

During the past legislative session, the Human Rights Commission (HRC) worked on several bills that affect the civil and human rights of Vermonters. The significance of these legislative enactments and changes is summarized in this newsletter. During the 2016 session, the HRC will continue its work on the gender-neutral bathroom bill ([H.333](#)) which passed the House but is still working its way through the Senate.

- Karen Richards

In 1788 “Freedom and Unity” was adopted as the official motto for the State of Vermont.

*The motto not only reminds us to protect our freedom but that we also must **work together** as a State.*



Photo Credit: Ingo Meekmann Photography

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Did you know?

The U.S. has the highest number of incarcerated people and the highest rate of incarceration in the World. The U.S., China and Russia incarcerate half of the prison population in the World. Rates: U.S. 737/100,000; China 118/100,000; and Russia 651/100,000. <http://www.sentencingproject.org/criminal-justice-facts/>

Black men have a 1:3 chance of being incarcerated during their lifetime versus 1:17 for white men. Black women have a 1:18 chance versus 1:111 for white women. Latino/a men and women also have higher rates at 1:6 and 1:45 respectively. Source: Prison Policy Initiative from Bureau of Justice Statistics. Correctional Population in United States 2010 and U.S. Census 2010

Incarceration in the U.S. has increased by 500% in the last 40 years. <http://www.sentencingproject.org/criminal-justice-facts/> (See chart).

In *State of the Science, Implicit Bias Review 2015*, the Kirwan Institute at Ohio State University reviewed numerous studies documenting bias in the selection and retention of judges of color and of women; death sentences by race; over-representation of children of color in the juvenile justice system; and prosecutorial charging, bail, and sentencing decisions. Bias was also documented in jury selection and juror behavior.

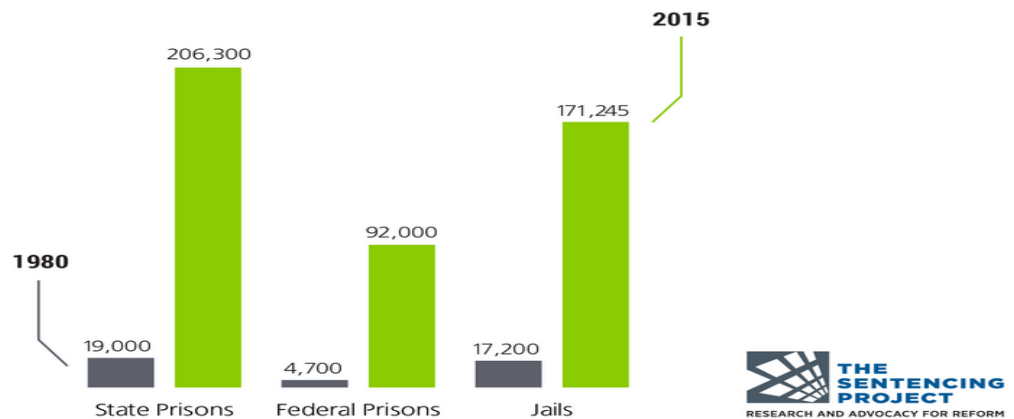
<http://kinwaninstitute.osu.edu/wp-content/uploads/2015/05/2015-kinwan-implicit-bias.pdf>

<http://kinwaninstitute.osu.edu/wp-content/uploads/2016/07/implicit-bias-2016.pdf>

In the 2015 Report from Vermont Legal Aid, *Kicked Out*, Black/African-American and Native American students in Vermont were two to three times more likely than white students to be suspended.

http://www.vtlegalaid.org/sites/default/files/Kicked%20Out_School%20Discipline%20Report.pdf

Number of People in Prisons and Jails for Drug Offenses, 1980 and 2015



Sources: Carson, E.A. and Anderson, E. (2016). *Prisoners in 2015*. Washington, DC: Bureau of Justice Statistics; James, D.J. (2004). *Profile of Jail Inmates, 2002*. Washington, DC: Bureau of Justice Statistics; Mauer, M. and King, R. (2007). *A 25-Year Quagmire: The War on Drugs and its Impact on American Society*. Washington, DC: The Sentencing Project; Minton, T.D. and Zeng, Z. (2016). *Jail Inmates in 2015*. Washington, DC: Bureau of Justice Statistics.

