

Senate Judiciary Committee

Jennifer Horgan 271-7875

SB 96-FN-A, requiring implicit bias training for judges; establishing a body-worn and dashboard camera fund and making an appropriation therefor; relative to race and ethnicity data on driver's licenses, and relative to juvenile delinquency.

Hearing Date: February 2, 2021

Time Opened: 3:45 p.m.

Time Closed: 5:05 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill:

I. Amends the municipal retention schedule for certain police non-criminal internal affairs investigations.

II. Extends the authority of a law enforcement officer to any elementary, secondary, or postsecondary educational institution pursuant to a request or written agreement with the administrator of the institution or the governing body of the school district.

III. Establishes a body-worn and dashboard camera fund and makes an appropriation therefor.

IV. Amends the juvenile delinquency statutes to exclude any child under 13 years of age unless he or she has committed a violent crime, and removes certain criminal offenses as the basis for transferring a delinquent child to superior court.

V. Adds race and ethnicity as optional information that may be included on a nondriver's picture identification card and requires law enforcement agencies to collect such data.

VI. Requires all judges to receive annual training covering the topics of implicit bias and racial profiling.

Sponsors:

Sen. Bradley

Sen. Whitley

Sen. Rosenwald

Sen. Perkins Kwoka

Sen. Soucy

Sen. Gray

Sen. Kahn

Sen. D'Allesandro

Sen. Morse

Rep. Cushing

Sen. Watters

Sen. Prentiss

Sen. Hennessey

Sen. Sherman

Rep. M. Smith

Who supports the bill: Senator Bradley; Governor Christopher Sununu; Senator Perkins Kwoka; Senator Rosenwald; Senator Gray; Senator Watters; Senator Hennessey; Rep. Cody Belanger; Rep. Amanda Bouldin; Rep. Andrew Bouldin; Rep. Laura Telerski; Matthew Broadhead, NH Department of Justice; Moira O'Neill, The Office of the Child Advocate; Commissioner Quinn, Department of Safety; Commissioner Hanks, Department of Corrections; Will Stewart, Stay Work Play NH; Joseph Lascaze, American Civil Liberties Union; Mark Morrison, NHPA; Joseph Hoebeke, NH Association of Chiefs of Police; Ken Norton, NAMI NH; Michelle Wangerin, New Hampshire Legal Assistance; Dan Weeks, ReVision Energy; Katherine Cooper, NH Association of Criminal Defense Lawyers; Ahni Malachi; Keryn Anderson; Annie Rettew; Nancy Brennan; Shira Hoffer; Adrian Coss; Karen Guggisberg; Martha Hennessey; Amy Manzelli; Christine Pattison; Lilian Carter; Ruth Perencevich; Alix Olson; Jen Lyon; Catherine Bushueff; Elizabeth Corell; Maura Willing; Julian Jefferson; Jeanne Torpey; Troy Hartmann; Doris Hampton; Jake Pierog; Elizabeth-Anne Platt; Marueen Ellermann; Mel Hinebauch; Betsey Neville; Sara Persechino; Louise Spencer; Marie Straiton; Margery Phillips; Chrisinda Lynch; Jennifer Jones; Charlene Kennedy; Kathy Spielman; James Spielman; Ann Podlipny; Faith Sillars

Who opposes the bill: No one

Who is neutral on the bill: John Scippa, NH Police Standards and Training; Richard Head, Judicial Branch; Marc Beaudoin, NH Troopers Association

Summary of testimony presented in support:

Senator Bradley

- Was asked to introduce this by the Governor and the Attorney General's Office.
- This bill seeks to implement some of the provisions of the Law Enforcement Accountability, Community, and Transparency (LEACT) Commission.
- This bill encompasses the recommendations from the LEACT Commission that appear to have broad agreement.
- Presented Amendment 0202s to make a technical correction.
- Section 3 of the bill may not be necessary. There is a provision in the LEACT recommendations that there should be a memorandum of understanding (MOU) between school resource officers (SROs) and police departments.
- Understands that RSA 186:11 already requires that MOU, so that section may not be necessary.

