



New York State Justice Task Force

Recommendation Regarding Working Group on Uniform Collection, Organization, and Reporting of Criminal Case Dispositions Data

February 2021

I. Introduction

The New York State Justice Task Force (the “Task Force”) was formed in May 2009 by Chief Judge Jonathan Lippman to identify practices that may contribute to wrongful convictions in the state and consider what measures should be taken to reduce – and, ideally, to eliminate – the incidence of such convictions. Nearly 12 years later, the Task Force’s work continues under Chief Judge Janet DiFiore, who has since expanded the Task Force’s mission to promote fairness, effectiveness, and efficiency in the criminal justice system; to eradicate harms caused by wrongful convictions; to further public safety; and to recommend judicial and legislative reforms to advance these causes throughout the State.

The Task Force is chaired by Hon. Paul Feinman, Associate Judge of the New York Court of Appeals. Hon. Carmen Beauchamp Ciparick (Ret.), former Senior Associate Judge of the New York Court of Appeals, and Hon. Deborah A. Kaplan, Administrative Judge of New York County Supreme Court’s Civil Term, serve as Co-Chairs. Prior to Judge Kaplan’s appointment in January 2021, Hon. Mark Dwyer (Ret.), Acting Justice of the New York Supreme Court, Civil Term, also served as a Co-Chair. The Task Force’s members represent a broad cross-section of the criminal justice community in New York State, consisting of judges, prosecutors, defense attorneys, law enforcement officials, victim advocates, and others who are committed to investigating and building consensus around some of the most important and difficult issues in our criminal justice system.

Since its inception, the Task Force has studied and provided recommendations on a number of issues, including: expanding the State’s DNA databank; granting post-conviction access to DNA testing; utilizing electronic recordings of custodial interrogations; implementing best practices in identification procedures; granting greater

access to forensic case file materials; reforming criminal discovery; using root-cause analysis to prevent wrongful convictions; addressing attorney misconduct; and providing meaningful bail reform.

II. Executive Summary

Chief Judge DiFiore most recently directed the Task Force to examine racial disparities in the criminal justice system at all key stages of the process—from arrest through sentencing—with a goal of proposing broad reforms to effectively address these disparities, and ensure a more just system for all New Yorkers. In recognition of the complexity and breadth of the issues, as well as the need to make timely progress, the Task Force’s recommendations will be issued on a rolling basis. The recommendation that is the subject of this report relates to the need for the collection of more uniform statewide data in connection with dismissal dispositions.

This recommendation grew out of the deliberations of a Task Force working group, chaired by Hon. Carmen Beauchamp Ciparick (Ret.), which focuses specifically on studying issues of racial disparity relating to charging decisions (the “CD Working Group”). Over the past five months, the CD Working Group has met on a bi-weekly basis and heard presentations on various topics, including from prosecutors, court clerks, representatives of the Office of Court Administration (“OCA”), representatives of the New York State Division of Criminal Justice Services (“DCJS”), and representatives from Albany’s Law Enforcement Assisted Diversion (“LEAD”) program. One of the topics being studied relates to criminal case dispositions and, specifically, how frequently felony charges are ultimately dismissed.

At a meeting on October 1, 2020, DCJS presented data to the CD Working Group reflecting the 2019 dismissal rates for felony charges across New York State. This data included the rates at which criminal actions, commenced by an accusatory instrument charging a felony, were completely dismissed. The data was viewed by the type of felony and by the race and ethnicity of the defendant. The figures presented were striking, as the 2019 dismissal rates for certain felony charges were high in general, and also statistically much higher for Black and Hispanic defendants. As a result of this discovery, and the concern that the criminal action may have been unjust at its inception, the CD Working Group expanded its analysis to try to determine the reasons for these high dismissal rates, recognizing the necessity of understanding what is driving the data before potential recommendations to address the disparity can be considered.

The CD Working Group enlisted the help of several district attorneys, including Task Force Members District Attorney Cyrus Vance (New York County) and District Attorney Madeline Singas (Nassau County), as well as District Attorney Darcel Clark (Bronx County), whose offices provided information and data collected internally regarding dismissals for a subset of felony charges. This data confirmed the trends we observed in the DCJS data; however, in terms of determining the causes for these trends, the presentations made apparent that the nature and amount of data collected relating to dismissals, and how that data is labeled and categorized, varies across different offices

and jurisdictions. This presents a challenge when it comes to interpreting and drawing conclusions with respect to such data.

