EXHIBIT B

MINUTES

HOUSE AND SENATE INTERIM COMMITTEES ON JUDICIARY

January 9, 2014

The House and Senate Interim Committees on Judiciary met at 1:30 p.m., Thursday, January 9, 2014, in Room B-MAC, Little Rock, Arkansas.

Committee members present: Senator Jeremy Hutchinson, Chair; Representatives Marshall Wright, Chair; John Vines, Vice Chair; Senators Jane English, Keith Ingram, and Garry Stubblefield; Representatives John Baine, Bob Ballinger, Mary Broadaway, Jeremy Gillam, David Hillman (non-voting), Patti Julian (non-voting), David Kizzia, Steve Magie, Mark McElroy, Micah Neal, Jim Nickels, Mary Lou Slinkard, Wes Wagner, John Walker, and Darrin Williams.

Other members in attendance: Senators Johnny Key, Joyce Elliott, and Linda Chesterfield; Representatives Eddie Armstrong, Charles Armstrong, John Catlett, Ann Clemmer, Harold Copenhaver, Andy Davis, Mike Holcomb, John K. Hutchinson, Sheilla Lampkin, Stephanie Malone, and Betty Overbey.

Senator Hutchinson called the meeting to order.

Without objection, Senator Hutchinson made a motion to adopt ISP 2013-056 (Senator Joyce Elliott) for discussion at the next meeting.

Consideration to Approve Minutes from the December 12, 2013, Meeting (Exhibit B)
Without objection, the Minutes from the December 12, 2013, meeting were approved.

Discussion of the Certification of Public School Employees to Carry Firearms
Jack Acre, Chair, Board of Private Investigators and Private Security Agencies (Board), said when the Attorney General issued an Opinion stating school districts cannot be recognized as private companies, and that the interpretation of the law by the Board was in error, the Board initially made a motion to suspend the registration of all school district security officers, but later rescinded the vote to allow the schools to remain licensed for an additional two years. The Board decided new applications would not be accepted until the test period was run, and to determine if the issue should be referred to the General Assembly. Mr. Acre stated that he personally opposes teachers, custodians, bus drivers, and administrators carrying weapons on school grounds as the law says only a commissioned police officer or commissioned security office is allowed to do so. He also spoke on the Board's decision to approve licenses on a case-by-case basis for individuals with a prior Class A misdemeanor charge (no felonies) if the background check showed no criminal activity in the past 15 years.

Senator Hutchinson stated that due to inconsistencies in some of the decisions made by the Board, he is inclined to introduce legislation to abolish the Board and allow the Arkansas State Police (ASP) to handle the responsibilities.

Upon questioning by Senator Hutchinson regarding the ASP's ability to assume the Board's duties, Captain Lindsey Williams, Division Commander, Regulatory Services, ASP, said the responsibilities could be

Discussion of Services at the DFA-Office of Child Support Enforcement

Dan McDonald, Administrator, Office of Child Support Enforcement (OCSE), DFA, provided a brief overview of the program which is administered by the DFA-Revenue Division and overseen by federal and state agencies. The Department of Health and Human Services establishes standards for state programs and is responsible for child support enforcement. Mr. McDonald stated the OSCE has 843 employees, including 50 attorneys that represent child support cases for the state. Funding comes from federal (two-thirds), and state (one-third) funds, as well as federal incentive funds based on performance. In 2013, the office collected over $295 million in 153,00 cases. OCSE provides two types of services:

Enforcement services – Custodial parties must apply for services or be referred by the Department of Human Services.

Payment processing services – Services are provided for cases that are handled privately. The Arkansas Child Support Clearinghouse receives, records, and sends payments to the custodial party. The custodial party, noncustodial parent, or either party's representative must provide the Clearinghouse with a copy of a current court order.

Senator Hutchinson said he gets more complaints from constituents about problems with child support than any other issue, and questioned why there was so much frustration from custodial parents. He asked Mr. McDonald if the court has ordered money to be paid, or increased, what's the hold up in getting the money to the children? He also asked why so much of the burden was placed on the custodial parent to collect payments.

Mr. McDonald replied that it takes time to make each case successful and on average, money is collected in 82% of the cases. He said OCSE works with the courts and is required to take administrative action and the process can sometimes take 3-4 months before payments are made.

Alisha Vaden, Citizen, Bryant, Arkansas, questioned why the wage assignment of a non-custodial parent is lowered if they do not complete a 40-hour week when the custodial parent must still pay 100% of expenses for the child. She said the system seems to work better for the non-custodial parent. Senator Hutchinson requested Mr. McDonald meet with Ms. Vaden upon adjournment to discuss the problems she has encountered with OCSE while trying to collect child support payments.

Representative Wagner requested Mr. McDonald provide committee members with the process for "proper service of notice" when suspending driver's licenses for non-payment of child support.

Representative Wright requested Mr. McDonald provide committee members with the following information: is there a law or rule allowing, or not allowing, OCSE to request the custodial parent's income and assets, and if OCSE could represent them based on such?

Representative Neal requested Mr. McDonald provide committee members with the following information: why does OCSE send a voucher to the non-custodial parent that pays electronically? Voucher shows no balance due.

Senator Hutchinson requested that Mr. McDonald submit suggestions to the committees on changes that could made during the next legislative session to improve the process for custodial parents on the state level. He would also like to know if it possible to get a waiver if the federal guidelines are not working for the state?

With no further business, the meeting adjourned at 3:45 p.m.

EXHIBIT E

ARKANSAS CRIME VICTIMS REPARATIONS BOARD

RULES AND REGULATIONS

January, 2011

BOARD MEMBERS

Jan Church, PhD., Chairman *Psychologist*	**Little Rock**
Colleen Nick *Victim Advocate*	**Alma**
Bryce Brewer *Attorney*	**Little Rock**
Alex Finger *Victim Advocate*	**Little Rock**
Louis Jones *Attorney*	**Fayetteville**

STAFF

Will Jones	**Assistant Attorney General**
Avis Lane	**Administrator**
Lynette Parham	**Assistant Administrator**
Wendy Sanders	**Investigator**
Rhonda Swindle	**Investigator**
Jimmy Ellington	**Investigator**
Ramon Stewart	**Investigator**
Shaun Greening	**Investigator**
Richard Goodwin	**Investigator**
Ruth Wilson	**Fiscal Specialist**
Varnell Messer	**Secretary**

ARKANSAS CRIME VICTIMS REPARATIONS BOARD

Rules and Regulations

ARKANSAS CRIME VICTIMS REPARATIONS BOARD

Rules and Regulations

Rule No. 1

TITLE AND OPERATIVE DATE OF THE ACT

The title of the Act under which these rules and regulations are being promulgated is known as the Arkansas Crime Victims Reparations Act, hereinafter referred to as the Act.

The operative date of the Act is July 1, 1988.

Rule No. 2

DEFINITIONS

1. BOARD - Means the Arkansas Crime Victims Reparations Board, hereinafter referred to as the Board.

2. CLAIMANT - Means any of the following persons applying for reparations under this act:

a. a victim,
b. a dependent of a victim who has died because of criminally injurious conduct, or
c. a person authorized to act on behalf of any of the persons listed above.

The term shall not include a service provider.

3. VICTIM - Means a person who suffers personal injury or death as a result of criminally injurious conduct committed within the state of Arkansas. The term further includes any Arkansas resident who suffers personal injury as the result of criminally injurious conduct which occurs in states presently not having crime victims reparations programs for which the victim is eligible and any Arkansas resident who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.

The term "victim" shall include a person who:

(A) is an immediate family member of a deceased victim, a victim of sexual assault, or a child victim;

(B) is not an immediate family member, but resided, at the time of the crime, in the same permanent household as a deceased victim;

(C) discovered the body of a victim who dies as the result of criminally injurious conduct.

(D) is the minor child, whether by blood, adoption, or marriage, of an eligible victim.