Senator Rosenwald

- Applauds the LEACT Commission's work with their diverse membership coming together to make these recommendations.
- This bill will result in much needed data collection on police interactions in NH and help police departments expand the use of body and dash cams and extend implicit bias training to judges.

- It is responsive to the thousands of demonstrators from last summer who urged police reform.

Matthew Broadhead (Attorney General's Office)

- In June 2020, the LEACT Commission was established for developing recommendations for reform.
- The Attorney General served as chair of that commission and in August they released a report with 48 recommendations.
- Many of those recommendations did not require legislation and have been implemented.
- This bill adopts all but two of those recommendations that require legislation.
- Continuing to work on drafting the language for those final two recommendations.
- This bill increases transparency, provides a funding source for local agencies to adopt body cameras, allows the collection of key demographic data for driver's licenses, and requires law enforcement agencies to collect and distribute aggregated data.
- Presented Amendment 0202s
- The intent of Sections 9-11 was to fulfill the recommendation from the LEACT Commission to have an optional field on the driver's license to allow someone to put their race or ethnicity.
- The bill as drafted only allows that on non-driver's license ids.
- This amendment corrects that by adding commercial driver's licenses, enhanced driver's license IDs, and to regular driver's licenses.
- On page 4, lines 2-3 it states 'pursuant to RSA 260:21, RSA 260:21-a, and RSA 260:21-b,' thinks that it is duplicative and would recommend striking that. It does reference at the top of the paragraph 'collect data from a driver's license or other state-issued identification card'
- Thinks we would be open to amending Section 3.
- RSA 186:11 talks about the duties of the State Board of Education and paragraph 37 talks about SROs.
- The main thrust of this recommendation was to make sure MOUs are public.
- If Section 3 was struck but the last line was kept to ensure those records are public or add it to RSA 186:11 directly that would both meet the recommendation.
- Has no objection to the amendment from the Judicial Branch.
- Senator Kahn asked about the costs of making these changes to driver's licenses and instituting the non-driver's license ID card.
 - The Department of Safety did offer a note on the cost of body worn cameras but not on the license change. Happy to reach out to the DMV on this. The non-driver id program does exist and this is just amending what is contained on the ID. Knows that there is some concern from the DMV about where they would add this line, but the Commissioner did not mention a concern about the cost of it.

Moira O'Neil (Child Advocate) (submitted written testimony)

- Section 6 creates a minimum age for delinquency at 13 years.
- Children do not have adequate brain function for competency to understand their actions or the legal process due to the development of the frontal lobe.
- Restricting young children from the delinquency statute forgoes the time and expense of competency assessments and makes a presumption of incompetency based on the science of brain development.
- This also reduces the harmful exposure of the juvenile justice system.
- The science has demonstrated a high potential for harm with any involvement with the system at all.
- Any involvement at all with the juvenile justice system at any stage is the greatest predictor of recidivism.
- These children are more likely to experience depression, anxiety, poor school performance, eventual employment difficulties, and involvement in the adult criminal justice system as well.
- Learned we can do a lot better by children with different interventions.
- Met a young girl placed in the SYSC at the age of 12. Since then, has seen a remarkable maturing in response to others and her circumstances, but unfortunately her risk of recidivism has been realized. Have witnessed withdrawal and poor self-esteem; the longer she remains in the system the greater those harms are going to magnify.
- Section 7 removes certain offenses as a basis for transfer to the superior court/treating children as adults.
- This is based on the same understanding as to the development of children's brains.
- A child was at the SYSC after committing a serious offense at a very young age but did mature and was doing well in school. He then moved on to the adult system at 18. His future haunts her.
- There is an initiative underway to transfer juvenile probation and the entire system.
- This initiative is aiming to understand children's needs as a means to mitigate any risk they may present to the community.
- This minimizes the focus on offenses and instead focuses on their needs.
- This bill acknowledges the advances in the field and allows for small changes.
- Senator Whitley asked if she aware of the data that children in the juvenile justice system have a high instance of behavioral health disorders and if she has seen in her work that children that do end up in the juvenile justice system do so because of an unmet behavioral health need.
 - Absolutely sees that. The majority of the children, particularly those that are confined, detained, or in a residential program, do have a behavioral disorder. Last year the SYSC did hire a forensic psychologist. Often it is communications disorder or developmental disability as a result of abuse or neglect. Sees a huge number of crossover youth who have been abused