RACIAL DISPARITIES IN THE CRIMINAL & JUVENILE JUSTICE SYSTEMS

An Act Relating to Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel- [Act 54](#)

This bill creates a 13-member advisory panel, organized within the Office of the Attorney General, with an overall charge of reviewing and providing recommendations to address systemic racial disparities in statewide systems of criminal and juvenile justice.

Nationwide, African-Americans occupy prison cells at a rate that is 5.1 times their percentage in the population. These racial disparities have been driven by federal policies that provided incentives to police departments many of which ended up largely targeting poor Black communities. For example, federal funding for the “War on Drugs” rewarded departments with high arrest rates and created a climate in which arrests for petty drug offenses flourished. These practices also eroded police/community relationships and undermined the problem-solving, public health aspects of community policing. Draconian and often mandatory sentencing laws for drug crimes contributed further to the problem by imposing long prison terms, including life sentences under “three strikes laws” for drug-related offenses. See the chart above for a comparison of before and after the “War on Drugs.”

Police agencies in Vermont have been working very hard on fair and impartial policing and while the data shows there are still issues to be addressed, the momentum is clearly in the right direction.

Other aspects of the criminal justice system have gotten far less (really, no) attention. Who gets stopped and arrested is only the beginning of the process. It is the State’s Attorney in each county who determines whether to charge the accused with a crime and if so, what charge or charges will be filed and ultimately whether to offer or accept a plea deal. Public defenders provide counsel and advice regarding issues like whether to accept a plea deal or go to trial. Judges set bail, accept or decline plea deals, and sentence those who plead or are found guilty. Juries decide the fate of those who choose to go to trial. Studies show that explicit or implicit bias play a role in key decisions at every step of this process (see Did You Know). It is critically important that data be collected and analyzed and that every aspect of the system receive the same level of scrutiny that has been given to our police agencies if we are going to begin to confront and change the inherent institutional bias in these systems.

In Vermont, despite representing only 1.1 percent of the population, Black defendants make up 10% of our jail/prison population. Anecdotally, Black youth are also over-represented in Woodside, Vermont’s juvenile detention center. African-American children in Vermont are subjected to school exclusion at statistically significant higher rates than their white peers. Students subject to exclusionary discipline are less likely to finish high school and more likely to join the “school to prison pipeline.”

The cost of mass incarceration in the U.S. has gotten the attention of policymakers across the political spectrum and states are actively looking for ways to reduce the prison population. This advisory panel will have the ability to gather data, clarify the issues and problems that are creating racial disparities within the criminal justice system in Vermont as a whole and make recommendations for improvement. The Human Rights Commission intends to closely monitor the process and provide whatever assistance it can to this important discussion.

Section 3 of the Act also requires the Attorney General’s Office (AGO), with input from the HRC and other stakeholders, to develop a strategy by November 1, 2017 for addressing racial disparities in other state systems including education, healthcare, housing, labor and employment, and economic development. The AGO and HRC will be reaching out to interested parties for input on these other important issues. Interested persons can email ka-ren.richards@vermont.gov for more information about the process.



Photo Credit: thinkstock

MENTAL HEALTH SERVICES FOR OFFENDERS

An act relating to offenders with mental illness, inmate records, and inmate services, [Act 78](#).

The Human Rights Commission, during the last year, found reasonable grounds to believe that the Department of Corrections and Department of Mental Health discriminated against an inmate with mental health needs who needed a hospital level of care and was incarcerated for 40 days in a correctional facility for lack of a Level 1 bed in a psychiatric hospital. Since Tropical Storm Irene, the lack of Level 1 beds in Vermont has been acute. Most of the discussion about needed changes to the system focuses on the lack of “step down beds” for individuals whose conditions have been stabilized sufficiently to no longer require a Level 1 bed but who still require treatment and support. The inability to move these individuals to more appropriate settings then causes a lack of Level 1 beds for those coming into the system who need acute care.