4. DEPENDENT - Means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of a victim born after the death of the victim where the death occurred as a result of criminally injurious conduct.

5. IMMEDIATE FAMILY - Means a person's spouse, children, parents or guardian, siblings, and grandparents whether related by blood, adoption, or marriage.

6. CRIMINALLY INJURIOUS CONDUCT - Means an act which occurs or is attempted in this state that results in personal injury or death to a victim which is punishable by fine, imprisonment or death. This term shall include acts of terrorism committed outside of the United States as defined in §2331, Title 18, United States Code, against any Arkansas resident. This term shall not include acts arising out of the operation of motor vehicles, boats or aircraft unless the acts involve any of the following:

(A) Injury or death intentionally inflicted through the use of a motor vehicle, boat, or aircraft;
(B) A violation of the Omnibus DWI Act, A.C.A.§ 5-65-101 et. seq;
(C) A violation of A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death).

7. PERSONAL INJURY - Means actual bodily harm, including pregnancy or mental anguish, which is the direct result of a violent criminal act.

8. ECONOMIC LOSS - Means monetary detriment consisting of allowable expense, and work loss, but shall not include non-economic detriment.

9. ALLOWABLE EXPENSE - Means charge incurred for needed products, services and accommodations, including, but not limited to, funeral expenses, mental health, medical care, rehabilitation, rehabilitative occupational training, crime scene cleanup, and other remedial treatment and care.

10. WORK LOSS - Means loss of income from work the victim or claimant would have performed in their regular course of employment if the victim had not been injured or died, reduced by any income from substitute work actually performed by the victim or claimant or by income the victim or claimant would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. Individuals filing claims must provide clear and convincing evidence of employment including but not limited to pay stubs, tax returns or certified documentation from employer.

11. NON-ECONOMIC DETRIMENT - Means pain, suffering, inconvenience, physical impairment and non-pecuniary damage.

12. COLLATERAL SOURCE - Means a source of benefits or advantages for economic loss which the claimant has received, or which is readily available to the claimant including but not limited to any one or more of the following:

(a) the offender,
(b) the government of the United States or any agency thereof, in the form of benefits, such as Social Security, Medicare, and Medicaid, or a state or any of its political subdivisions,
(c) state required temporary non-occupational disability insurance,
(d) workers' compensation,
(e) wage continuation programs of any employer,
(f) proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, or
(g) a contract providing prepaid hospital and other health care service or benefits for disability.

13. CATASTROPHIC - Means injuries involving a sustained loss of function, including but not limited to any of the following conditions: mangling, crushing, or amputation of a major portion of an extremity; traumatic injury to the spinal cord that has caused or may cause paralysis; severe burns that require burn center care; or serious head injury, loss of vision, or loss of hearing.

14. TOTAL AND PERMANENT DISABILITY – Means an impairment based upon demonstrable medical evidence that the victim is unable to perform the usual tasks required in his/her employment.

Rule No. 3

TYPES OF COMPENSATION AVAILABLE

Compensation is available for the following types of expenses:

Economic loss sustained by the victim or a dependent arising from the criminally injurious conduct of another. Future economic loss is also compensable but may be reduced or discontinued if the recipient's circumstances change.

Rule No. 4

MEMBERSHIP AND OFFICERS OF THE BOARD

The Board shall consist of five (5) members appointed by the Governor to serve four (4) year terms and until the successor is appointed and qualified. At least two (2) members of the Board shall be persons admitted to practice law in this state. At least one (1) member of the board shall be: (A) A victim of criminally injurious conduct; (B) The next of kin of a Homicide victim; or (C) An individual experienced in providing victim assistance services. Of the first members appointed, two (2) shall be appointed for a term of two (2) years, two (2) shall be appointed for a term of three (3) years, and one (1) shall be appointed for a term of four (4) years. Vacancies shall be filled in the same manner.

Rule No. 5

PURPOSE OF THE BOARD

The purpose of the Board shall be to hear and decide all matters relating to Crime Victims Reparations applications. The Board shall have the authority to award compensation to victims of crime for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

Rule No. 6

POWERS AND DUTIES OF THE BOARD

The Board shall have the power:

1. To hear and determine all matters relating to applications filed with the Arkansas Crime Victim Reparations Board for compensation, including the power to re-investigate or re-open claims without regard to the statutes of limitations.

2. The Board, or the Administrator, on behalf of the Board, may subpoena witnesses, compel their attendance, enter orders, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence. The Board shall be considered in continuous session for the purposes stated above.

3. To regulate its own procedures except as otherwise provided in the Act.

4. To adopt rules and regulations to implement the provisions of the Act.

5. To define any term not defined in the Act.

6. To prescribe forms necessary to carry out the purposes of the Act.

7. To request access to any reports of investigations or other data necessary to assist the Board in making a determination of eligibility for compensation.

8. To publicize the availability of compensation and information regarding the filing of claims therefore.

9. To order the claimant to submit to a mental or physical examination or order the autopsy of a deceased victim if the results would be material to a claim.

10. To require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.

11. To deny, withdraw or reduce an award of compensation upon finding that the claimant did not fully cooperate with the appropriate law enforcement agencies.

12. To reconsider a decision granting or denying a compensation award, based on its own motion or on request of the claimant.

13. To suspend the application for compensation proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but the Board may make a tentative award.

14. To join in a civil action as a part plaintiff to recover the compensation awarded if the claimant brings such action.

15. All necessary and reasonable expenses of the Board shall be paid for from the Crime Victims Reparations Revolving Fund.

16. The Board shall have the duty of preparing and transmitting an annual report to the Governor.

Rule No. 7

MEETINGS OF THE BOARD

1. The Board shall meet on the third Thursday of January, March, May, July, September and November - six (6) times each year, or at the call of the Chairperson, at 9:30 a.m. to hear appeal claims.

2. The Chairperson shall serve as presiding officer at all official meetings of the Board. In the absence of the Chairperson, the remaining Board members present at the meeting may designate a president officer for that meeting.

3. The Chairperson shall have the authority to vote on all matters coming before the Board.

4. A majority of the board shall constitute a quorum at hearings on appeal claims. The concurrence of two (2) members of the commission shall be necessary to determine the outcome of a claim. The Board may act in a panel of three (3) with proxies or consent decrees being permitted.

5. In the event of a tie vote the matter or matters shall be continued to the next meeting.

6. The order of business at any meeting of the Board shall follow the agenda prepared in advanced of the meeting. Such other matters may be brought before the Board as shall be requested by any member in writing and presented to the Chairperson.

7. Administrative staff shall be responsible for preparation of minutes for each Board meeting.

8. Roberts Rules of Order, Revised, shall govern all meetings of this Board.

Rule No. 8

ELIGIBILITY CRITERIA FOR COMPENSATION

1. The criminally injurious conduct leading to the filing of the reparations claim must have occurred in Arkansas or must have occurred to a resident of Arkansas in a state without a reparations program for which the victim is eligible or to a resident of Arkansas who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.

2. The incident must have occurred on or after July 1, 1988.

3. The incident must have been reported to the proper authorities within 72 hours or would have been reported within the period of time except for good cause.

(A) Good cause shall include, but not be limited to:

(1) the physical incapacity of a victim,
(2) the mental incompetence of a victim,
(3) the age of the victim,
(4) the injury was not reasonably discoverable.

4. The application for compensation must be filed within one (1) year of the incident, unless the Board finds good cause for failure to file a timely claim.

(A) Good cause shall include, but not be limited to:

(1) the physical incapacity of a victim,
(2) the mental incompetence of a victim,
(3) the age of the victim,
(4) the injury was not reasonably discoverable,
(5) restitution or other collateral source was regularly being paid and then terminated,
(6) postal service delays which are verifiable.

5. The victim must have suffered personal injury or death as a result of the criminal act of another.

6. The claimant and/or victim must to the extent able, have cooperated with law enforcement officials during their investigation.

