

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, Oct 10th, 2023

Location: Zoom Meetings

ORCA Media recording of the live meeting:

- <https://www.orcamedia.net/show/october-10-2023-rdap>
- <https://youtu.be/YuYVqnLPvXc?si=vx-UH1gw5lr35nzg>

- Introductions

1. Erin Jacobsen – Codirector of the Community Justice Division at the Attorney General’s Office
2. Etan Nasreddin-Longo – Chair of the Racial Disparities Advisory Panel
3. Derek Miodownik – Community and Restorative Justice Executive with the Department of Corrections
4. Tyler Allen – Adolescent Services Director with the Department for Children and Families
5. Xusana Davis – Executive Director of Racial Equity for the State of Vermont
6. Superior Judge Mary Morrissey – Judiciary Representative on the Panel
7. Tiffany North-Reid – Data Manager with the Division of Racial Justice Statistics
8. Laura Carter – Data Analyst with the Division of Racial Justice Statistics
9. Shela Linton – Executive Director of the ROOT Social Justice Center
10. Tim Lueders-Dumont – The Department of State’s Attorneys and Sheriffs
11. Jennifer Firpo – Vermont Police Academy
12. Wichie Artu – Health Equity and Data Systems Consultant
13. Judge Amy Davenport – Council for Equitable Youth Justice
14. Angela Arsenault – State Representative from Williston
15. Jennifer Poehlmann – Executive Director for the Vermont Center for Crime Victim Services
16. James Pepper – Chair of Cannabis Control Board
17. Reverend Mark Hughes – Executive Director of the Vermont Racial Justice Alliance
18. ORCA Media
19. Rebecca Turner – Head of the Public Division at the Office of the Defender General

- Announcements

Etan: Chief Don Stevens and Elizabeth Morris are absent tonight.

Approval of minutes from last meeting.

Wichie: Moved to approve the September 12th minutes.

Jennifer F: Seconded.

Motion passed.

Etan: We need to start pivoting to writing the report.

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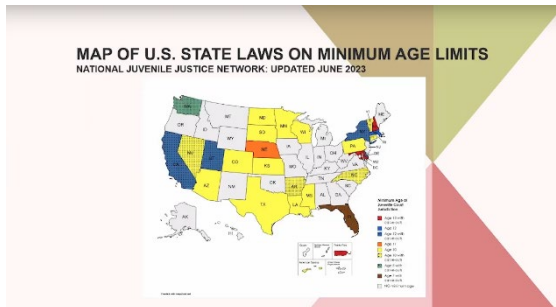
- Juvenile Justice subcommittee

Tyler: The Juvenile Justice subcommittee consists of Tyler Allen, Elizabeth Morris, and Rebecca Turner. They have met several times. He began sharing his screen with a PowerPoint presentation.



Depending on how the Panel hears the information, we can decide whether to write it out as recommendations. Kids under the age of 10 years old cannot be tried in the family court as delinquents, the carve-out exception being murder. The Council for Equitable Youth Justice has been supporting raising that age to 12. What is this Panel's stance?

15 minutes



Wichie: What kind of research has been found on benefits and detriments to children being incarcerated with an age variance?

Tyler: On the older end of the spectrum a lot of research shows that when you incarcerate individuals who are otherwise developing, it's more likely to solidify criminalistic behavior.

Judge Davenport: The Council for Equitable Youth Justice has looked at data for 10-, 11-, and 12-year-olds and the numbers are very small. It's hard to draw conclusions from them. It's hard to prove intent when talking about a 10-, 11-, or 12-year-old. You'll notice that Florida is age 7 with carve-outs, I don't know what happens to those kids that are convicted.

Wichie: Modern day science shows brains developing until around 27 years of age. Juvenile justice system and the reinforcing of behavior and the disparities within our adult population, remembering that we do still have resource officers in schools, and that our BIPOC population skews younger.

Tyler: Agrees that brains are still developing until 27 and thinks that as the age gets younger it only becomes truer.

Shela: Is there specific research around brain development and intent? When does intent start developing? Should no one under 25 be charged because their brain is still developing? What is the racial makeup of those other states, and does that determine why they have a lower or higher age?

Tyler: Intent is something a judge needs to determine to issue a ruling.

