Their recommended pre-arrest strategies "rely heavily on helping police become knowledgeable regarding the nature of mental and substance use conditions, provide tools to de-escalate crisis situations and provide options for treatment alternatives to incarceration that are available in the community." These conclusions are reaffirmed in the Justice Center's report that

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cited the conclusions of two regional law enforcement focus groups in Wisconsin that met on March 9th and March 10th of 2009, organized by Madison Police Chief Noble Wray and Milwaukee Police Chief Edward Flynn, that “described concerns about the lack of booking alternatives in their jurisdictions for people with mental illness.” (p. 5)

Clearly, there is a critical need for a close working relationship between the police and community-based mental health services. The Little Hoover Commission (2000) noted that when people are unable to have access to these services they are “arrested for committing crimes of survival or for publicly displaying symptoms of untreated mental illness such as camping in public, urinating on private property, and ‘felony mouth’ aggressive confrontations with police.” In Madison in the 1970s, with the movement to deinstitutionalize mentally ill patients, nationally recognized programs were developed to ensure that when these calls occurred, there were close working relationships between mental health professionals and the police that averted the use of arrest. With limitations in funding, these resources ceased to be available for “real time” police/professional interaction. (See for example, “Gold Award: A Community Treatment Program,” *Psychiatric Services*, June 2000: Vol. 51, #6.) Their presence in the past in Dane County increases the possibility, with community support, to provide these alternatives again.

THE MEMPHIS MODEL: One widely copied model, the Memphis, Tennessee’s Police Department Crisis Intervention Team approach, is extensively described in the U.S. Department of Justice’s *Practitioner Perspectives*, July 2000 issue. It is perhaps significant that the catalyst for the development of a CIT was the death of a suicidal young African American man shot in a confrontation with the Memphis police. Public outcry led to the formation of a task force made up of key players, including the police, representative of the universities and medical centers, managers of the mental health facilities, members of National Alliance for the Mentally Ill (NAMI), and local citizens, with the political support of the mayor. Committed partnerships developed among the constituents—the families of the mentally ill, law enforcement agencies, emergency medical/psychiatric services, regional short-and-long-term receiving hospitals, and the consumers themselves.

While the Memphis Model included the development of Police Crisis Intervention Teams (CIT) available 24 hours a day, seven days a week, we recommend that all the members of the police department, rather than relying on an intervention team, receive training developed by those involved in the reality and treatment of mental illness and substance abuse. The training needs to include knowledge of psychiatric disorders, substance abuse issues, and de-escalation techniques; of legal issues related to mental health and substance abuse; and empathy training from mentally ill individuals and family members. Integral to the program is not only the provision of information for the responding law enforcement personnel on community resources for people in a mental health crisis, but most critically the development of a seamless link between law enforcement and community mental health and substance abuse services. Essential to the successful development of the program is the provision on a twenty-four hour basis of a single point of entry into the mental health service with a policy of no refusals where officers can make referrals or transport an individual. This requires a mental health facility with a clearing house role agreed to by all the health services entities where the consumers may be placed in protective custody with no charges, until the decision is made to transfer to a state hospital, or referred to various community resources, such as medical detoxification programs, mental health centers, rehabilitation programs, and social service agencies.

This is a major challenge as the “Criminal Justice Primer for State Mental Health Agencies” (September, 2002), realistically states:

Community mental health and criminal justice agencies seldom work together. They compete for funding, have priorities and mandates that are often at odds with each other, and lack a culture and history of shared values. Despite estimates that 40% of persons receiving public mental health services will be arrested during their lives, these two public agencies do not routinely collaborate. (p. 11)

The provision of a “seamless link” in Dane County clearly will not be easy, but is essential not only for any pre-arrest efforts, but also for successful post-arrest and re-entry programs that other working groups of the Task Force are recommending. The Primer provides an excellent overview of the issues and alternative diversions and stresses the increased awareness of the need to divert persons from the criminal justice system into treatment, noting that “waiting to provide mental health services until a person is in jail ensures that the services are provided in the least appropriate setting at the highest cost.” (p. 7)