The following issues may be considered when determining cooperation:

1. Failure to cooperate in the prosecution of the defendant or to appear as a witness.

2. Not cooperating initially but later deciding to cooperate and the delay allows the defendant to escape prosecution.

3. Not cooperating initially but later deciding to cooperate without any good cause as to the delay.

4. Causing extra or unnecessary effort on the part of law enforcement to gain prosecution.

5. Reluctantly providing information pertaining to the crime; failing to appear when requested, without good cause; giving false or misleading information; or attempting to avoid law enforcement.

6. Failing to prosecute or cooperate with law enforcement because of fear for his/her personal safety.

7. Failing to give testimony or otherwise cooperate with the prosecutor's office.

8. Failing to cooperate with Arkansas Crime Victims Reparations Board administrative

staff by not returning requested information, not returning telephone calls, not providing accurate information, etc.

7. The net amount of compensation requested in the application must not have been paid by another source.

8. Reparations may be reduced or diminished to the extent of the degree of responsibility for the cause of the injury or death attributable to the victim. Such responsibility may include, but is not limited to, the victim initiating, provoking, or otherwise contributing to the incident.

   The claim may also be denied or diminished if the victim was involved in illegal activity at the time of the incident.

   Illegal activity may consist of any of the following but is not limited to:

   (a) victim was buying drugs;
   (b) victim was using drugs;
   (c) victim was a minor and drinking alcohol;
   (d) victim was in an illegal place of business, such as a crackhouse, house of prostitution, or gambling establishment.

9. The injury or death must not have been the result of negligent maintenance or use of a motor vehicle unless the acts are committed with the intent to inflict injury or death or unless the acts committed were in violation of the Omnibus DWI Act, A.C.A. § 5-65-101 et. seq. or A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death.)

10. An award shall not be made to a claimant/victim who has been convicted of a felony involving criminally injurious conduct.

11. Awards shall not be made to a victim who is injured or killed while confined in state, county, or municipal jail, prison or other correctional facility as a result of conviction of any crime.

12. An award shall not unjustly benefit the offender or accomplice except as permitted by Rule 9 of the Arkansas Crime Victims Reparations Rules and Regulations. (See Rule 9)

13. In those cases where the victim has died, the claimant will be considered to have no compensable loss for the expenses incurred by the victim as a result of the criminally injurious conduct if the claimant has no legal obligation to pay for these expenses.

Rule No. 9

UNJUST ENRICHMENT

1. No portion of a compensation award shall unjustly benefit the offender or accomplice. However, no award shall be denied solely on the basis of the victim's familial relationship to the offender or the presence of the offender in the household at the time of the award.

1. In determining whether or not an award would unjustly benefit the offender, the following factors should be considered:

    a. The legal responsibilities of the offender to the victim and collateral resources available to the victim from the offender. Victims of family violence must not be penalized when collateral sources of payment are not viable.
    b. Payments to victims of family violence that only minimally or inconsequentially benefit the offender.
    c. The special needs of child witnesses to violence and child victims of criminal violence, especially when the perpetrator is a parent who may or may not live in the same residence.

Rule No. 10

MAXIMUM COMPENSATION AMOUNTS AND METHODS OF PAYMENTS

1. Compensation payable to a victim or claimant incurring expenses due to injury or death may not exceed a total of Ten Thousand Dollars ($10,000.00). However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the maximum reparations amount shall not exceed $25,000.

2. Compensation for funeral expenses of deceased victims may not exceed $7,500.

    a. Collateral sources of income such as burial policies, workers' compensation, etc. will be applied towards the total cost of the victim's funeral.

    b. Life insurance may not be used as a collateral source when dependents of the deceased victim remain and may benefit from the proceeds of this policy.

    c. Life insurance will be utilized as a collateral source and be applied against funeral expenses in those cases involving no surviving dependents.

3. The Board may provide for the payment to a claimant in a lump sum or in installments.

4. The Board shall pay all or part of an award directly to service providers unless evidence of prior payment for services is submitted.

5. The Board may also provide for payment of legal fees, not to exceed Two Hundred Fifty Dollars ($250) - plus filing fees, of a guardianship when an award has been made to a minor child as per Rule 18 of the Arkansas Crime Victims Reparations Board Rules and Regulations.

6. Upon request of the claimant, the Board may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the Board of either of the following:

    a. That the award in a lump sum will promote the interests of the claimant;

    b. That the present value of all future economic loss does not exceed One Thousand Dollars ($1,000).

7. An award payable in installments for future economic loss may be made only for a period that the Board can reasonably determine future economic loss and may be modified by the Board upon finding that a significant change in circumstances has occurred.

8. Approved claims will be paid in the order of their approval by the Board as funds become available.

9. For victims, as defined in A.C.A. § 16-90-703(2)(B), up to one week of work loss compensation may be eligible provided the following requirements are met:

   a. the work loss must have been incurred within two weeks of the incident; and
   b. documentation must be submitted verifying the victim's employment and income at the time of the incident, as well as any employee benefits received.

10. Claimants, as defined in A.C.A. § 16-90-703(4)(A)(ii), shall not be entitled to work loss compensation for wages earned by a deceased victim but not yet paid by the employer. An employer is not relieved of their responsibility to pay wages earned by the victim prior to death; therefore, the wages are not considered a work loss.

11. For claimants, as defined in A.C.A. § 16-90-703(4)(A)(ii), economic loss or future support may be awarded upon verification that the deceased victim provided more that 50% of the claimant's care or support. Awards are subject to diminishment based on benefits recouped from collateral sources.

Rule No. 11

GARNISHMENT AND ASSIGNMENT OF AWARD

1. An award shall not be subject to execution, attachment, garnishment or other process, except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent such creditor has provided products, services or accommodations, the costs of which are included in the award.

2. An assignment by the claimant to any future award is unenforceable, except:

   a. For work loss to assure payment of court-ordered alimony, maintenance or child support;

   b. For allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death.

Rule No. 12

APPLICATION REVIEW PROCEDURE

1. A victim, dependent of a victim, or person legally acting in behalf of the victim, must first secure a copy of the official Victims Reparations Application Form from their local prosecuting attorney's office, law enforcement agency, victim/witness coordinator, service provider or from the Board. Assistance in completing the form may be provided by the victim/witness coordinator or the

prosecuting attorney's staff in districts that have no victim/witness coordinator. The Crime Victims Reparations Board staff will also be available to assist in the completion of the form.

2. A form must be completed in its entirety, and accompanied with an itemized statement and police offense report or other official documentation from the agency to which the incident was reported.

3. The staff of the Board shall log the application as being received and begin a thorough review and verification process.

4. The Board and staff have the authority to conduct investigations and/or request any additional information from the victim, the investigating law enforcement agency, medical personnel and/or facilities, witnesses, employers and others as may be deemed necessary for the proper review and verification of the application.

5. The staff shall make a thorough analysis of the application and attachments, then prepare staff comments relative to the application which shall be filed in the application folder along with supportive data that is pertinent to the investigation.

6. Except in cases where a conflict of interest exists as set forth in Rule No. 23, the administrative staff shall have the authority to review and decide crime victim reparations claims up to the maximum allowable amount of Ten Thousand Dollars ($10,000) or Twenty-five Thousand Dollars ($25,000) for victims whose injuries are catastrophic and result in a total and permanent disability.

7. The Board shall then make a decision regarding the claim. The claimant/victim shall be mailed notification of the administrative decision within fifteen (15) calendar days by mail. If the claim is denied the claimant/victim will be notified by certified mail, return receipt requested.

8. The claimant shall have the right to appeal the decisions of the Board in the manner set forth in Rule No. 14, APPEALS PROCEDURE.