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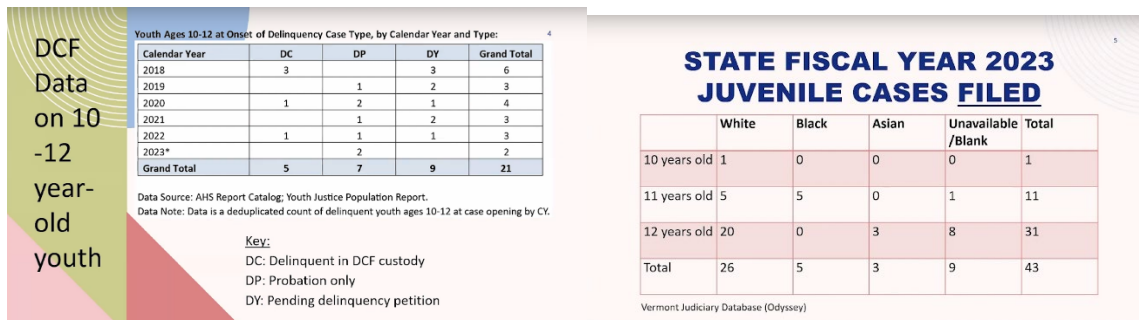
Judge Davenport: An example case that I had involved a 10-year-old girl throwing a toy truck at her 3-year-old brother, it was an assault charge. That charge got dismissed because a 10-year-old can't really form the intent to harm in the same way as an adult. The thing about brain development is that there are stages to it. Maybe a 16 or 17-year-old could understand intent to cause harm by throwing a toy, but a 10-year-old probably isn't developmentally able to do that. A 16-year-old doesn't have a fully developed brain, but it's more developed than a 10-year-old.

Wichie: If it's a judgement call then we are leaving that to a judge, right. And not all judges think the same. Is that part of our job as a legal advisory board? Instead of leaving it up to the bias of whomever is judging the kid.

Judge Davenport: The judge may well be informed by expert opinion on the situation. That was my case and I think I made the call without having an evidentiary hearing to determine if the child had intent or not. I just suggested this wasn't the right way to approach things, and they accepted my suggestion.

Tyler: There is subjectivity to child development too. When we're talking about 10 and 11-year-olds, intent is difficult to prove. This brings us to the next few slides.

30 minutes



There are a total of 43 cases for 2023 that are filed, this doesn't include every interaction with law enforcement and children. These are distinct cases, not individuals. Hard to do analysis with numbers this small. It does suggest anecdotally there is a disproportionate response to youth of color. Tracking nationally with associating youth of color more with adult behavior.

Wichie: Do we know if multiracial was an option when the data was collected?

Tyler: It's form 101 that's filled out, and it's left blank in those situations.

Judge Davenport: There is currently no multiracial option in the court data.

Wichie: Do we know in proportion to the number of children that are in Vermont?

Tyler: These data show cases, not individuals. So, we're unable to determine the proportion of the total population.

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Tim: What you're talking about is the improvisational space between the contact with law enforcement, or an initial report, and a larger chain of events that's happening. There is some diversion with no paper trail.

Reverend Hughes: From this data it looks like the assumption is largely being made that the youth who are having juvenile cases filed against them, that the sole point of entry is law enforcement. Are there other points of entry?

Tyler: These are specifically referring to delinquency cases. With a juvenile it would be considered a criminal act. The Department for Children and Families works with families from a child welfare perspective. Family court will see the same cases if you have abuse or neglect as well.

Reverend Hughes: I'm assuming that this Panel is taking into consideration that raising the age from 10 to 12 or 13 could reduce the disparities in the system. It sounds as though it's unclear if disparities exist at this point.

Tyler: While the data is too small to come up with conclusions, it does track with what we see nationally with how we work with youth of color and associate them with adult behavior.

45 minutes

Rebecca: While this data is too small on its own, when we look at year after year data, we can begin to see patterns. Not just looking at 10-12 years old. What we suspect is that there are racial disparities here in Vermont.

Tyler: Statistical significance is not the same thing as significance. One life is significant. When looking at it over years we can see trends.

Etan: It seems possible to make a nuanced case in the report that makes a distinction between something that is absolutely probative, and something that is strongly suggestive. That kind of work needs to be done before this is bought full sail.

Tyler: This conversation is set to happen in front of the legislature this year, it would probably behoove this Panel to have a stance on it. One of the limitations of the court data is the "unknown" column.

RACE/ETHNICITY DATA REQUIREMENTS

- For years, more than 20% of the judiciary race/ethnicity data is marked as "unknown" or recorded as blank.
- How does the Judiciary currently receive their juvenile race data? The Law enforcement Officer records race on "Form 101," which is filed with the State's Attorney, and then subsequently filed with the Court.
- The Council for Equitable Youth Justice is looking into if there can be a requirement that race/ethnicity data on form 101 is properly filled out.

What is RDAP's Stance?

If we're looking to understand where racism is impacting the system, then we need to understand the perception of the law enforcement in these scenarios. Where is it appropriate to ask a person to divulge what race they identify with? What is the interest of the Panel in terms of the data collection?

Judge Davenport: What we understand about the law enforcement data is that if the juvenile is not taken to the police station, then what we're getting

is the law enforcement officer's perception of the race. If it's a more serious offense and the juvenile is taken to the police station, then the youth is asked to self-identify what race they are.

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Wichie: It's important that the people are trained in how to ask about ethnicity, and why they are asking. Thinking about how are we training folks to ask for this information, so that people know we are trying to eliminate racial disparities and not just asking to ask.

Etan: The report will be suggestive of directions the legislature ought to go in. These things around the details get worked out in testimony.

1 hour

Rebecca: Do we agree that raising the age of minimum jurisdiction 10 to 12 will reduce racial disparities? I hope we can get around a recommendation that underscores our further desire for the need for accurate data that reflects the extent of racial disparities in the system.

