

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, January 10, 2023

Location: Zoom Meetings

ORCA Media recording of the live meeting:

- <https://www.orcamedia.net/show/january-10-2023-rdap>
- <https://youtube.com/watch?v= XMtodDcm4E&si=EnSlkaIECMiOmarE>

Introductions

1. Dr. Etan Nasreddin-Longo – Chair of the Racial Disparities Advisory Panel
2. Erin Jacobsen – Codirector of the Community Justice Division at the Attorney General’s Office
3. Alexandra (Alex) Bailey – Senior Campaign Strategist at The Sentencing Project
4. Grant Taylor – Minute taker for the panel
5. Dr. Brashani Reece – Community Organizer at The Sentencing Project
6. David Singleton – Ohio Justice and Policy Center
7. Elizabeth Morris – Juvenile Justice Coordinator at the Vermont Department for Children and Families
8. Geoffrey Jones – Former Vermont State Police Trooper
9. Qing (Tsing) Ren – Evaluation and Program Analyst at Shelburne Farms
10. Captain Barbara Kessler – Co-Director of Fair and Impartial Policing and Community Affairs at Vermont State Police
11. Jessica Brown – Assistant Professor at the Vermont Law and Graduate School
12. Tyler Allen – Adolescent Services Director at the Vermont Department for Children and Families
13. Representative Martin LaLonde – State Representative from South Burlington
14. Wichie Artu – Health Equity and Data Systems Consultant
15. Xusana Davis – Executive Director of Racial Equity for Vermont
16. Isaac Owusu – Director of Community Engagement and Support at the Vermont Racial Justice Alliance
17. Rebecca Turner – Head of the Public Division at the Office of the Defender General
18. Timothy Lueders-Dumont – Legislative and Assistant Appellate Attorney at the Vermont Department of State’s Attorneys and Sheriffs
19. Superior Judge Mary Morrissey – Judicial Representative on the Panel
20. Shela Linton – Executive Director of the ROOT Social Justice Center
21. Haley Sommer – Community member from Burlington
22. Jay Greene – Policy and Research Analyst for the Office of Racial Equity
23. Chief Don Stevens of the Nulhegan Band of the Coosuk, Abenaki Nation
24. Reverend Mark Hughes – Executive Director of Justice for All

Approval of Minutes from October meeting.

Shela: Move to approve the October minutes.

Tyler: Seconded.

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15 minutes

Approved – Etan, Shela, Tyler, Jessica, Xusana, Erin, Rebecca, Wichie, Barbara, Qing, Tyler, Mary

Opposed – None

Abstaining – Chief Stevens

Etan: Monica Weeber has left the panel. Idea of putting together a spreadsheet.

Wichie: Put together a spreadsheet to record achievements and suggestions. Record where they are at right now: Were they implemented into policy? Did someone pick it up somewhere else? Is there work that we still need to do with it? Thinking of creating a feedback mechanism. What work has been done? What are the long term affects?

Etan: Isn't there already a spreadsheet?

Elizabeth: The *EM\_Compilation of Reports and Recommendations* does include things this Panel has done but it also includes recommendations that other entities have started. If we're talking about the Juvenile Justice aspects that are in that document, there's a lot going on across the state of Vermont. If we create a spreadsheet, create 2 columns: 1 for specific work from this Panel, and 1 for other entities' work products that we want to keep track of.

Etan: Do we already have a spreadsheet for this? Where is it?

Erin: Doesn't recall a spreadsheet, but remembers a working list of this Panel's initiatives. If that's the document that everyone remembers, it is in the SharePoint folder. That document was created as a working document that we could all add to and modify, serving as a grounding point for where we've been and where we want to go.

Etan: People should have access to the SharePoint folder now.

Wichie: That document needs an owner to manage it.

Etan: Thinks we need it, so please see if you can access it, familiarize yourself with it, use it, and he will commit to making sure it becomes part of these meetings.

Jessica: The document she recalls working on was a summary of a lot of different initiatives taking place around the state.