and neglected chronically and their behavior in response and they end up being held accountable in the juvenile justice system rather than their parents. The movement in the field is to look at where the behavior is coming from and how best to treat it. SB94 emphasizes that diversion program.

- Senator Gannon asked if she was alluding to restorative justice and NH not being ready for that.
 - Thinks NH is positioned to be very ready for it, but in the conversations, we are having around certain offenses children may be accused of there is still disagreement on focusing on children's needs rather than focusing on the offense. In a perfect world we would ignore the offense and just look at the child's needs, does not think NH is quite ready for that, which is within reason because this is a lot of change happening to a system.

Chief Joseph Hoebeke (NH Chiefs of Police)

- Served on the legislative work group for LEACT.
- Agrees that Section 3 may be somewhat duplicative and supports adding language to RSA186:11 to include that public disclosure of the MOUs.
- Knows HB108 has very detailed content relative to the structure of SRO programs.
- Would suggest changing the words 'dashboard cameras' to 'in-car cameras' in order to cover the different kinds of cameras that may be used.
- Supports the release of demographic information relative to citizens contacts.
- Thinks the language as written may be problematic.
- If police try to populate this for every traffic stop and citizen contact there is no way the records management systems can do that.
- It would require manual entry, which would take months, tying up considerable resources.
- Has a small town with about 5000 traffic stops a year alone, not including arrests or field interviews.
- Wholly supports that this information is public.
- His department is a nationally accredited agency, so it is already required of them that they make this information public, and it is on their website.
- Happy to work on this to make it workable.
- There will be a need, if the legislation stands as is, to have a state database to collect this specific data.
- It would be incredibly costly to equip their system with that and is not even sure if the company would do it.
- Senator Kahn asked if Hollis has purchased any in-car cameras.
 - In 2016, they were one of the first agencies in their area to use body cameras and this year marks the end of that service agreement. Decided to upgrade their system so that they are now integrated with in car cameras. Each patrol car now has in-car cameras and each officer has body cameras.

- Senator Kahn asked if he believe the in-car cameras are beneficial for citizens and law enforcement.
 - Absolutely, as it ensures transparency. Would not operate an agency without them in the current climate. It is a different time for policing and the cameras help to build trust and legitimacy for our agencies.
- Senator Whitley asked if an update to the software the state uses would alleviate the data collection concerns.
 - Each agency uses their own records management system. His department uses IMC which is one of the more popular systems, and those capabilities are just not present. Thinks this should be amended to be workable until we can implement a statewide system like Vermont has. In order to modify records management systems, is not sure they would even do this, it would be a significant cost. Currently, his agency pays \$17,000 a year for licensing and fees. Any time you tweak or add features it adds to the cost. Not sure they would be able to meet the requirements of this bill if it passed tomorrow.
- Senator French asked if this bill would increase the number of citations given just so officers would not have to fill out this report.
 - The way records management systems work is that any time an officer conducts a stop regardless of the disposition of the stop, they must enter mandatory fields in the system. If he misread the number on an inspection sticker and stopped someone, he would still have to populate a record in the system, which includes a requirement to complete demographic information. This is why there was a push to get the ethnicity and race on driver's licenses, so officers don't have to ask what someone's race is. Does not want to put his officers in the position of asking someone what their race or ethnicity is on the side of the road, so often officers have to guess, resulting in a margin of error.