I. Enforceable warnings in lieu of arrest for certain low-level offenses

Milwaukee District Attorney John Chisholm, in his presentation to the Task Force on April 20, 2009, noted that 67% of all the charges by his office involve Blacks, who only represent 33% of Milwaukee’s population. At the same time he stressed that most of the disparities involve lower level crimes, such as disorderly conduct, traffic violations, minor retail theft, drug use, and prostitution. Likewise, in Dane County there are high racial disparities for low-level offenses for people of color, whose diversion from the criminal justice system prior to arrest to appropriate treatment, community service, or restitution programs may lessen the disparity in arrest and later incarceration levels and more critically, lessen the probability of their future involvement in the criminal justice system.

An essential component of this form of police discretion is the provision not only for police officers trained in the use of this discretion and provided with information on the availability of specific services and programs, but also working agreements with each of the services and programs involved. The development of structures of reporting is essential to ensure that the services or programs in the referral have been contacted and used.

Currently in Dane County there has been significant use of forms of deferred prosecution. With experience in these forms of post-arrest diversion, we are recommending the provision for pre-arrest diversion be expanded using the experience and services of the Deferred Prosecution Unit, RESPECT, the Drug Treatment Court, the Pathfinder program, New Routes, Cool Choices, and the Treatment Alternative Program (TAP). The TimeBank and other restitution and community service programs should also be utilized. The experience in Milwaukee with Justice2000, with data and evaluation, attests to the valuable role of post-arrest diversion programs. It would seem to be essential in Dane County, building on our experience with post-arrest diversion, that we develop a network of pre-arrest community alternatives.

Recognizing that police discretion historically has been used to increase racial disparity, it would be a significant change for police discretion be used to lessen that disparity.

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J. Dane County Jail Diversion/Jail Alternative Program Descriptions

ARC Community Services, Inc. – Alternative Living Services

This program provides an average of 1.25 beds for alternative living for women involved in Dane County TAP and Drug Treatment Court with possible involvement in ARC Center for Women & Children, ARC Healthy Beginnings, ARC House, or another court specified AODA treatment program in Dane County who are in need of a safe structured living environment during the duration of their treatment program. In addition this bed may be used at the discretion of the Court as an alternative to incarceration for pregnant women housed in the Dane County Jail.

ARC Community Services, Inc. – RESPECT

RESPECT is a jointly initiated and funded City/County diversion project which addresses local prostitution issues and related HIV/AIDS issues in the City of Madison and Dane County. RESPECT provides advocacy, intensive outreach, case management, counseling, crisis intervention, and peer support services for women with prostitution histories who want to change their lives. Service priority is given to women who are referred by the District Attorney's Office and the City of Madison Attorney's Office. In addition, self-referrals and referrals by other City and County agencies are eligible for services.

Bail Monitoring Program

In operation since 1992, the Bail Monitoring Program supervised by the Dane County Clerk of Courts Alternative to Incarceration Program provides Judges with an option besides cash bail to release defendants in jail awaiting trial. Bail monitoring supervision at a minimum includes one weekly face-to-face contact with the defendant; two phone contacts per week; random urinalysis to screen for controlled substances; and verification of employment, if any.

Centro Hispano - New Routes/Nuevas Rutas

New Routes is a jail diversion program for Latino offenders that provides monitoring during the consumer's stay with the justice system to assure compliance with bail, hearing dates, sentences, and/or legal agreements; referrals to legal representation; interpretation during hearings, pleas and/or necessary meetings regarding the individual's case; referral to necessary social services in connection with the case; transportation; counseling; advocacy; and follow up. It was initiated after a study by the Committee on Jail Diversion found that Latinos were over-represented in the number of persons issued bench warrants. Referrals are made through the District Attorney's Office, the Courts, self-referral, and outreach by the Program Coordinator.