30 minutes

Erin: That document is in the RDAP 2022-2023 folder titled *Compilation of Reports and Recommendations*. Wanted to take some time to talk about the Vermont Judiciary's Diversity, Equity, and Inclusion Commission is soliciting community engagement around how the judiciary is doing on Diversity, Equity, and Inclusion issues. In terms of community engagement panels there have been just two. The first one was in Burlington, and the second one was in Winooski. The judiciary is looking to improve the community engagement process, so the community feels this is something they can engage in. The next forum is at 4 pm on Thursday, January 19<sup>th</sup>, at the Bennington Courthouse and Webex.

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Etan: Would like to move into relatively quick recaps of the work of our subcommittees. It's 20 minutes to 7, let's start with Juvenile Justice.

Elizabeth: Maybe this will be a bit more homework. Over the summer, spent time at a couple of meetings going into a lot of different work that's going on in different realms, organizations, and state advisory groups across the state of Vermont about juvenile justice. We never had a chance to debrief and talk about within that realm of work what this Panel wants to get involved in. Question for the Panel – What would you like to really dive into? The reality is that the juvenile justice world also branches into other aspects, it overlaps with our child welfare system, with our education system, and many other aspects. This is represented in *EM\_Compilation of Reports and Recommendations* document. What does this group really want to work on? That might mean reviewing that document and saying "This is something that I really think we should talk about." Or saying "This is something I think another group is already working on, and I don't think we need to add our two cents." Wants to remind us that a pitch was made over the summer to focus on youth who are in the adult system.

Etan: Look over *EM\_Compilation of Reports and Recommendations* and answer Elizabeth's question. This is homework for next month's meeting. What is it in there that you feel this Panel should take up?

Tyler: That report came to be from a question of what this Panel wants to take on next. Juvenile justice efforts were added to it in blue, and those efforts are ongoing regardless of what this Panel chooses to focus on.

Wichie: The Community Safety Review subcommittee was able to meet a couple of times. The scope of the project may be a bit broad for just the two people left in the subcommittee. Are there actual voting members of this Panel that are willing to put in the work to read through these reports?

45 minutes

Etan: Voting members of the Panel need to decide about whether to do this project. Are there people who feel that they can work on this subcommittee who are voting members of this panel?

Mary: What are the expectations? How much work needs to be done?

Etan: How many reports are there? And how long are they?

Wichie: Will look and get back to us later in the meeting.

Etan: Lastly, let's hear from the Second Look subcommittee.

Rebecca: The Second Look subcommittee hasn't met for a couple of months. When they met they landed on needing to hear from experts in this area, from around the country. Decided as a group to bring these people to the full Panel at our monthly meetings so they could get some grounding as to what we're interested in doing here in Vermont. Hoping to have David Singleton come back and address the entire group. Now introducing Alex Bailey and Dr. Reece from The Sentencing Project, experts in the field of Second Look.

Alex: Refreshing to see people from all different backgrounds coming together to make their state safer and more equitable. She is the senior campaign strategist at The Sentencing Project and leads their

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, January 10, 2023

Location: Zoom Meetings

campaign to end life imprisonment. She works in all 50 states to rollback mass incarceration, rolling back sexism, a history of anti LGBTQ, and more. Most of her portfolio at the Sentencing Project now encompasses Second Look bills. Second Look bills allow a person, after a fairly long term of incarceration, to go back before a judge to determine whether continued punishment is necessary. If this person is deemed to be rehabilitated and is able to re-enter the community safely, at that time they will be able to do so. Every state has a different process when it comes to this. They are currently working in 7 tier-1 states on repeals that are involved with Second Look. They are also mounting a Second Look legal network which will be up and running later this year. Vermont currently has 1,348 people incarcerated, and a population that is 94% white. The racial inequities are problematic. It is her opinion that if we go all the way into the harm that has already been done, go back through the system and reevaluate, then that is a great starting point to figure out what went wrong. In Washington DC they passed a Second Look bill and the several hundred people who received Second Look resentencing are now some of the primary leaders in the city around carceral issues in general. Looking at Vermont's data she drafted a bill for us. Vermont has doubled its population serving extreme sentences since 2003, life sentences or sentences that would take the person into old age. Today, 22.47% of the incarcerated population is over 50 years old. The bill she drafted proposes that after serving 10 years of incarceration, the person would be able to apply to see if continued incarceration was necessary.