Regardless of the reasons, there is no question that the lack of Level 1 beds is leading to long waits for individuals in emergency departments of hospitals or in correctional facilities, neither of which are equipped to deal with people in the midst of a major psychiatric episode. While not equipped to handle such persons, emergency departments are at least staffed by medical personnel. On the other hand, a person in need of a hospital level of care, who is placed in a correctional facility, is in a facility that has as its primary function maintenance of security and order, not mental health treatment. This results in placement of individuals in segregation cells and uses of force to subdue, including use of pepper spray or actual SWAT-team like cell extractions, all of which exacerbate the person’s illness and likely result in longer periods of hospitalization when the person is finally able to access a psychiatric bed.

Across the country, deinstitutionalization of people with mental health needs without the concurrent provision of robust community services, has led to the re-institutionalization of many people in correctional facilities. Under current law, the DOC and DMH are required to work together to provide treatment for such individuals. What that looks like in practice has been less than sufficient to deal with the problem.

[S.61](#), now [Act 78](#) is a first step in beginning to address this seemingly intractable issue in correctional facilities. The bill takes a phased in approach to the problem. First, it places into statute, current practice which is to refer individuals in need of a hospital level of care to the DMH within 24 hours of arrival at a correctional facility. As of July 1, 2019, the DOC will be required to actually provide necessary services within 48 hours of the inmate’s arrival. Section 9 of the Act requires that the DOC, in consultation with the DMH and designated mental health agencies, “develop a plan to create or establish access to a forensic mental health center” that will provide “comprehensive assessment, evaluation, and treatment for detainees and inmates with mental illness, while preventing inappropriate segregation.” The forensic mental health center is to be available by July 1, 2019 and coincides with the statutory obligation to provide services within 48 hours.

In the meantime, DOC and DMH must augment the mental health services available within the DOC.

These changes will require a significant level of financial support in fiscal year 2019 from the Legislature and the Administration. The Human Rights Commission will continue to carefully monitor DOC and DMH compliance with these statutory provisions and fight for the funding necessary to provide humane and appropriate treatment for those with mental illness regardless of where they reside.



PREGNANCY RELATED ACCOMMODATIONS

An Act Relating to Accommodations for Pregnant Employees, [Act 21](#).

The Pregnancy Discrimination Act of 1978 was passed by Congress after the 1976 Supreme Court decision in [General Electric Co. v. Gilbert](#), in which the Court determined that pregnancy discrimination did not equate to *per se* discrimination based on sex. The legislation was intended to make clear that pregnant women should be treated the same as other employees with regard to their ability or inability to work.

Despite this attempt at clarification, women continued to experience differential treatment when their pregnancy caused the need for accommodations in the workplace, such as avoiding heavy lifting, needing more frequent bathroom breaks, or increasing hydration by having water at their workstation. While many employers accommodated workers with other temporary or permanent medical conditions by providing for light duty or allowing the extra bathroom breaks, etc., pregnant women were not accommodated to the same extent unless they qualified as a person with a disability.

Title I of the Americans with Disabilities Act Amendments Act (ADAAA), requires an employer to provide reasonable accommodations/modifications for women whose pregnancy reaches the threshold of constituting a disability under the Act unless doing so would impose an undue hardship on the employer. But many of the accommodations needed by pregnant women do not reach that threshold.

Over the short and long term, pregnancy discrimination contributes to gender pay and wealth gaps and creates insecurity for both workers and employers. [Act 21](#) makes it an unfair employment practice for an employer to fail to provide a reasonable accommodation for an employee's pregnancy-related condition unless it would create an undue hardship, regardless of whether the employee meets the standard of being an individual with a disability under the ADAAA.

A pregnancy-related condition is defined as “a limitation on an employee’s ability to perform the functions of the job caused by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth,” and thus is broader than just the pregnancy itself. Employers are required to post notice of the provisions of the law in a conspicuous place at the business. The law goes into effect on January 1, 2018 to give businesses time to comply.

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NEWS

[VT Digger Report: Racial Justice Legislation Gets Scott's Signature](#)

[VT Digger Report: Governor Signs Pregnancy Accommodations Bill](#)

RESOURCES

[Vermont Human Rights Commission](#)

[Disability Rights Vermont](#)

[U.S. Equal Opportunity Commission \(EEOC\)](#)

[Vermont Commission on Women](#)

[Office of the Vermont Attorney General—Civil Rights Unit](#)

[Prisoners' Rights Office](#)