Custody Alternative Monitoring Program (CAMP)

CAMP is an electronic monitoring/GPS tracking program for selected, sentenced inmates of the Dane County Jail which enables them to serve all or a portion of their sentence at home and in the community. Inmates must volunteer for the program, pass a rigorous screening process, have a Dane

County residence, agree to all program rules, and be able to pay the daily program fee. Inmates who fail to comply with the program requirements must serve the remainder of their sentence in Jail, with a possible loss of good time and Huber privileges.

DART Treatment Program

The DART Program began in June 2007 and is funded by a grant from the Wisconsin Department of Justice, Office of Justice Assistance. DART is a pre-trial treatment program, targeting individuals with drug and alcohol treatment needs who are in jail and unable to post to cash bail. Individuals to be referred to DART are identified at or shortly after their initial arraignment. The Arraignment Court Commissioner has ongoing responsibility for each case. Individuals who agree to participate in DART receive intensive case management and residential and/or outpatient treatment. The case management and treatment providers are the Mental Health Center of Dane County and Hope Haven – Rebo United.

Drug Court Treatment Program

The Drug Court Treatment Program, begun in June 1996, is a single court to which non-violent drug offenders are referred for voluntary participation in a comprehensive rehabilitation program. The District Attorneys have overall authority for referrals. The Judge has ongoing responsibility for each case. The goals are to reduce incarceration and criminal justice costs for defendants who present a low risk to public safety and to provide defendants with the life skills necessary to reduce drug addiction and street crime.

Electronic Monitoring Program

The Alternatives to Incarceration Program of the Dane County Clerk of Courts Office operates the Dane County Electronic Monitoring Program. This is an electronic ankle bracelet home detention program for defendants sentenced to EMP in lieu of jail for all or a portion of their sentence which enables them to remain in the community. Defendants are restricted to their home unless approved by the EMP supervisor for such appointments as work, medical, and legal. Eligible defendants must be court ordered to the program. If EMP was not ordered at the time of sentencing, defendants must serve at least 30 days in jail and may not serve more than four months on EMP. Defendants must have a verifiable residence with a telephone, agree to all program rules, and be able to pay the daily program fee. Inmates who fail to comply with the program requirements must serve the stayed portion of their sentence in Jail.

First Offender/Deferred Prosecution

Sections 971.37, 971.38, 971.39, and 971.40 of the Wisconsin State Statutes give the District Attorney the right to enter into a variety of deferred prosecution agreements which divert eligible persons out of the formal criminal court process. While these individuals may not have been ordered to serve jail time as part of their sentence if found guilty, diverting them from the judicial system means criminal court resources may be directed to other cases.

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Through the Deferred Prosecution Program under the guise of the Dane County District Attorney's Office, eligible offenders should have no previous criminal conviction or record, be 17 years of age or older or be waived from juvenile jurisdiction if under age 17, have the consent of the Assistant District Attorney assigned to the case, voluntarily agree to participate in the program, and accept responsibility for the offense, although an admission of guilt may not be used against the offender in a criminal court of law.

Participants enter into a contract with the Deferred Prosecution Unit by which they agree to attend classes, make restitution, engage in community restitution work, secure needed psychiatric, alcohol and/or drug, or other counseling services. If the contract terminates before completion of the program, the District Attorney may resume the criminal court proceedings. If the offender successfully completes the contract, the case is dismissed.

Hope Haven – Rebos United – Pathfinders

The Pathfinder program provides a continuum of care including residential treatment, followed by outpatient treatment services and aftercare services (generally 4-9 months) for male and female adult offenders. The overall goal is to effectively, responsibly, and economically treat jail inmates with alcohol and other drug abuse problems resulting in improved public safety, reduced overcrowding in the Dane County Jail, saved taxpayer money, and reclaimed lives. The program operates in three phases: Phase I - Residential Treatment (generally first 30 days); Phase II - Outpatient Treatment (2-3 months) which focuses on relapse prevention and basic life issues associated with implementing a clean, sober, crime-free life; and Phase III which is the aftercare and follow-up phase of the program (4-6 months). There are three avenues for referral into the program: 1) by the defense attorney, prosecutor, or judge prior to the plea/sentencing hearing; 2) by Probation and Parole for offenders for whom the Court has ordered a pre-sentence investigation who potentially meet the criteria; and 3) by the Sheriff's Office for sentenced, Huber released inmates.