In order to better understand how data is collected, coded, and reported on a statewide level, on December 2, 2020, the CD Working Group heard from representatives from OCA's Division of Technology & Court Research. This presentation focused on the way data is collected by the court system and the many dismissal codes that may be entered in the court's management system upon the dismissal of an action. OCA explained that a variety of different codes are available for inputting dismissal data, many representing the Criminal Procedure Law provisions, and that different coding is used by different courts or jurisdictions because there is no uniform protocol as to data entry. Indeed, as a default mechanism, a general dismissal code may be entered providing no further details. As a result, dismissal data is inconsistently collected and/or entered, which prevents any meaningful analysis of the reasons behind the statistics themselves. Further, some reasons for a dismissal may not be represented in the present codes, and other codes that are used often do not provide meaningful insight into the circumstances behind a dismissal. For example, if the code for a CPL 30.30 People's lack of readiness dismissal is utilized in an action, the reason for the delay is not required to be entered. It is therefore unknown for analytical purposes if the action was inappropriately commenced or if there was an inability to go forward due to an uncooperative witness.

In addition to the limitations this imposes with respect to studying disparity in dismissal rates, there is a legislative dimension to the issue. Pursuant to Judiciary Law § 212, the Chief Administrative Judge must compile and publish data on charges that includes the race, ethnicity, age, and sex of the individual charged, and report that data to both the legislature and the governor. *See* N.Y. Judiciary Law § 212 (u-1), (v-1), (w-1). Although data is now collected and made available pursuant to the legislative mandate, the inexact and general method of coding prevents any meaningful comparative analysis. This undermines the practical effectiveness of section 212 reporting, despite the fact that technical compliance with the statute's requirements is achieved. The CD Working Group and OCA discussed the potential for forming a working group led by OCA to study and remediate these issues, an initiative which OCA fully supports.

As a result, and with gratitude to OCA for its assistance with this key initiative, the Task Force unanimously recommends that a working group, consisting of key policymakers and stakeholders, well versed in the criminal justice system, partner with OCA to study and propose potential changes with respect to data collection, as outlined in Section III of this report. The goal of the working group will be to achieve uniformity and transparency in the collection, organization, and reporting of data relating to the disposition of criminal cases across New York State. These enhancements to data collection will not only enable the effective study and potential identification of racial disparities in charging decisions, but can in turn be used as a platform for analysis of potential causes of such disparities and ultimately for the proposal of meaningful reforms in this area now and in the future. The enhancements will also further the goals of section 212, helping to achieve what the CD Working Group believes to have been the intention of the legislature in crafting these reporting requirements.

III. Recommendation

The Task Force recommends that a working group be created, in conjunction with OCA, to study and recommend reforms relating to the uniform collection, organization, and reporting of data demonstrating the disposition of criminal cases across New York State.

This working group would be responsible for three main tasks:

- (i) Examine dispositional codes and, in particular, what case dismissal reasons are currently captured by each criminal case management system.
- (ii) Determine whether any inconsistencies and/or gaps exist that prevent the ultimate resolution of criminal cases from being accurately and transparently captured statewide.
- (iii) Make recommendations necessary to address any such gaps and achieve uniformity.

This review should also include an operational analysis of the feasibility of recommended reforms to ensure that those reforms are reliably captured and implemented.

The working group should consist of representatives with requisite experience regarding criminal justice dispositional codes and case management systems, and should include the following groups or organizations:

- OCA's Division of Technology & Court Research (which developed and supports the applications used to collect information in the various Unified Court System's case management systems);
- DCJS and NYPD Data Analytics;
- Prosecutors' offices;
- Institutional and private defense counsels' offices; and
- The judiciary.

The membership's collective experience should also vary geographically and span the village, town, city, criminal, district, and superior court systems of New York State.

The working group should set an aggressive timeline for the implementation of recommended reforms and plan to deliver recommendations, along with an implementation plan, during the Second Quarter of 2021.

Pursuant to Judiciary Law § 212, the final report of the working group should be submitted to the Chief Administrative Judge.