

**Washtenaw Equity Partnership (WEP) Court Process Subcommittee Inaugural Meeting
February 15, 2022 5:00-6:15pm**

Meeting Minutes

Attendees:

Deborah Labelle (Co-Chair)

Judge Carol Kuhnke (Co-Chair)

Judge Tim Connors

Joe Summers

Judge J. Cedric Simpson

Dick Soble

Jason Morgan

Bonsitu Kitaba

Nimish Ganatra

Peter Joseph Martel

Ted Heaton

Sandhya Kajeeepeta (Vera)

Kaitlin Kall (Vera)

- New members who were not present at first meeting introduced themselves
- Members voted and unanimously approved the meeting minutes for last month's meeting
- Judge Kuhnke reviewed the draft flowchart of how a criminal case proceeds through the court system
 - Note that this is a living document that can be added to and subtracted from
 - It represents cases that are at least initially charged as a felony
 - Open question of whether misdemeanors should be integrated into this flowchart or if they should have their own flowchart
 - Member raised point that there are two options: preliminary exam or it goes back to district court as a misdemeanor
 - Question about where bond is raised
 - A: Bond can be reconsidered at every step
 - Question about when counsel gets appointed
 - A: Counsel appears at arraignment

- Suggestion to move arrow to treatment court referral from probable cause conference rather than from district court arraignment
- Question about whether prosecutor and public defender also submit a sentencing report
 - A: There is only one report based on the interview conducted by the probation officer. The defendant is entitled to an attorney during the interview (this is new Michigan law).
- Discussion about how the sentencing guidelines used to be mandatory. Now, Michigan Supreme Court has said that the guidelines are just guidelines and judges are not mandated to follow them. Also noted existing conversations about how the guidelines themselves may have racialized and cultural biases embedded within them. The guidelines serve as a “ruler” against which the Court of Appeals can compare a sentence. It is assumed that a sentence that falls within the guidelines is reasonable.
- Question about what happens if someone is sentenced to fines/costs but they are indigent
 - A: In this county, they would be let go and it would be a debt they would need to address at some point. This may not be the case everywhere.
- Discussion and clarification about plea agreement vs. Cobbs evaluation
- Members asked to review the flowchart and begin to think about what questions it raises
 - Question about whether the subcommittee will be looking at racial equity in the context of plea agreements and sentencing agreements?
 - A: It is important to look at this, but it’s not easy to do in practice because there is limited data on whether there is or is not a sentencing agreement
 - Question about whether looking at racial disparities in plea deals offered by prosecutors falls within the purview of this subcommittee?
 - A: The subcommittees have not decided on their priority areas yet, but yes that topic would fall under this group’s charge
 - Question about whether judges having discretion over jail but not prison sentences is statutory?
 - A: Yes
 - Discussion of how there are so many research questions and we might get lost. Suggestion to start by looking at best practices/models in other jurisdictions that have addressed these issues.
 - Comment: Before we get to best practices, we need to understand whether disparities exist using rigorous data
 - Response: We already have enough evidence to know that racial disparities exist in the system, we could spend 5 years documenting the inequalities. Instead, we could just think about how to address disparities.
 - Comment about the Prosecution Transparency Project that is underway in the prosecutor’s office and the possibility of taking a look at their preliminary findings to inform our work. It will depend on their timeline.
- Review of WEP research priorities that will guide the work of all subcommittees
 - These research priorities were developed by the WEP working group members to guide the information gathering activities of the subcommittees. No one

subcommittee is expected to tackle all of the questions, but the work/areas of focus should fall under at least one of these.

- 1. What are the primary drivers of racial disparities within and upstream of the criminal legal system and how can they be intervened on?
- 2. What do county residents need to thrive and feel safe, and are government agencies and other service providers delivering those needs?
- 3. What gaps exist in access to community resources/services?
- 4. What opportunities exist to increase the use of non-punitive alternatives and to move problems outside of the criminal legal system?
- 5. What are strategies to increase transparency around racial disparities in the criminal legal system?
- 6. What are strategies to increase accountability around racial disparities in the criminal legal system?
- Discussion of what topics this group wants to focus on. What are your goals for this subcommittee or what issues do you most want to address?
 - What are metrics that we would want to track on a regular basis that would help flag disparities and enable accountability?
 - What is the goal of court processes? The legal system should not be designed to punish but rather to address the root issues of why a person is engaging in certain activities. How do we unearth this? What are alternatives to incarceration/punishment that we can better utilize? How can we create mechanisms to ensure that people are being treated fairly when they enter the system?
 - Discretionary points where people make decisions that impact someone's trajectory in the system, and in particular how they enter the system in the first place. These discretionary points need to be examined.
 - Interested in good data about jury pool composition. This shapes feelings about fairness and might influence whether someone takes a plea if they don't feel the jury will be fair. Important to look at who is summoned for jury duty, who reports, and who is disqualified due to prior felony convictions.
 - This group should think outside the box. With this in mind, question #4 seems vital.
 - Interested in disparities in participation in specialty court. Member sees disparities in who is offered specialty court.
 - Member agreed they also see disparities in specialty court participation. This points to discretionary issues.
 - Questions #1 and #4 touch on probation. Around 1/30 people in Michigan are on supervision and violations are a source of people getting sucked back into the system. There are disparities in who can be successful on probation. Lawyers don't have access to probation guidelines
 - Member agreed that they are also drawn to questions #1 and #4. The goal is to have the county not feed mass incarceration. Part of the issue is over-policing and arrest, but given the focus of this subcommittee, we should

focus on rise in sentences and how much more punitive the system has become. We should think about how to roll back length sentences that don't serve a public safety/rehabilitative purpose.

- Next steps
 - Members to review flowchart further and think about what questions arise
 - Co-chairs and Vera to send out discussion/brainstorming questions to continue thinking about what topics the subcommittee should focus on and what information/data/testimony/examples we need
 - Vera to follow up with members who were not in attendance
- Meeting adjourned at 6:31pm