Rule No. 13

ADVANCE (EMERGENCY) AWARD OF COMPENSATION

The Board may make or authorize the Administrator to make an advance (emergency) award of compensation to the claimant/victim prior to taking action on an application and pending a final decision when it appears the claim is one for which compensation is probable and undue hardship will result to the claimant/victim if immediate payment is not made. The claimant/victim may request in the application that consideration be given for an advance award and provide justification for such award. A decision denying emergency relief shall not be appealable.

The amount of such advance (emergency) award shall not exceed Five Hundred Dollars ($500). Any advance award shall be deducted from the final compensation made to the claimant/victim. If the final award amount is less than the amount of the advance award, the claimant/victim must repay the excess to the Board. If an emergency award is made and the claimant/victim later does not follow through with prosecution or some other requirement of this program, the claimant/victim will be required to reimburse the Board for the amount of the award made.

Criteria for payment of emergency awards is listed below:

a. Claimant/victim is without an income at the time of application resulting in loss of food, heat or shelter.

b. Claimant/victim can not receive emergency service (i.e. burial) without the emergency payment.

Documentation required:

a. Proof of financial emergency should be obtained for the file such as notice of eviction from the landlord or a shut-off notice from the power company.

b. If no proof is available, then the investigator should note in file why he/she thinks the application is considered an emergency.

c. There must be contact with the investigating law enforcement officer to verify what occurred, the victim's innocence and the victim's cooperation. A law enforcement offense report and Crime Victims Reparations Board Law Enforcement Form must be included in the file.

d. For wage loss claims, the employer may be contacted by telephone but the written verification must follow to go in the file. If self-employed applicant must provide a copy of his/her last three (3) years tax return or check stubs for the last three (3) months as proof of his/her income. If proof is not available, lost wages can not be considered.

e. If the injury is not commensurate with the time lost from work, a doctor's excuse will be required.

f. Claimant/victim is required to sign a promissory (demand) note which must be signed and executed by the claimant/victim with the Administrator prior to receiving the emergency award.

Rule No. 14

APPEALS PROCEDURE

1. In the event an application for compensation is approved in a modified form or denied, the administrative staff of the Board shall notify the claimant/victim by certified mail, return receipt requested, within fifteen (15) calendar days setting forth the basis of the decision.

2. The claimant/victim shall have the right to appeal and may do so by notifying the administrative staff of the Board, in writing, of the intent to appeal within forty-five (45) calendar days of the date of the notification letter setting forth administrative staff's decision.

3. The claimant/victim shall then be entitled to a formal hearing before the Board. The hearing shall be held within ninety (90) calendar days of the date of the notice from the claimant/victim stating the intent to appeal.

4. The claimant/victim or an authorized representative, excluding service providers, in the event the claimant/victim is incapacitated must be present at the appeal hearing. In an appeals hearing, all parties shall be afforded an opportunity to appear and be heard. A record of the proceedings shall be made and shall be transcribed upon request of any party, who shall pay transcription costs unless otherwise ordered by the Board.

5. Notification of Board meetings shall be made in compliance with Arkansas Code Annotated § 25-19-101 - 25-19-107 - the Arkansas Freedom of Information Act.

6. All agendas and supporting documentation necessary shall be mailed to the Board ten (10) calendar days in advance of the Board meeting.

7. The Board may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.

8. The Board shall render its decision relative to the appeal within ten (10) calendar days of the formal hearing and the claimant/victim will be notified by mail.

9. The claimant/victim, if not successful in the appeal to the Board shall then have thirty (30) days from the receipt of the decision to file a petition for judicial review pursuant to Arkansas Code Annotated 25-15-212 in the circuit court of his/her county of residence or in Pulaski County.

Rule No. 15

SUBROGATION RIGHTS OF THE BOARD

1. Upon an award of compensation by the Board for personal injury or death, the Board shall be subrogated to recover from a collateral source to the extent reparations were awarded.

2. Should the claimant/victim file a cause of action against any third person responsible for such injury or death, and be entitled to recover the amount of damages sustained by the claimant/victim then the amount recovered and collected in the action is subrogated to the Board for the amount of reparations awarded.

3. In the event a defendant is convicted of a crime and ordered to pay restitution, the office of the Attorney General may seek to recover any or all of the restitution paid. Any excess amount recovered over the reparation amount awarded and paid shall be paid to the claimant/victim.

Rule No. 16
PENALTY FOR FALSE CLAIMS

The filing of a false claim for compensation pursuant to the Arkansas Crime Victims Reparations Act shall constitute a Class D Felony. If a victim or a claimant knowingly files a false claim or provides false information or fails to provide material facts or circumstances necessary to substantiate the claim, he/she may not at a later date, file a correct claim. If this happens, the claim shall be denied.

Rule No. 17

BOARD STAFF

The Administrator of the Board shall be the Chief Executive Officer of the Board staff. He/she shall be hired by the Attorney General with the advice and consent of the Board. He/she shall be responsible for the administration of the rules, regulations, policies and procedures promulgated by the Board, pursuant to the Administrative Procedure Act, and within such restraints as mandated by statute.

The Administrator shall also be responsible for employment, supervision, evaluation and termination of Board employees and shall delegate appropriate powers and duties to them, subject to the advice and/or consent of the Attorney General and the Board.

Rule No. 18

CLAIMS OF INCOMPETENTS OF MINOR CHILDREN

Proof of the establishment of the guardianship may be required in applicable cases.

Rule No. 19

AMENDMENT TO RULES AND REGULATIONS

Any modification or amendment to the Rules and Regulations of the Board shall be made pursuant to the procedure as outlined in the Arkansas Administrative Procedure Act.

Rule No. 20

ELIGIBILITY REQUIREMENTS AND APPLICATION REVIEW PROCEDURE FOR THE SEXUAL ASSAULT REIMBURSEMENT PROGRAM

DEFINITIONS

"Victim" means any person who has been a victim of any alleged sexual assault or incest.

"Appropriate emergency medical-legal examinations" means health care delivered with emphasis on the collection of evidence for the purpose of prosecution and shall include, but not be limited to:

1. The appropriate components contained in an evidence collection kit for sexual assault examinations distributed by the Forensic Biology Section of the State Crime Laboratory;

"Medical facility" means any health care provider that is currently licensed by the Department of Health and providing emergency services, and all publicly owned or tax-supported medical facilities in Arkansas.

"Licensed health care provider" means a person licensed in a health care field who conducts medical-legal examinations.

PROCEDURES GOVERNING MEDICAL TREATMENT
ADULT VICTIMS

1. All medical facilities in Arkansas or licensed health care providers conducting medical-legal examinations shall adhere to the procedures set forth below in the event that a person presents himself or is presented for treatment as a victim of rape, attempted rape, any other type of sexual assault, or incest.

2. Any adult victim presented for medical treatment shall make the decision of whether or not the incident will be reported to a law enforcement agency.

   a. No medical facility or licensed health care provider may require an adult victim to report the incident in order to receive medical treatment.

   b. Evidence will be collected only with the permission of the victim. However, permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.

3. Should an adult victim wish to report the incident to a law enforcement agency, the medical facility, licensed health care provider, or his designee shall contact the appropriate law enforcement agencies.

   a. The victim shall be given a medical screening examination by a qualified medical person as provided under the Emergency Medical Treatment and Active Labor Act, as in effect on January 1, 2001. If the victim arrives at the emergency department of a hospital, the person shall be examined, treated and any injuries requiring medical attention will be treated in the standard manner and a medical-legal examination shall be conducted and specimens shall be collected for evidence.
   b. If a law enforcement agency has been contacted and with the permission of the victim, the evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

PROCEDURES GOVERNING MEDICAL TREATMENT
OF MINOR VICTIMS

1. All medical facilities in Arkansas shall adhere to the procedures set forth below in the event that a person under the age of eighteen (18) presents himself/herself or is presented at the medical facility for treatment as a victim of rape, attempted rape, any other type of sexual assault, or incest.

2. The reporting medical facility or licensed health care provider conducting the medical-legal examination should follow the procedures set forth in A.C.A. §12-12-507 regarding the reporting of child maltreatment.