Etan: You are capturing what we know, what we don't know, and then also what we need to do.

Wichie: I would vote for a recommendation with an "and" in it. I think it's important to recognize that if we take away from the juvenile system then we're putting more burden on our educators, and caregivers.

Etan: Is there enough from this conversation that a draft recommendation can be drawn up for us to review?

Tyler: Yes, I can put this into writing.

Wichie: What is our process for sharing, editing, reviewing, and commenting?

Etan: We have been SharePoint for this process previously. We are attempting to switch to a Google Drive.

- Second Look subcommittee

Rebecca: We have materials before us comparing various second look legislation from around the country. Second look laws are laws that provide statutory ability to revisit sentences imposed after certain threshold criteria is met. There are laws in place passed by congress. As a subcommittee we look at these laws and proposed laws to see what their similarities and differences are. There is a second look conference coming up, which will be held at Vermont Law School.

1 hour 15 minutes

There will be a panel about what a second look is and why we need it. Another about what's worked and what hasn't worked. And one with people with lived experience, from the perspective of the families affected by the underlying crime.

Jennifer P: Will this also include victims of harm who are not supportive?

Rebecca: This conference won't be looking at whether second look laws should be passed period, it's looking at what the impact has been in jurisdictions that have passed it. It's meant to highlight the lived benefit from those at the practitioners' level, science level experts, and those with lived experience.

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Erin: In the conference planning we've been trying to bring in voices from that perspective of second look laws that are victim centered. The National Center for Restorative Justice is also thinking about this in terms of bringing that restorative approach.

Shela: There are benefits to having it livestreamed online. I like vibe checks, and body language. There's value to having some of these things in person.

Etan: Would the subcommittee prefer not to submit anything in writing until after the conference?

Rebecca: What are the threshold requirements for eligibility? What are the crimes or underlying circumstances that make one ineligible? Is this legislation targeting youth only? Is the petition process one where there is automatic notification of the process? What factors and evidence does a judge consider? No law that's been passed has identified factors of race or ethnicity of the applicant. Who decides the petition of review? Is it the original sentencing judge? What is the retroactivity of these laws? Is there a minimum reduction that the judge must consider? What is the victim's involvement?

Etan: There's a certain point where we need to create a cutoff point. We've got to do that with some issues that have horrifying impacts on the lives of real people. We've got to come to a point of saying "this is what we're suggesting:".

1 hour 30 minutes

We need to develop all this into a written document. We will have to edit it after that, then we take it to the proxies. That process takes time, and we must build that into our timetable.

Rebecca: On Thursday our Second Look subcommittee is meeting again. Knowing this, I think we can agree on what the most important things for us are. Then we are having this big conference on November 3rd. I think we can come up with a summary for next month's Panel meeting.

Shela: You must prepare people to ask the appropriate questions. That's the start to a foundation. We don't have a law to ask about race and I think that should be one of this Panel's initiatives.

Jennifer P: Is there any connection about this back to the sentencing commission?

Rebecca: That's a good idea. They have their own subcommittee on second look also.

Etan: Wichie, can we add the Community Safety Review subcommittee to this meeting?

- Community Safety Review subcommittee

Wichie: Two things were common across the reports. One about the effectiveness of policing, and the other about the effectiveness of training. What's in the training? Also from the Burlington report, a Citizen Review Board. That will be another recommendation.

Etan: Is there going to be a moment in there where you suggest to the legislature that these reports not only be encouraged by but also partially funded by the state?

Shela: This was presented at the last meeting. Then there's this report Wichie has put together. Then everyone on the Panel chimes in. Then we find out if it's something we want to support.

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Etan: We'll add that to the agendum for next month.

1 hour 45 minutes

- New Business

Xusana: The state of Vermont is hosting a series of community forums related to traffic statute enforcement. A joint venture between the Department of Motor Vehicles, the Department of Public Safety, and the Office of Racial Equity. The next forum will be held tomorrow, in St Johnsbury from 6-8 pm. It will also be hybrid, there's a Zoom link. This is the 2nd of 5. They'll take place over the next 2 weeks.

Representative Arsenault: As a legislator I just want to thank everyone for all the time and energy that goes into creating these reports. As 1 member of the Judiciary Committee who will be looking at this once it comes together, I really appreciate it.

Reverend Hughes: Act 65 Section 24-A.

Etan: When we adjourn this meeting, I'd like you (Mark), myself (Etan), Xusana, Tiffany, and Laura to stay on for a few minutes to hear from you.

Reverend Hughes: 24-A is about equity and the community reinvestment fund, the cannabis fund. I also want to circle around with the Human Rights Commission and revisit the Racial Disparities in All Systems.

Erin: Another group to reconvene with is the Truth and Reconciliation Commission. Part of their charge is to remedy past harms.

Etan: A while ago I did a breakdown of what got done from the 2019 report and what didn't.

Wichie: In a week and a half I will be the new NAACP of Windham County President.

Etan: Next meeting is the 14th of November.

Erin: Motion to adjourn.

Tyler: Seconded.

Motion passed. Meeting adjourned.