1 hour

Alex: They would want the court to take into consideration whether the person had a medical condition, major mental illness, whether the person was under duress at the time of the crime, the history and characteristics of the person at the time of petition, their age and their age at the time of going into prison (asking for special consideration for people incarcerated under the age of 25), the nature of the offense, the circumstances of incarceration including their conditions of confinement, physical/sexual/psychological abuse they might have dealt with while incarcerated, effectiveness of counsel at the time of sentencing, and whether they were the victim of physical/sexual/psychological abuse that in any way lead to their criminalized behavior. The people who have served a lot of the longest sentences in Vermont are predominantly black and brown.

Mary: Many of the factors just outlined are brought up at the original sentencing, so how does it work in other states recognizing that these issues were already addressed once at the time of sentencing?

Alex: The argument is that frequently they haven't been addressed. We wouldn't see the racial disparities that we have if that were the case.

Mary: Under the Second Look legislation that is being proposed, are the issues that have to be brought up pursuant to Second Look something that didn't get brought up at the original sentencing?

Alex: No. It is merely rehabilitation is the opening reason about why the resentencing happens. However, one of the things that can be considered in the case is any aspect of the trial that was problematic. This is a preliminary bill that she would like feedback on.

Brashani: Foundationally the purpose of Second Look is to address the public safety component. When someone is sentenced there is an idea that at the at the time of sentencing the criminal is dangerous

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, January 10, 2023

Location: Zoom Meetings

and that we need to keep them incarcerated for a really long time. Second Look allows somebody the opportunity to go back before a judge.

Alex: One of the major things that comes up in Second Look questions is – How do survivors of crime feel about resentencing?

Barb: Some cases should never be allowed to have a Second Look.

Jessica: How is restorative justice incorporated into Second Look legislation?

Alex: Most states have a Victims Bill of Rights, and they have amended it to say that the person is entitled to restorative justice facilitation, should they decide that they want it. They can opt out of the proceedings, they can say that they don't think this person should be eligible for anything, or they can decide to engage in a restorative justice process.

1 hour 15 minutes

Wichie: Is there a right for everyone to have a Second Look? If someone does get out because of Second Look and they recommit the same type of crime – Is there something in the bill for that? One of the opportunities of Second Look is to address biases in the system. Should the judge be the same as in original sentencing? Is there any language around that?

Alex: That has worked differently in different states, in a lot of states their carceral population is so elderly that most of the judges that were benched at the time are no longer. Other states have decided to ensure that the incarcerated person does not go before their original sentencing judge. That is something to discuss around the bill. Second Look gives the incarcerated person a chance to plead their case, they are not guaranteed to come home.

Erin: Has second look legislation facilitated conversations, or even programming, around actual rehabilitation inside of prisons?

Alex: Most carceral systems do not offer any rehabilitation services to people serving long sentences. They are lucky to get a meal that won't cause diabetes or hypertension. The average age of death for incarcerated men is 53 or 54 at this time, people who are sent to prison die young. Here's what we know about people serving extreme sentences; they are the least likely to recidivate, they are the most likely to engage in rehabilitative efforts, they usually become leaders or educators, they take the young people under their wing when they come in.

Jennifer: How do we know that this is not going to result in additional ramifications in terms of implicit bias? How do we know this is going to change the culture? Is it going to result in more white people who have means being able to take advantage?

Alex: Based on other places that have already implemented this, the vast majority of its recipients are black and brown. This doesn't solve everything, and there is the possibility of the privileged abusing it. Still, this the best shot some will have. It is a vital initial step to go back and look at the history of sentencing. Vermont can do this review with a lot fewer people than other states. It would be the first time that Vermont can actively track resentencing and put numbers to this in real time. One thing they

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, January 10, 2023

Location: Zoom Meetings

have encouraged states to do is to put a research component as an accompanying bill to the Second Look bill.

Jennifer: Thinks a research component is important. Victims do want to be a part of this process, maybe they don't agree with it or maybe they do. There is an assumption that victims are uncomfortable with these conversations, and they do want to be involved. Make sure we are transparent in criteria and work out the details. What does it look like here in Vermont?