3. Any victim under the age of eighteen (18) years of age shall be examined and treated and any injury requiring medical attention will be treated in the standard manner.

4. A medical-legal examination shall be performed and specimens shall be collected for evidence.

5. The evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

PROCEDURES APPLICABLE TO BOTH ADULT AND MINOR VICTIMS TRANSFERS

The victim shall not be transferred to another medical facility unless:

a. The victim or the parents or guardian of a victim under the age of eighteen (18) requests to be transferred, or
b. A physician or other qualified medical personnel when a physician is not available has signed a certification that the benefits to the patient's health would outweigh the risks to the patient's health as a result of the transfer, and
c. The transferring medical facility or licensed health care provider provides all necessary medical records and insures that appropriate transportation is available.

EXAMINATIONS AND TREATMENT -- PAYMENTS

1. All licensed emergency departments shall provide prompt, appropriate emergency medical-legal examinations for sexual assault victims.

2. All victims shall be exempted from the payment of expenses incurred as a result of receiving a medical-legal examination provided the following conditions are met:

   a. The assault must be reported to a law enforcement agency, and
   b. The victim must receive the medical-legal examination within ~~seventy-two (72) hours~~ ninety-six (96) hours of the attack.
   c. The ~~seventy-two (72) hour~~ ninety-six (96) hour time limitation may be waived, if the victim is a minor or if the Arkansas Crime Victims Reparations Board finds that good cause exists for the failure to provide the exam within the required time.

3. A medical facility or licensed health care provider that performs a medical-legal examination shall submit a sexual assault reimbursement form and an itemized statement which meets the requirements of 45 C.F. R. 164.512(d), as it existed on January 2, 2001, directly to the Arkansas Crime Victims Reparations Board for payment.

4. The medical facility or licensed health care provider shall not submit any remaining balance after reimbursement by the Arkansas Crime Victims Reparations Board to the victim.

5. Acceptance of payment of the expenses of the medical-legal examination by the Arkansas Crime Victims Reparations Board shall be considered payment in full and bars any legal action for collection.

REIMBURSEMENT OF ALL MEDICAL FACILITIES

1. The Arkansas Crime Victims Reparations Board may reimburse any medical facility or licensed health care provider for reasonable and customary costs of performing a medical-legal examinations for sexual assault victims. The Board may mandate cost ceilings for claims and determine reasonable cost.

2. Medical facilities must be currently licensed by the Department of Health and providing emergency services.
3. Medical facilities and licensed health care providers are responsible for fulfillment of the following procedures since reimbursement is made directly to them:

   a. Claims will be paid only if submitted on Arkansas Crime Victims Reparations Board Sexual Assault Reimbursement Forms.

   b. The medical facility must send the reimbursement form with the attached itemized bills to the Arkansas Crime Victims Reparations Board.

4. Acceptance of payment for services paid by the Arkansas Crime Victims Reparations Board shall be considered payment in full and bars any legal action for collection. The medical facility or licensed health care provider to whom the award is made will be notified that by accepting the approved payment, they are agreeing not to commence civil actions against the victim or his/her legal representative to recover any balance due under the bill.

5. The victim shall not be responsible for the payment of the cost of the medical-legal examination. A medical facility or licensed health care provider shall not submit any remaining balance after reimbursement by this Board to the victim.

Rule No. 21

COST CEILING ON MEDICAL BILLS

In connection with claims for payment on medical bills, not covered by insurance, made by victims, the Board will award up to 65% of medical bills, not to exceed a total reimbursement of $10,000. However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the total reimbursement shall not exceed $25,000.

The provider of medical services to whom the award is made will be notified that by accepting the payment of 65% of their bill, they are agreeing not to commence civil actions against the victim or his legal representative to recover the balance due under the bill.

Acceptance of payment for services paid by the Arkansas Crime Victims Reparations Board shall be considered payment in full and bars any legal action for collection.

Rule No. 22

COST CEILING ON MENTAL HEALTH BILLS

1. In connection with claims for payment of mental health services, not covered by insurance, incurred by victims, the Board will pay a maximum of Thirty-five Hundred Dollars ($3500) for out-patient services provided the services are conducted by a licensed mental health professional who has a signed contract on file with the Board. Additionally, the Board may pay a maximum of Thirty-five Hundred Dollars ($3500) for in-

patient or other intensive services that are provided by a licensed mental health care facility. The term mental health professional shall be limited to psychiatrists, psychologists, psychological examiners, professional counselors (LPC), certified social workers (LCSW), masters level social workers (LMSW) under the supervision of a LCSW, associate counselors (LAC) under the supervision of a LPC, or marriage and family therapists (LMFT).

Fees for specified mental health services, based on the current usual and customary rate, shall be set by the board and reviewed annually.

The following documentation must be submitted before payment of mental health expenses can be considered:

a. A treatment plan stating the basis for the necessity of such treatment, the anticipated extent of the treatment, and the relationship of the treatment to the crime perpetrated upon the victim and whether or not the diagnosis is related to a pre-existing condition.

b. Copies of original, individual diagnostic case notes or other approved documentation summarizing the victim's therapeutic issues and progress.

c. An itemized statement.

2. The victim or claimant may submit a request for a waiver of the $3500 maximum if further services are required. The maximum may be waived only upon justification of special need based on the following documentation:

a. A detailed statement and new treatment plan submitted by the provider justifying the continued need for treatment and its continued relationship to the crime.

3. The Board reserves the right to have any mental health claims and treatment plans reviewed by an independent peer review committee should it so desire.

Rule No. 23

CONFLICT OF INTEREST

No member of the Board shall use such appointment for purposes which are motivated by private gain, including gain for providers, claimants, or victims with which the board member is associated within any capacity. There shall exist a conflict of interest when a provider, claimant, or victim with whom the board member is associated with appears before the board in the course of business of the board.

When such a conflict arises for a member, the individual member should declare the conflict. Additionally, any member of the Board who questions whether or not another member has a conflict of interest in the matter under discussion may ask for a determination by the Board. If the Board finds that a conflict exists, the affected member shall also follow the aforementioned procedure.

Any member of the Board who declares a conflict of interest, or who is found to have a conflict, should neither participate in debate nor vote on the issue in question.

A conflict of interest shall exist among members of the administrative staff in any case where a member of the Attorney General's staff or a person related, whether by blood, adoption, or marriage within the second degree of consanguinity to a member of the Attorney General's staff is the claimant or victim on a claim for compensation.

Additionally, the administrator of the Board and the staff attorney may determine that a conflict of interest exists on claims where one or more members of the administrative staff know the claimant or victim.

Administrative staff members shall immediately notify the administrator when another member of the Attorney General's staff or someone whom they believe is known by one or more members of the administrative staff has filed a claim.

In the event that a conflict arises or exists among all members of the administrative staff, the Board shall make the initial determination regarding the eligibility of the claim. The administrative staff may gather the necessary information and present the application and attachments to the Board, but shall not participate in the debate, nor vote on the claim in question.

The administrative staff shall also immediately notify the administrator when such staff member knows the victim or claimant on a particular claim.

If only one staff member is determined to have a conflict, then that staff member shall not participate in the debate, nor vote on the claim in question. If that staff member has been assigned to investigate the claim, then the administrator shall immediately re-assign the claim to another investigator.

Rule No. 24

SUPPLEMENTAL AWARDS

If at the time of the application, the victim or claimant was unable to submit all of the itemized bills, he/she may submit supplemental bills to be considered after the original award. If a victim or claimant has been awarded their original claim at a reduced amount due to contribution, then the Board will note at the time of approval whether or not they will consider any supplemental awards concerning this claim. If the Board determines that supplemental awards will not be considered after the initial award, the Board shall so note at the time of the initial award. Each case will be considered on its own merits.

The total of the original award and any and all supplemental awards may not exceed $10,000.