Pathfinders Electronic Monitoring

This program provides electronic monitoring of offenders who participate in the Pathfinders treatment program. Some offenders are sentenced directly by the courts and some are referred by the Sheriff's Office. All offenders are released from jail and monitored electronically by the Sheriff's Office. Offenders who fail to comply with the program requirements and rules must serve the remainder of their sentence in jail, with a possible loss of good time and Huber privileges.

Mental Health Center of Dane County, Inc. - Community Treatment Alternatives

Community Treatment Alternatives is a Community Support Program (CSP) certified under HFS 63 to provide effective and easily accessible treatment, rehabilitation and support services in the community where persons with chronic mental illness live and work (HFS 63.01). Admission to Community Support Programs (CSP) is limited to individuals with a chronic mental illness which by history or prognosis requires acute treatment or prolonged periods of institutional care and who exhibit persistent disability or impairment in major areas of community living. Community Treatment Alternatives (CTA) is a

specialty program that provides a wide range of supports including medication services, helping consumers find and keep housing, work-related services, coordinating medical/health care, and addressing issues relevant to their criminal justice involvement. Many individuals served by CTA have co-occurring mental health and AODA needs. CTA provides AODA counseling and links consumers with other AODA resources as needed.

Persons admitted to CTA must either be currently incarcerated, have charges pending which would result in their incarceration, or be conditionally released after being found not guilty by reason of mental disease or defect. CTA's primary goals include helping people avoid or minimize jail incarceration and avoid or minimize psychiatric hospitalization.

Mental Health Center of Dane County, Inc. – Emergency Services Unit – Emergency Jail Diversion Services

The contract provides funding for one full-time equivalent staff person to aid in the Provider's efforts to re-establish a closer routine working relationship between law enforcement and the Provider including the provision of a triage service for persons presenting for jail. A portion of the FTE time is devoted specifically to education and liaison between the Provider and law enforcement agencies and the remainder to improving staff coverage levels in order to be able to respond to police requests.

Mental Health Center of Dane County, Inc. – Core Services Program – Medication Services

This program, which is newly funded in 2007, will provide support with psychotropic medications for individuals leaving the Dane County Jail. In order to be able to regularly accept referrals, the goal is to offer time limited support while linking individuals who have ongoing needs with other community resources.

SOAR Case Management Services, Inc. – Jail Diversion

SOAR Case Management, Inc. provides interim case management services for persons with a mental illness who are involved with the criminal justice system. This includes working with the justice system to identify the barriers to release, working to resolve those issues, and providing support after the individual is released from Jail.

Thomas and Associates - Cool Choices

Cool Choices is a jail diversion program for African-American/Black offenders that provides client assessments as needed, individual counseling, Cool Choices anger management, AODA education and counseling, a cognitive intervention program, and works to integrate families and significant others into the lives of clients, including having them be part of the treatment plan. Referrals are made to other agencies when services are needed which fall outside the scope of those offered. Clients are referred to the program by the District Attorney's Office as part of a deferred prosecution agreement; by the Court along with bail monitoring by the Alternatives to Incarceration Program; by defense attorneys in preparation for pre-sentence hearings; by the Pathfinder program; by self-referral by persons in jail; and by voluntary clients who have been arraigned and released, but who are at risk of jail time and need

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added support to help them comply with the expectations of the court process and avert continued placements.