Joseph Lascaze (ACLU)

- Served on the LEACT Commission.
- Enacting this bill will strengthen NH's credibility as we work towards more transparency.
- NH has a lack of comprehensive data when it comes to law enforcement and NH communities of color.
- If we wish to better our current system, we need to have data to analyze and see how the system is working.
- The MOU recommendation was put forward to ensure it was public.
- Many Granite State parents has concerns about not knowing what the MOUs say.
- The implicit bias training recommendation was set as a floor for the training to be at least two hours with the option of increasing if necessary.

- Everyone is inherently biased, which reflected in the NH supreme court case State v. Ernest Jones where race was an element that could be added to how decisions were made.
- Biases are formed from experiences and experiences happen to everyone.
- If you ever purchased a product that did not work to your expectations, the next time you go to buy something you would have a bias towards that product.
- The problem is when those biases are occurring in a system that is allowing it to be human behavior and is it is controlled by racial and implicit biases.
- Hears the concerns Chief Hoebeke has around the addresses and happy to continue working on that with him and the Committee.
- Feels that the address is necessary because of the thematic concern they kept receiving from law enforcement over how they were interpreting racial disparities that were reflected in the courts and whether or not there were really disparities in the system because an individual's residence was out of state or in NH.
- In order to address that felt that information was necessary and should be provided on the driver's license.

Mark Morrison (NH Police Association)

- Served on the LEACT Commission.
- Supports the recommended changes from Senator Bradley and from Attorney Broadhead.
- For the collection of the data, concerned with clarifying the language because race and ethnicity seem to be being used synonymously.
- Would suggest just using 'race' as that was the recommendation of the LEACT Commission.
- This would also limit the physical space needed on the driver's licenses.
- Senator Carson asked if the data collection should capture 'race' and not 'ethnicity'.
 - Capturing both could be a challenge for the Department of Safety, especially considering how varied some ethnic backgrounds can be. Thinks race is a smaller group of categories. Is not against capturing any information, but to be able to comply with the statute thinks it would be helpful to have race.
- Senator Whitley pointed out that Latinos are captured under ethnicity and not necessarily under race. Asked how it would be possible to collect data on Latinos if ethnicity was excluded.
 - Is not really the one to answer that. It is a statistical challenge. To try and comply with this, thinks this would make it easy to comply and be the most beneficial at the same time to have race. Only bring this up because the LEACT Commission only recommended 'race', not looking to exclude ethnicity, but wants everyone to be on the same page.
- Senator Whitley raised concerns about excluding any community of color that has been impacted in the past.

- Certainly, that is not the point of the recommendation. It is just about wanting to make sure we can comply.

Ken Norton (NAMI-NH)

- Was a member of the LEACT Commission.
- There is a lot of overlap with law enforcement and individuals with mental illness.
- There are high rates of arrest and incarceration for those with mental illness.
- 45% of the officer involved shootings in NH involve people with known mental illness according to the Attorney General's Office.
- Supports the amendments proposed by Senator Bradley and Attorney Broadhead.
- Cautions against making any other significant changes to the legislation.

Will Stewart (Stay Work Play NH)

- Attracting and retaining more young people to NH is critical to the future of the state.
- NH is the second oldest state in the country with one of the lowest unemployment rates.
- NH is the number one exporter of graduates seeking a four-year degree.
- 62% of NH graduates leave the state each year.
- Spoke to the importance of young people to the community.
- About three years ago Stay Work Play commissioned a survey conducted of young people in NH about why they leave and one of the top three reasons was the lack of diversity.
- This bill will increase trust in the judicial system as a whole and with law enforcement in particular.
- Both of those things are important if we want to attract and retain more people of color in NH.