Supplemental awards may be paid quarterly.

Supplemental bills will be considered only if submitted within one year of:

a. the date of treatment, or
b. notification of payment or denial by a collateral source.

Rule No. 25

FINANCIAL OBLIGATION REQUIREMENT

Reparations shall not be awarded to any victim/claimant who owes a financial obligation ordered or imposed as a result of a previous criminal conviction until the board receives information or materials establishing to the satisfaction of the board that the financial obligation has been satisfied. Such financial obligation includes parole and probation fees.

EXHIBIT F.1

INTERIM STUDY PROPOSAL 2013-056

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/28/13

A Bill

SENATE BILL 1093

By: Senator Elliott
By: Representatives H. Wilkins, Love

Filed with: Interim Senate Committee on Judiciary pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO REQUIRE THE PREPARATION OF A RACIAL IMPACT STATEMENT FOR CERTAIN BILLS FILED WITH THE SENATE AND HOUSE OF REPRESENTATIVES; AND FOR OTHER PURPOSES.

Subtitle

TO REQUIRE THE PREPARATION OF A RACIAL IMPACT STATEMENT FOR CERTAIN BILLS FILED WITH THE SENATE AND HOUSE OF REPRESENTATIVES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 10, Chapter 2, Subchapter 1 is amended to add an additional section to read as follows:

10-2-132. Racial impact statement.

(a)(1) A racial impact statement shall be prepared as provided in this section for any bill filed in the Senate or House of Representatives that will:

(A) Create a new offense;

(B) Significantly change an existing offense;

(C) Change the penalty for an existing offense; or

(D) Change existing sentencing, parole, or probation procedures.

(2) A racial impact statement shall be prepared and filed with the chair of the committee to which the bill is referred before the bill is heard in the committee during a regular, fiscal, or special session of the General Assembly.

(3) If a bill requiring a racial impact statement is amended, a revised racial impact statement shall be prepared for the bill.

(b)(1)(A) Except as provided in subdivision (b)(1)(B) of this section, the Office of Economic and Tax Policy, with the assistance of the Department of Criminal Justice at the University of Arkansas at Little Rock, shall prepare the racial impact statement required by this section.

(B) The Office of Economic and Tax Policy, with the assistance of the Arkansas Coalition for Juvenile Justice and the Department of Criminal Justice at the University of Arkansas at Little Rock, shall prepare a racial impact statement for a bill under subdivision (a)(1) of this section that has an impact on minors.

(2) The racial impact statement shall include without limitation:

(A) The estimated number of criminal cases per year that the bill will affect;

(B) The impact of the bill on a minority as defined in § 1-2-503;

(C) The impact of the bill upon correctional facilities and services; and

(D) Other matters deemed relevant to the bill at issue.

(c)(1)(A) If a racial impact statement indicates a disparate impact on a minority as defined in § 1-2-503, the sponsor of the bill shall consider whether the bill may be amended to achieve its purpose with a lessened impact on minorities.

(B) If a bill is amended to lessen its impact on minorities the sponsor of the bill shall identify in writing, in the bill and the racial impact statement, the methodology used to lessen the impact on minorities in the amended proposal.

(2) If the sponsor of the bill elects not to amend the bill or if the racial impact statement for an amended bill continues to indicate a disparate impact on a minority, the sponsor of the bill shall:

(A) Withdraw the bill; or

(B) Identify in writing, in the bill and the racial impact statement, his or her reasoning for proceeding with the bill despite the disparate impact.

(d)(1) If a Senate or House bill is called up for final passage in the Senate or House of Representatives and a racial impact statement is required by this section and has not been provided by the author of the bill or by the committee to which the bill was referred, the presiding officer of the Senate or House of Representatives shall cause the bill to be referred for the preparation of a racial impact statement, which shall be filed with the presiding officer at least five (5) days prior to the bill again being called up for final passage.

(2) The bill shall not be called back up for final action until a racial impact statement has been filed with the presiding officer.

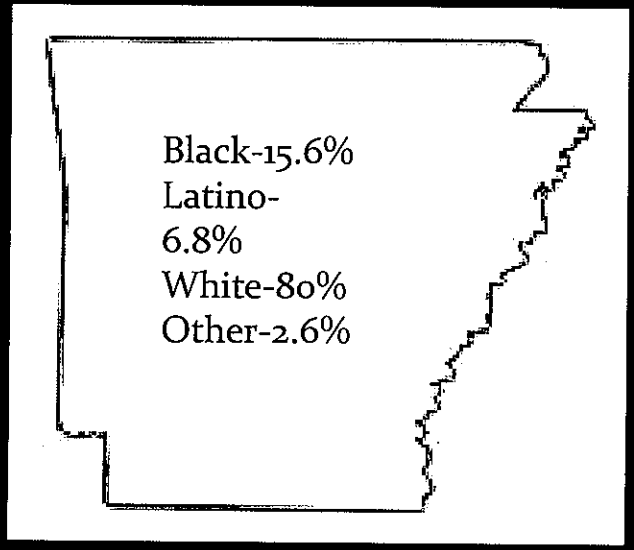
/s/Elliott

Referred by the Arkansas Senate
Prepared by: MBM/VJF

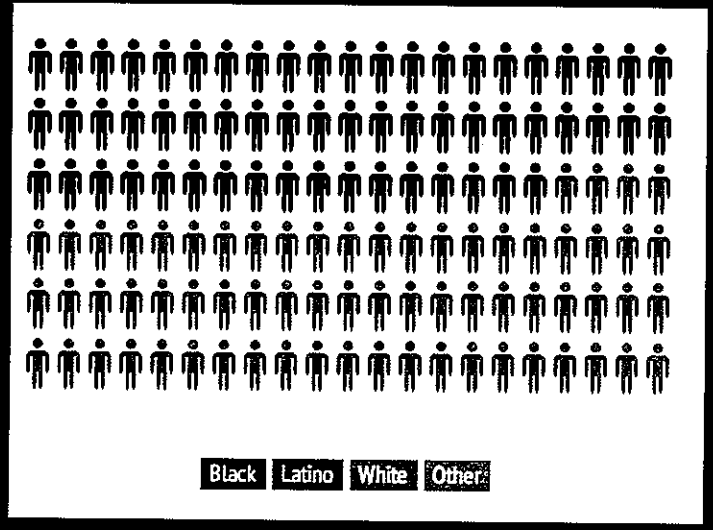
Racial Disparities in the Arkansas Criminal Justice System Research Project

"Arkansans have confronted racial injustices throughout our State's history. Now we must confront the racial disparities in our criminal justice system. People of color make up less than a quarter of the population of Arkansas but constitute almost half of the incarcerated population. This inequity separates families, divides communities, and comes at a social and economic cost to our state that it cannot endure. To protect all Arkansans we must identify and correct the policies and practices that contribute to this racial disparity."

Arkansas Population



Currently Incarcerated



Black-44.2%
Latino-2.9%
White-52.2%
Other-0.7%

EXHIBIT F.2

Racial Impact Statements

CHANGING POLICIES TO ADDRESS DISPARITIES

BY MARC MAUER

In reaction to a study that found Iowa topped the nation in racial disparity in its prison population, Iowa Governor Chet Culver in April 2008 made history by signing into law the nation's first piece of legislation to require policy makers to prepare racial impact statements for proposed legislation that affects sentencing, probation, or parole policies. In signing the bill, Gov. Culver noted that "I am committed to making sure government at all levels reflects our shared values of fairness and justice." In the following months Connecticut and Wisconsin took similar action.

These policy initiatives come at a moment when the scale of racial disparity within the criminal justice system is truly staggering. One of every nine black males between the ages of 20 and 34 is incarcerated in prison or jail, and one of every three black males born today can expect to do time in state or federal prison if current trends continue. For Hispanic males, the lifetime odds of imprisonment are one in six. Rates for women are lower overall, but the racial/ethnic disparities are similar.