Treatment Alternatives Program (TAP)

The Treatment Alternatives Program (TAP) is a comprehensive, multi-agency criminal justice diversion program for Dane County alcohol and other drug abuse offenders who have been charged with and/or sentenced for operating while under the influence (OWI) three or more times, drug possession, operating after revocation, domestic battery, secondary prostitution, disorderly conduct, and economic crimes. Referrals are accepted from any source including the Courts, Department of Corrections, District Attorney's Office, State Public Defenders' Office, Deferred Prosecution, and law enforcement. The Court has overall authority for approving program participation with the exception of Alternatives to Revocation where the Department of Corrections has overall authority. The program, within the Dane County Department of Human Services is funded in part through a federal grant, state community aids, county levy, and IV drug abuse funds. The Mental Health Center of Dane County provides screening, assessment, and coordination services. A number of other agencies also provide case management, outpatient counseling, day treatment, and residential treatment services.

Urban League of Greater Madison, Inc. – Fatherhood Responsibility Project

The Fatherhood Responsibility Project works to ensure that economically disadvantaged children with non-custodial fathers have a prosperous and healthy future - in school, work, and family life. The Fatherhood Responsibility Project fosters this hope and opportunity by providing direct services to non-custodial fathers that include intensive case management, job training and placement, parenting and life skills training, legal assistance, and peer support. Services are provided through collaboration with community resources serving economically disadvantaged families, including the Employment and Training Association's Children First Program.

K. Driver's License Recovery and Employability Program

In collaboration with the City of Madison, Dane County should fund a comprehensive collaborative effort to reduce the numbers of unlicensed drivers in Dane County through the establishment and operation of a community-wide driver's license recovery and employability resource center based on the successful model at created by Justice 2000 Inc. in Milwaukee County.

According to Justice 2000, lack of a valid driver's license is a significant barrier for many individuals, particularly low-income youth and people of color, who are more easily caught in the cycle of serious legal, financial, and social consequences. Driver's license restoration positively affects the capacity of these individuals to obtain and retain employment, to provide a better quality of life for themselves and their families, and to fully participate in and contribute to their communities.

In the (EARN) Early Assessment and Retention Network Model for Effectively Targeting WIA and TANF Resources to Participants, Pawasarat and Quinn (2007) found that

Driver's license suspensions and revocations disproportionately affect young men of color, a demographic group that is experiencing record high unemployment numbers in

the City of Milwaukee. A valid driver's license has become a soft-skill measurement of reliability by employers, regardless of whether the job requires one to drive. In 2007, a valid driver's license was found to be a more accurate predictor of sustained employment than a General Educational Development (GED) diploma among Workforce Investment Act (WIA) recipients.

Implementing this program in Dane County could help in both preventing arrests in general and in reducing the racial disparity in the incarceration rate. This is a preventative program that helps people avoid accumulating more serious charges than a traffic violation. Additionally, since those most likely to face suspensions and revocations are low-income people of color, reducing their likelihood of contact with the criminal justice system could contribute to reducing the racial disparity in the incarceration rate.

By providing two direct service components including Intake/Triage/Case Management, which is the entry point for clients, and Legal Services, Justice 2000 helps deter low-income people from the criminal justice system while also increasing their employability. Justice 2000 provides case management services for program participants and Legal Services provides assistance for those clients who cannot succeed without legal help.

According to the Second Year Evaluation of the Center for Driver's License Recovery & Employability (University of Wisconsin-Milwaukee Employment and Training Institute, 2008), posted at www.eti.uwm.edu,

The Center for Driver's License Recovery & Employability operating out of Milwaukee Area Technical College has shown success in helping ex-offenders restore or obtain their driving privileges. In 2008, 58% of the CDLRE clients formerly incarcerated in state corrections facilities obtained their driving privileges (up from a 44% success rate in 2007), with many of these clients seeking out the program on their own. The 58% recovery rate is notable given the level of problems faced, including the potential for drug convictions, SR 22 insurance requirements, and damage judgments to limit any access to immediate license recovery as well as the extremely low rates of licensed drivers among ex-offenders.