Ahni Malachi

- Is the Director of the Commission on Human Rights.
- Was a member of the LEACT Commission.
- Supports the bill and the amendments discussed.
- If an ID does not identify someone's race/ethnicity, law enforcement has to guess.
- Even if the interaction between an officer and an individual is a positive one, the individual is ready to move on once the interaction is done.
- If it is a less than positive interaction, then how do you ask someone how they self-identify.
- Data collection is important.
- There is a variety of ways that someone can self-identify within a particular cultural/ethnic group, and there has to be some consensus as to what those identification markers would be.
- Maybe something as small as a letter on the ID would be that marker to identify someone's race and ethnicity.

- Race is primarily a misnomer and ethnicity speaks more accurately to who we are as individuals.
- Some of those who are of Latin American descent consider themselves to be white and some don't.

Commissioner Helen Hanks (Department of Corrections)

- Requests the Committee consider changing the section on body cameras by deleting the word 'local' in front of 'law enforcement', so that agencies like the DOC may utilize it.
- This would give the DOC the opportunity to enhance their already existing body worn cameras.

Julian Jefferson

- Served as a member of the LEACT Commission.
- Worked on the legislative working group to draft language and fully supports the bill.
- In terms of the discussion about IDs and race or ethnicity, would be supportive of one field just for race as long as one of those options was Hispanic or Latino.
- In his research found that initially Latino was not listed as a race, but a lot of governmental organizations are now listing that as a race or ethnicity.
- Thinks the legislation should include the six universal races of which Hispanic and Latino are one of.
- Senator Kahn asked about individuals who have a multi-racial identity.
 - Does not think there is an easy answer to that one but should not let the imperfect get in way of the good. Would suggest leaving it at the six, understanding that biracial individuals may identify as one or the other. This is an optional requirement, so if someone does not want to identify they do not have to.

Summary of testimony presented in opposition:

None

Neutral Information Presented:

Richard Head (Judicial Branch) (submitted written testimony)

- Proposed an amendment to Section 12 of the bill, to bring it in line with actual practices in the court in terms of training.
- The amendment also recognizes that for several years now the Judicial Branch has been doing implicit bias training for its judges.
- The Branch determines training not through rulemaking but through collaboration between the Supreme Court, the Chief Justice of the Superior Court, and the Administrative Judge of the circuit court.
- It is his understanding that the Department of Justice has no objection to this amendment.
- Senator Kahn asked if there is annual implicit bias training.

- The training that is being done and has been done for a number of years on a regular basis for sitting judges and is part of on-boarding for new judges. It is an evolving training that gets revised as more research on this is done.
- Senator Gannon asked if having this training is saying there is an assumption that all judges are biased or that there is just a possibility that they are biased; where is the factual data coming from that this is a science.
 - There is a great deal of research and study on this. Did not sit in on the training last year but did do the Attorney General's implicit bias training a couple months ago. Took from that that there is a great deal of science relative to how the human mind interacts with people. The science exists relative to implicit bias and racial prejudices that are not overt and not easily recognized by us but do exist. It should be a part of any judges thought process when dealing with a criminal defendant. The training in this bill is for everyone involved in law enforcement and not just the judges. Returning to this training regularly is warranted and worthwhile.

John Scippa (Police Standards and Training Council)

- Served on the LEACT Commission.
- Supports Senator Bradley's proposed amendment.
- Under the Governor's Mandate 13-C, the PSTC was mandated to work with the Department of Education and stakeholders to develop a model memorandum of understanding that could be used for any community/police department to clearly define the roles and expectations of an SRO.
- The model is posted on the PSTC website.
- Supports striking Section 3 and adding language to RSA186:11 to ensure the MOUs are public.
- PSTC is ready to move all these recommendations forward.
- In terms of the data collection, the PSTC is working with a vendor to develop a statewide record management and learning management system to regulate certifications of officers and ensuring that they are receiving appropriate training.
- Would be ready to speak with that vendor about developing a statewide data collection system that speaks to this bill.
- Senator Kahn asked if he could get the Committee information regarding implementation costs from his vendor.
 - Will forward that information to the Committee.