The effects of high rates of incarceration go beyond the experience of imprisonment itself, and have broad consequences for both the offender and the community. A prison term results in challenges in gaining employment, reduced lifetime earnings, and restrictions on access to various public benefits. Families of offenders themselves experience the shame and stigma of incarceration, as well as the loss of financial and emotional support with a loved one behind bars. And for the community at large, the challenges of reentry result in high rates of recidivism and the consequent costs of a burgeoning prison system.

Thus, we are faced with twin problems in the justice system. Clearly, we need policies and practices that can work effectively to promote public safety. At the same time, it also behooves us to find ways to reduce the disproportionate rate of incarceration for people of color. These are not competing goals. If we are successful in addressing crime in a proactive way, we will be able to reduce high imprisonment rates; conversely, by promoting racial justice we will increase confidence in the criminal justice system and thereby aid public safety efforts.

Reducing minority rates of confinement is a complex process. These outcomes result from a complex set of factors, including socioeconomic disadvantages, involvement in criminal behavior, resource allocation in the criminal justice system, sentencing policies, limited diversionary options, and biased decision making among practitioners. We can debate the relative contribution of each of these factors, but there are few who would dispute that each plays at least some role.

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. Policy makers contemplating new construction projects or social initiatives routinely conduct such assessments, which are now widely viewed as responsible mechanisms of government.

Racial impact statements are particularly important for criminal justice policy because it is exceedingly difficult to reverse sentencing policies once they have been adopted. The classic example in this regard is the federal crack cocaine mandatory sentencing policies. Adopted in 1986 and 1988, at a time of widespread concern about this new form of cocaine, the laws were hastily passed by Congress with virtually no discussion of their potential racial impact. Two decades later, the results are in and they are very sobering. More than 80 percent of the prosecutions for crack (as opposed to powder cocaine) offenses have been of African Americans, far out of proportion to the degree that they use the drug, and there is broad consensus that the penalties are overly punitive. (U.S. Sentencing Commission, *Cocaine and Federal Sentencing Policy*, May 2007.) But despite the fact that the U.S. Sentencing Commission amended its guidelines for crack offenses in 2007, and bipartisan legislation has been introduced in Congress to scale back the penalties, the mandatory sentencing policies remain in place today.

Reports Offer Hard Numbers

Although in recent years there has been increasing attention to issues of race and criminal justice, two policy

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reports issued in 2007 provided lawmakers with renewed incentive to address these issues. In a study titled "And Justice for Some," the National Council on Crime and Delinquency found wide racial disparities in the juvenile justice system nationally. (Report *available at* http://www.buildingblocksforyouth.org/justiceforsome/jfs.html.) At the state level, Wisconsin led the nation in the degree of racial disparity among youths in custody, with children of color being detained at more than 10 times the rate of white youth.

State officials responded to the report with alarm, leading Governor Jim Doyle to establish a broad-based Governor's Commission on Reducing Racial Disparities in the Wisconsin Justice System. The commission reviewed policies, analyzed data, and heard citizen testimony over the course of the year, and then issued a comprehensive report with recommendations for reducing disparities at each stage of the system. Following that release, in April 2008 Governor Doyle issued a sweeping executive order calling on all relevant state agencies to track decision making by race, to create an oversight commission charged with advocating for policies to reduce disparities, and to support a range of practices regarding reentry and alternatives to parole revocation.

A second report, "Uneven Justice," produced by The Sentencing Project, analyzed racial and ethnic disparities in the adult criminal justice system. ("Uneven Justice" *available at* http://www.sentencingproject.org/Admin/Documents/publications/rd_stateratesofincbyraceandethnicity.pdf.) The report found that nationally, African Americans were nearly six times as likely as whites to be incarcerated, but that there was a broad variation in this ratio among the states. States in the upper Midwest and in the Northeast generally had the highest rates of disparity, representing a combined effect of higher than average black rates of incarceration along with lower than average white rates. The State of Iowa led the nation with a black/white ratio of more than 13 to 1.

The public and political response to the findings in Iowa was substantial. The report received front-page coverage and subsequent editorials in the *Des Moines Register*, and statements of concern from Gov. Culver. The legislative response was led by Rep. Wayne Ford, the longest serving African-American lawmaker in the state, who in 2008 introduced racial impact legislation. The bill quickly received broad support and was adopted almost unanimously. The legislation requires that in addition to preparing a correctional impact statement for proposed policy changes, the legislative services agency should also conduct a racial impact analysis that examines the impact of sentencing or parole changes on racial and ethnic minorities.

Concurrently, in Connecticut, Rep. Michael Lawlor, chair of the state's House Judiciary Committee and a longtime leader in justice reform, introduced a similar measure. The bill called for racial and ethnic impact statements to be prepared for bills and amendments that would increase or decrease the pretrial or sentenced populations of state corrections facilities. This legislation also received bipartisan support and was signed into law by Gov. Jodi Rell in June 2008.

The racial impact legislation adopted in Iowa and Connecticut will go into effect in 2009, but we already have a model in place that provides some guidance as to how these mechanisms can aid policy makers. In 2008, the Minnesota Sentencing Guidelines Commission began to conduct such inquiries for a proposed new sentencing policy. In their overview of the process, the commissioners noted their policy goals:

> 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*, Minnesota Sentencing Guidelines Commission, February 27, 2008.)

Thus, for one bill designed to increase penalties for robbery, the commission's analysis found that "[m]inorities are even more over-represented among persons sentenced to prison for attempted aggravated robbery than non-minorities and their sentences would be increased if this bill were to be adopted. . . . The average increase in sentence length for those offenders would be 8 months for white offenders, 10 months for black offenders, 15 months for American Indian offenders, and 23 months for Hispanic offenders." But for another bill, designed to defer judgment for certain controlled substance offenses, the commission concluded that it would have no impact on racial disparity in prisons since the legislation did not provide an option for diversion for those repeat drug offenders sentenced to imprisonment.

In considering the utility of such policies, lawmakers will need to consider the scope and procedures involved in establishing such mechanisms, including the following issues. (For greater detail, *see* Marc Mauer, *Racial Impact Statements as a Means of Reducing Unwarranted Sentencing Disparities*, 5 (No. 1) OHIO STATE J. CRIM. L. (Fall 2007).)

Scope of racial impact statements

While proposed changes in sentencing policies are the most obvious decision-making point at which unwarranted racial disparities might emerge, a host of policy decisions at other stages of the criminal justice system can affect the racial/ethnic demographics of the prison population as well. These include adjustments to sentencing guidelines, "truth in sentencing" and other policies that affect length of stay in prison, parole release and revocation policies, and "early" release mechanisms, such as participation in drug treatment or other programs. Conceivably, a racial impact statement policy could cover one or more of these decision-making points.

Preparation of racial impact statements

Depending on the jurisdiction, there are a variety of mechanisms and agencies that could be charged with preparing racial impact statements. These would include:

- *Sentencing Commissions*—In addition to the federal system, 21 states and the District of Columbia currently have a sentencing commission that in most cases should be capable of producing racial impact statements. Generally, these bodies have relatively sophisticated databases of sentencing data and trends, and usually contain relatively complete information on race, gender, and offense demographics. Some states, including North Carolina and Virginia, already maintain legislative requirements that their sentencing commissions produce impact statements to project any effects of new policy on the size of the prison population. And as described above, the Minnesota commission has begun to produce racial impact assessments as an outgrowth of an internal policy decision.
- *Budget and Fiscal Agencies*—Many state legislative analysts routinely produce fiscal and other analyses of legislative initiatives, and could be delegated to produce racial impact statements as well.
- *Departments of Correction*—State and federal corrections agencies now generally have sophisticated analytical tools with which they can produce detailed forecasts of changes in prison populations based on sentencing data and trends. To the extent that their databases contain information on race and ethnicity, it is likely that they could produce racial impact statements as well.