Justice 2000 uses the following system-level measurements to evaluate their success, which we could use as a starting point to create our own system of measurement:

1. How many fewer suspended or revoked drivers are there *since* the inception of the program? Compare to how many suspended or revoked drivers *as of* the inception of the program. As far as the DOT data permit, neutralize for the number of new drivers during this period and the number of people who recovered their license as the result of an administrative change, and include narrative discussing these changes.
2. Segregate data by race, gender, and age when possible.
3. Establish a comparison group with similar demographics to those enrolled in the program. How does the recovery success rate of the total persons who were closed out of the program compare (to the) recovery rate of a similar demographic group of persons selected prior to the inception of the program who did not go through the program?

Appendix

4. Of the total suspensions/revocations as of the inception of the program, how many were due to failure to pay fines (FPF)?
5. How many new suspensions/revocations occurred during the period since the inception of the program?
6. How many of these new suspensions/revocations are due to failure to pay fines (FPF)?

L. Dane County Juvenile Justice System DMC Historical Overview

At the same time that this Task Force was developing its recommendations regarding the adult criminal justice system in Dane County, a parallel Task Force, called the Dane County Juvenile Justice DMC Solutions Workgroup, was developing recommendations specifically tailored to reduce disparities in the Juvenile Justice System. Its report is available at:

http://danedocs.countyofdane.com/webdocs/pdf/juvenileCourt/DMC_Workgroup_Report.pdf

The following historical overview was shared with the Task Force by John Bauman, Dane County Juvenile Court Administrator, who has been a leader for years in reducing racial disparities in Dane County's juvenile justice system.

During the course of Dane County's efforts to address the concerns over disproportionate minority contact and confinement (DMC), considerable effort and investment has occurred in certain key areas. Following is a review of the development of the Neighborhood Intervention Program, system change efforts, programmatic efforts, some data and information on DMC issues in Dane County, and an overview of the Juvenile Justice Solutions Workgroup process.

1. Neighborhood Intervention Program

In 1987, with modest financial support, Dane County began its first DMC effort through the development of the Neighborhood Intervention Program (DCNIP) under the leadership of Stephen Blue. Originally beginning within the Juvenile Court Program, by 1991 program operations were transferred to the Department of Human Services, where they could become more integrated in the general service delivery and supervision services provided to youth/families. DCNIP has developed a myriad of successful prevention, early intervention and supervision programs.

2. System Assessment and Change

Beginning with an Office of Justice Assistance (OJA) grant in 2002, a series of grants has been secured and managed by the Juvenile Court, with the assistance of system partners. Within this area, Dane County has been very successful in establishing a committed, ongoing DMC Oversight Committee, consisting of key leaders in the community (e.g. Chief of Police, MMSD Administrators, District Attorney, Juvenile Court Judges, Human Services managers, etc.) as well as a wide range of other community persons committed to changing the course of DMC in Dane County. Those meetings have been a source of information-sharing and a forum for all key systems in Dane County to report on progress and struggles with addressing DMC. Numerous sub-committees were formed that helped to assess systems and make policy changes, including specific changes on capiases for missing court and law enforcement intervention during school disturbances, as well as providing training in the DA's office, Juvenile Court, court system and Human Services.

There have also been significant efforts made in areas of data collection. For example, the Juvenile Court Program established a new database in 2005 to assist in tracking and developing data related to custody intake referrals and decisions. Human Services has continued to collect and report on data related to minority youth, based on the intake assessments done for all youth referred to Juvenile Court. The Madison Schools continue to review discipline-reporting data, as well as develop other alternatives to discipline, to resolve school-based issues with minority youth.

Key leaders in the respective agencies are directing many of these efforts, but as it relates to the Dane County DMC effort, a key component has been the availability of a DMC Coordinator. The DMC Coordinator has been the central figure in coordinating members, leading meetings and gathering, analyzing, and disseminating data. Dane County also sponsored four community-based DMC forums and one statewide youth DMC forum.

During the first grant period, an in-kind contribution was included in the conditions of the grant. As a result, staff from the Juvenile Court, Human Services, Courts and other system partners contributed a total of \$30,000 of in-kind staff time toward the effort through March 2004. The Juvenile Court and Human Services continues to support detention alternatives such as restrictive juvenile intake policies, the Home Detention program, Weekend Report Center and the FOCUS program to provide alternatives to confining minority and other youth.