1 hour 30 minutes

Timothy: Part of his work with the department of states attorneys, prior to his work as a legislative attorney, was working as a deputy states attorney in some of the states that have been mentioned. He was assigned post-conviction release cases for Washington county. In Vermont there are 5 pathways to appeal, and some of them fall below the 10 year timeline. There's a 90-day reconsideration, there are post convictions releases, supreme court appeals, and both forms of habeas state and federal. In other states is there any requirement that a person has to exhaust other remedies for appeal? Coming from a world of working on post-conviction release cases, he recently came to two voluntary agreements. In one the gentleman was 20 years old at the time, was under the influence of a number of really difficult factors in his life, including substance use disorder stemming from multi-generational issues, and this was essentially a Second Look. The things that had been brought to the table as for the bases of the post-conviction release were important, but when they talked about resentencing this person there was some important things there. Letting the victim know after he had been in for 8 years. It was an emotional day watching him walk out of the courtroom with his Red Sox hat on, and it was a wonderful moment, but it was allowed through a current remedy that we already have. In the second story a person who was having severe health issues despite having committed an outrageous crime, he came to a difficult decision to release him with conditions into the community. He's just showing two of the current examples in Vermont and how they are functioning.

Alex: Second Look is the best of research in terms of remedies that all the criminologists and everyone who's worked on this for decades could come up with for a couple of different reasons. A lot of states have done a lot of tweaking to a lot of sections of law. What we know is that proving racial bias is almost impossible in most cases. How are they going to prove 30-years later that a person was racist? They made a positive out of the negative, and decided to take a look at who the person is now. They look at rehabilitation, and all the things a person has done to decide if punishment should be continued. What could they actually do in a court of law that would be broad enough to give everybody a chance, and have it be focused on something that is provable in a court of law? Rehabilitation is a lot easier to prove than racist judging.

Wichie: Noting that we have a population lower than other states, we also have less resources and less capacity. So it's worth this Panel noting, as they prepare their report, and to look at they ways they are creating bottlenecks, and how can they preempt those bottlenecks. Like in the 90-day reconsideration where it requires lawyers, and this and that, and then the 90 days is gone by. Making sure they are making things efficient for those who are going to apply, and to put in the resources as a state to make sure they are taken care of. The second thing to mention considers the 5 pathways we have, that we make sure to include an explicit comparison of what Second Look offers that the others don't. These

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, January 10, 2023

Location: Zoom Meetings

questions will be asked at the legislature and it's important that it doesn't get swept away like with other bills.

Alex: Eligibility numbers are always the number one thing, that the state tells you you're eligible for instead of figuring it out on your own. Figuring out resentencing from prison if you don't have the money for legal help is difficult.

Mary: In other states is it the sentence itself that triggers the Second Look? Is there any consideration given if it was a plea agreement? The vast majority of the people serving time in Vermont is the result of a plea agreement, where they have agreed to a certain amount of time. Are other states looking at just if it was a contested sentencing? If somebody has agreed to that sentence as being appropriate, do they still qualify for a Second Look?

Alex: No other state is thinking of it in that way. The way that they are thinking about it is that after serving a certain amount of time people become eligible to apply. They are not getting into the weeds on plea agreements because one of the major arguments around Second Look, and a reason a lot of district attorneys and defense attorneys have stepped forward, is to say that "I've been in situations where the choice for my client was almost all of their life or all of their life." So they were being over sentenced and they didn't have the resources to defend that. Or depending on the state it's a capital case, and they're going to get pumped full of potassium chloride or life without the possibility of parole, and those are the only options. So, they take life without the possibility of parole. All of this is simply to say that after you have served an extensive amount of time a person is eligible to apply. Not necessarily granted but eligible to apply. That is the best and cleanest way to do it based on all their research across the country, to address mass incarceration and to go back and review cases. And to do it at a point that they know from the criminological curve, where people are usually going to start to show differences in behavior and reduced criminality. All this research came together with these recommendations which is what has served for the basis for all of the bills they have worked on. All the bills look very similar while being retrofitted for each state's particular code.

Mary: Are they all based on 10 years? Or is it a percentage of time served?

Alex: New York state has 10 years or 50% of sentence, if a person has been sentenced to more than five years. Based on prison populations, in Michigan it had to be tiered out with the sickest and eldest going first simply because their prison population is so large.

1 hour 45 minutes

Mark: The Sentencing Project is at the heart and soul of this Panel. This Panel was constituted originally with the hope that it would be more oversight oriented. They wanted it to be a commission and wanted it to be independent. A focus of this Panel has always been – what do we do about the disparities in the system? Are you hearing this in other places?