Policy implementation

Racial impact statements should be viewed as a mechanism to help guide the development of sound and fair policy, but they are not an impediment to enacting changes in the law. That is, they represent one component of the discussion regarding sentencing policy, but only in conjunction with other relevant considerations. In some cases, lawmakers might receive analyses indicating that African Americans or other racial/ethnic groups would be disproportionately impacted by a proposed sentencing change, but conclude that public safety concerns override these considerations.

In order to see how this might play out in the legislative arena, consider two types of proposed changes. In the first example, legislators are contemplating a sentencing enhancement to school zone drug laws that penalize conduct committed within a certain distance of a school. The racial impact statement provides data indicating that African Americans would be disproportionately affected by such a change, most likely as a result of the disproportionate effect of these policies on the densely populated urban areas where African Americans are more likely to reside. If so, then lawmakers need to assess the concern about exacerbating racial disparity with the goal of providing greater public safety.

A key aspect of formulating policy in this regard relates to the breadth and effectiveness of the school zone law. Certainly, no one wants drug dealers peddling narcotics to school children on the playground during recess. But in some states, these laws also provide for additional penalties for drug transactions between consenting adults that take place in the middle of the night. Clearly, these drug sales are illegal, but should penalties be enhanced if they will disproportionately affect African Americans?

Using the public safety framework, legislators might decide that they could avoid exacerbating racial disparity and promote better public safety by tailoring the law itself rather than the punishment. For example, they could define the statute in a more targeted way, specifically focusing on selling drugs to children on school property. Such a policy could address legitimate concerns of the public while also delineating distinctions in penalties that would not adversely affect minority defendants.

In a second example, consider a legislative proposal to enhance mandatory sentences for robbery convictions. An impact statement produced for such a proposal might demonstrate that African Americans would be disproportionately affected by such a change as a result of greater involvement in the crime. After reviewing such documentation, many policy makers would be likely to place the concern for public safety above the objective of reducing racial disparity, and proceed with adopting the initiative. But it is also conceivable that legislators could use this analysis as an occasion to explore overall investments in public safety. For example, extending the length of time that persons convicted of robbery stay in prison clearly

provides some incapacitation benefits in crime control. But as offenders age in prison, their risk of recidivism generally declines, so at a certain point the additional cost of incarceration may not provide cost-effective approaches to producing public safety. For policy makers the question then becomes how to evaluate the degree of public safety produced through additional years of imprisonment compared to investing those funds in community policing, drug treatment, preschool programs, or other measures believed to be effective interventions. Reasonable people may disagree on how to answer this question, but it should frame the relevant questions.

Growing Movement to Address Disparity

Interest in the concept of racial impact statements is growing rapidly, both in the legal community and among policy makers. Within the ABA, in 2004 the Justice Kennedy Commission recommended a sweeping policy that legislatures "conduct racial and ethnic disparity impact analyses to evaluate the potential disparate effects on racial and ethnic groups of *existing statutes* and proposed legislation; . . . and propose legislative alternatives intended to eliminate predicted racial and ethnic disparity at each stage of the criminal justice process (emphasis added)." The policy was approved by the House of Delegates later that year.

In 2007, as part of its revision to the Model Penal Code, the American Law Institute called for sentencing commissions to prepare projections to quantify "demographic patterns," along with correctional resource projections. The ALI noted that "The provision does not dictate the policy decisions that will result. Rather, the provision treats numerical disparities in punishment as an important societal cost that must be considered along with other factors when the existing sentencing structure is assessed, or when changes within the system are contemplated." (American Law Institute, "Model Penal Code: Sentencing," 2007, p. 138.)

Policy makers and practitioners are also creating a range of mechanisms to address unwarranted disparities. In 2007, the Delaware Supreme Court, in conjunction with the Delaware Criminal Justice Council, convened a two-day Racial and Ethnic Fairness Summit. The meeting involved 75 key policy makers, practitioners, and community leaders in a frank discussion of how to promote policies that were both fair and *perceived* to be fair by all members of the community. The summit produced a working document of recommendations that is guiding the work of the Council in these areas.

Initiatives at the local level have highlighted ways in which jurisdictions can address issues of disparity in a collaborative way. In 2001, the mayor's office in Bloomington, Indiana, convened a task force to address concerns about racial disparity raised by community groups. Over a two-year period, aided by researchers at Indiana University, the group analyzed a wealth of local data regarding arrests, charging, prosecution, and sentencing in order to aid policy makers in assessing what changes in policy or practice could reduce unwarranted disparities.

An ongoing project of the Vera Institute of Justice provides a means of developing practical approaches to addressing disparities within the prosecution function. The multiyear project is working with prosecutors in three jurisdictions—Milwaukee, Mecklenberg County (Charlotte), N.C., and San Diego—to collect and analyze data regarding decision making in prosecutors' offices. Based on their findings, the project staff will aid prosecutors in adapting case management systems to collect data on racial dynamics, develop protocols for ongoing review of data, and implement corrective policies and procedures.

At the federal level, bipartisan legislation introduced in the 110th Congress by Sen. Joseph Biden (D-Del.) and Sen. Arlen Specter (R-Pa.) was focused on providing federal prosecutors with a mechanism by which they could engage a broad segment of the community in assessing the racial dynamics of prosecution. The Justice Integrity Act of 2008 called for establishing broad-based task forces in 10 U.S. attorney districts, comprised of leaders from the jurisdiction's federal and state justice systems, as well as community representatives. The task forces would be charged with producing racial and ethnic fairness plans that analyze data on prosecutorial decision making, assessing whether disparities are explained by relevant legal variables, and recommending policies and practices to reduce any unjustified disparities. It is expected that the bill will be reintroduced in 2009.

Local initiatives highlight ways to address the issue in a collaborative way.

Conclusion

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. Racial impact statements offer one means by which policy makers can begin to engage in a proactive assessment of how to address these challenging issues in a constructive way. ■

EXHIBIT G

Stricken language would be deleted from and underlined language would be added to present law.
Act 1190 of the Regular Session

State of Arkansas *As Engrossed: S3/18/13 S3/20/13 S3/27/13*
89th General Assembly **A Bill**
Regular Session, 2013 SENATE BILL 1095

By: Senators Elliott, J. Hutchinson
By: Representatives Love, Sabin, H. Wilkins, *Hodges*

For An Act To Be Entitled

AN ACT CONCERNING THE REENTRY INTO SOCIETY BY A PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION OR OTHER CORRECTIONAL FACILITY; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE REENTRY INTO SOCIETY BY A PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION OR OTHER CORRECTIONAL FACILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. *Legislative Intent.*

The purpose of this act is to create a holistic and seamless approach for reentry into society for persons in the custody of the Department of Correction.

SECTION 2. DO NOT CODIFY. *Meetings established.*

(a) The Department of Community Correction is directed to convene joint sessions with the Department of Correction, Arkansas Economic Development Commission, Department of Education, Department of Higher Education, Department of Career Education, Department of Workforce Services, Department of Human Services, Department of Finance and Administration, the Parole Board, the Arkansas Prosecuting Attorneys Association, the Arkansas Public Defender Commission, as well as criminal defense attorneys and any

other state, county, or local agency as appropriate to discuss the goals of this act. All invited agencies shall participate.

(b) The Department of Community Correction also shall involve the private sector by engaging groups such as chambers of commerce, labor unions, faith-based organizations, foundations with an interest in a reentry system, literacy groups, advocates for systemic reentry, and any other private sector groups as appropriate to discuss the goals of this act.

SECTION 3. DO NOT CODIFY. Written findings required.

On or before October 15, 2014, the Department of Community Correction shall make recommendations for the creation of a Restorative Justice Reentry System to the Interim House Committee on Judiciary and Senate Committee on Judiciary based upon the meetings and discussions with the agencies and other parties as outlined in this act.

/s/Elliott

APPROVED: 04/12/2013