3. Programmatic Interventions

Several programmatic interventions have occurred. The Youth for Peaceful Options Program at Madison East High School was funded with an OJA grant. In this program, 9th grade minority youth were identified by their respective middle school staff as being at-risk of academic and behavioral problems at East. They become involved in a series of activities designed to increase their positive connection to school and their academic performance, increase their problem-solving and decision-making skills, and participate in an overall effort to enhance the social atmosphere at East High School. This project began part-time in the summer of 2005 and was full-time for the 2005-2006 school year. A Juvenile Court Program staff member from Shelter Home provided staffing for this project. Some favorable outcomes from this project included a reduction in out-of-school suspensions for some program-involved students and numerous altercations that were averted due to the connections made with the students. Many students were also trained on appropriate conflict resolution skills during the term of this project. This grant and the program ended after only one school year.

The four Madison high schools have subsequently hired four School Engagement Coordinators for the schools that are modeled after this project and earlier efforts that DCNIP had initiated in the schools. Their positions are funded through 2009.

The Community Assessment and Support Services (CASS) project was the next component of the OJA grant and ran from October 2007 to June 2008. The YWCA was awarded the \$50,000 grant and the mission was to assess, refer, and re-direct youth into more pro-social activities, provide educational support, and promote positive community involvement. The goal was to include 80 youth from 4th-8th grade, with 90% being youth of color, with referrals coming from targeted schools, Human Services, and law enforcement. Forty of these youth were provided assessments and referrals and forty were provided direct service through groups, mentoring, academic support, and skill building.

The Neighborhood Intervention Program is administering the current OJA grant. This grant increases the capacity of several successful DCNIP programs for 140 youth. These programs are for 10- to 14-year-olds

and focus efforts in targeted school and neighborhood areas where more minority arrests, school suspensions, and other issues are identified. One of the programs is designed to work with middle school youth who are experiencing issues related to school suspension/discipline, but have had minor law enforcement contact and/or have been referred to Human Services for assessment. Staff work with schools and provide support and supervision to assist the youth. Another program is one that occurs over the summer and provides academic support, development of pro-social skills and community-based enrichment activities. The third program that this grant is helping to fund is the Parent Advisory Council, with the goal of having twenty parents involved in regular group discussions about how to effectively assist at-risk youth and families. This information should help system partners better understand how to meet the needs of some at-risk minority youth in the community.

4. Data and Ongoing Issues

Despite the above system and programmatic interventions, Dane County still has a significant issue with the disproportionate contact and confinement of minority youth. A 2005 DMC report from the State Office of Justice Assistance reported that Dane County had a disproportionate rate of arrests, referrals to juvenile court, and placement in corrections for minority youth. 2007 data that Human Services collected and reported to the federal Office of Juvenile Justice and Delinquency Prevention indicated that the relative rate of minority juveniles diverted from the court system was less than white juveniles, that the rate of minority juveniles in detention was higher, and that the rate of formal charges filed by the District Attorney's office was higher for minority youth than white youth.

Another report from Human Services in 2006-2007 on African-American and White middle school males charged with one or two offenses stated that nearly 71% of African-American males charged with disorderly conduct were formally adjudicated by the court. That compares to 30% of White middle school males. Even greater, nearly 74% of African-American males charged with battery were adjudicated, compared to 23% of White males.

Data gathered from the Juvenile Court Program shows similar statistics. In 2007, although the 0- to 16-year-old minority population of Dane County was 14%, minority youth were 64% of the referrals to the Juvenile Reception Center, 73% of the population in Detention, and 63% of the population at Shelter Home.

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Dane County Office of Equal Opportunity
210 Martin Luther King Jr. Blvd. Room 421

Madison WI 53703-3340

Phone: 608-266-4192

Website: <http://www.co/dane/wi/us/oeo/>