Alex: Most Second Look recipients are black. The thing with Second Look that's very concrete is that the first metric tracked is freedom. That's returning fathers, that's returning mothers, that's returning siblings, that's putting families back together. She supervises a Second Look employee at her work. Because the vast majority of the prison population is black it's almost hard for the vast amount of beneficiaries not to be black as well. In a state like Vermont, it would become painfully obvious very

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, January 10, 2023

Location: Zoom Meetings

quickly into these resentencing's, if there was that disparity happening. It would be so easy to track and pinpoint, which makes Second Look particularly exciting.

Mark: Here in Vermont, when we're doing horrible, we have about a 10 or 11% incarceration rate for black folks.

Alex: Currently in Vermont 10.8% are black, 3.4% are other, 1% Native and Asian American, 1.6% more than one race, for a total of 16.8% non-white incarcerated people.

Mark: Knowing that it's about 94.5% white in Vermont, those are ugly numbers. Clearly most of our prison is white folks, that's the difference between Vermont and other states. The numbers are horrible, and we can talk about private prisons in Mississippi, but it's a different demographic here. It's harder to lift all ships with that tide here.

Alex: 1.5% of Vermont is black, and 10.8% of the prison population is black. The terrible thing to point out is that although there is a different demographic per capita here, we track some of the worst states in the country.

Qing: Her first question is about the financial cost of reviewing the Second Look cases. Do other states' Second Look bills establish funding for reviewing? Because a lot of states charge a fee to apply for a Second Look case, and that's a financial barrier for a lot of applicants. The second question is about legal support, there is an effort to pair the Second Look applicants with pro bono legal teams. Is that a common practice in other states? How do we ensure that applicants get access to the legal support they need? To avoid replicating the disparity in the process.

Alex: This is exactly why the Second Look network, which is an attorney network, has been mounted at The Sentencing Project. For that very reason, to ensure equal legal representation across the board, to address the disparity of the fact that people whose families are able to afford lawyers to help them apply for this are probably going to do a lot different than people who cannot. States have dealt with this differently based on the size of their carceral population, and their financial wherewithal. She has written bills where the applicants are entitled to representation from the application stage. In some states, they aren't able to provide that, so a person represents themselves, or they're able to hire an attorney, or the judge appoints an attorney. In Washington DC, they've actually setup whole nonprofits of lawyers who do nothing but Second Look cases. Part of the reason they set up the Second Look legal network is to ensure that when they pass these bills, the legal representation is there.

Xusana: Which states are those that give representation from the application stage?

Alex: In the state of New Hampshire's bill, their public defenders asked to represent from the application stage. That's actively what they asked for, so that's what they wrote in the bill. This is the most aggressive bill that she's seen in terms of actual representation. Most other states can be adopted by the defenders service after they apply, hire an attorney, go pro bono, or do pro se. In a lot of states, the public defender's office is so nonexistent that they couldn't take it on even if they wanted to.

Rebecca: At this stage, the question is what's next? We have proposed language for the bill. As chair of the Second Look subcommittee, do members have any questions about the bill, maybe they can send them in.



Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, January 10, 2023

Location: Zoom Meetings

Alex: There's a lot of information there, and a lot to get into the weeds on this bill. This bill serves as a best in show for everything they've learned across the country when it comes to resentencing and how they plan to take carceral numbers down. She'll be available for questions and putting together more research for Vermont that she'll share with us. Always available my email or phone. Happy to return to this or another meeting.

Etan: Is there any new business?

Wichie: Has the numbers for the Community Safety review documents. Brattleboro did a focus on community safety which is 224 pages. The Brattleboro Union High School did a Student Resource Officer research which is 4 pages. Amherst Massachusetts did a report that's 68 pages long. Burlington did a review of the police department which is 172 pages.

Qing: Does everyone need to read all of them? Or each person could take on one?

Wichie: That's up to the subcommittee to decide.

Etan: There needs to be a meeting of everyone who might be interested in doing this, and have an informational session. Then we can see who's going to be able to do this work.

Qing: Is interested in helping.

Wichie: Please email Etan or him if you want to help make this work happen.

Etan: Next meeting is Valentine's Day, February 14<sup>th</sup>, 2023.