

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, Jan 9th, 2024

Location: Zoom Meetings

- ORCA Media recording of the live meeting:
 - <https://www.orcamedia.net/show/january-9-2024-rdap>
 - <https://youtu.be/Zn5gRcM8DFY?si=xWPTZTGdEGyWmZrw>

- Introductions
 1. 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. Laura Carter – Data Analyst with the Division of Racial Justice Statistics
 4. Wichie Artu – Health Equity and Data Systems Consultant
 5. Tyler Allen – Adolescent Services Director with the Department for Children and Families
 6. Elizabeth Morris – Juvenile Justice Coordinator at the Department for Children and Families
 7. Rebecca Turner – Head of the Public Division at the Office of the Defender General
 8. Jessica Brown – Assistant Professor at Vermont Law and Graduate School
 9. Superior Judge Mary Morrissey – Judiciary Representative on the Panel
 10. Derek Miodownik – Community and Restorative Justice Executive with the Department of Corrections
 11. Matthew Bernstein – Child, Youth, and Family Advocate for the State of Vermont
 12. Dan Bennet – Vermont State Police, Deputy Director of Fair and Impartial Policing
 13. Jacq Rose – Health Equity Director at Department of Corrections
 14. Shela Linton – Executive Director of the ROOT Social Justice Center
 15. Reverend Mark Hughes – Executive Director of the Vermont Racial Justice Alliance
 16. Tim Lueders-Dumont – The Department of State’s Attorneys and Sheriffs
 17. Jennifer Firpo – Training Coordinator with Vermont Police Academy

- Announcements

Etan: There are no minutes for the December meeting. It’s time to put the report together. Can have 1 more meeting on this, February 13th.

Erin: Asks to not vote on anything tonight.

Etan: Check out the spreadsheet, use it. Will write the Executive Summary and send it by email.

Wichie: Would like some orientation with the spreadsheet.

Elizabeth: What would the group like the spreadsheet to result in? One option is that everyone can use it for their internal purposes. Or we could use the spreadsheet as a checkmark for keeping track of what we have majority of and what we don’t have majority of.

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Tyler: Cautions against using the spreadsheet outside this meeting. Doesn't think we can have a shared document we're doing business in outside the meetings.

15 minutes

Rebecca: Each subcommittee has a list of recommendations. For transparency's sake, individual members when we get to the vote, should be voting on the submitted recommendations.

Etan: Seconds the individual voting method. Can record that at the meeting on February 13th. Let's start the discussion off with the Juvenile Justice system. Can everyone bring up that document?

- Juvenile Justice subcommittee discussion

Elizabeth: Appreciates Wichie's additions and apologizes for his name not being included.

Rebecca: As a member of the Juvenile Justice subcommittee, she also appreciates Wichie's additions. Also, she wrote the Second Look subcommittee's draft and Tim is asking for name corrections. They had a template that was provided, and they will go through that for accuracy.

Etan: I want to dig down on this, the language. Anyone have any comments? No one? People are good with it the way it is?

Tim: The Juvenile Justice system is aimed at rehabilitation exclusively and the criminal justice system has many goals. When someone has a delinquency filing the goal is to engage them with services, not to criminalize them in any way. Having that comment about the different goals of Title 33 as opposed to Title 13 might be educational to the legislature.

Etan: Or can that come up in testimony?

Tim: That's fine, but legislators think when you file a delinquency that you're filing a miniature crime. I think it can happen in testimony for sure.

Etan: I looked at the either/or section and that's point number 3. "Use best practices for gathering race, ethnicity data in incidence of arrest with youth. The Panel recommends that both law enforcement perception and court perception of the youth is gathered." Or "The Panel recommends that law enforcement perception and self-identification of the youth is gathered at a later time." Or "Our recommendation is that law enforcement perception of the race/ethnicity of youth and self-identification of the youth is filed with the judiciary."

Tyler: I want to do a little clarification on the option at the end of that. It's a one or the other. There's a recommendation that we would ask this Panel to support or not about acquiring race and ethnicity data. Where we had some discussion in our Juvenile Justice subcommittee was – What race and ethnicity data should be recorded and from where? The Department for Children and Families has policies that they are striving to implement fully about taking in calls, which includes information provided by the caller, but they also want to approach people using self-identified race. For them, they are both valuable data

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points to have, but when they gather those data points might be at separate times. When we're looking at the court's perception of race or law enforcement, law enforcement's perception of race is important, but at a later date is it more important to gather self-identification or the court identification of race?

Wichie: Right now, race and ethnicity are recorded through an assumption by a law enforcement official. When we're seeing disparities, we're not seeing actual disparities, we're seeing how law enforcement officials act when perceiving minorities. Versus when we look at the judicial data, we have self-identifying that allows more room to work with actual data. Having both allows for the comparison of how the perceptions of law enforcement are interacting with the actual race or ethnicity.

Xusana: In terms of capacity and buildout, this data is going to be very important to collect. We have the Agency of Digital Services for assistance with that buildout. What do we have capacity for in terms of building out this data collection system? And what do we have capacity for in terms of regular routine analysis and reporting on it? At the moment, the office of Racial Justice Statistics has only 3 people and it's scheduled for 5.

30 minutes

Rebecca: I want to tease out the difference between the two proposals. The difference is the first proposal is about collecting race and ethnicity data from law enforcement and the judiciary. I have not been convinced that collecting self-identification on race and ethnicity from our youth clients will be safely handled. We crafted, and the legislature adopted, our recommendation that the data entity not just have the staffing but that there was also an independent counsel to guide the data entity that was now created. We're still waiting for that independent counsel. I recommend that a flat request that we do self-identification is premature.

Etan: Seconds Rebecca's statement and would go with the first option.

Judge Morrissey: Is concerned with the Court collecting data, as it's only as good as the information coming in. There are many times in a delinquency case where she never sees the child. Whoever is the intake person may be the most reliable for that info.

Shela: Doesn't disagree with Rebecca, remembers bringing up a conversation about this because there's a few different data points. One main concern is, as people of color, when do they get to self-identify? Whether it's as a child or an adult, when does that happen? Are we collecting a data point from the difference between what was perceived by the court or officer versus what the actual identity of the person is? Sort of like how they changed the Vermont harassment laws to be perceived or actual in the school systems. There's a risk to youth at certain times to being able to identify, and for it to become a way of collecting information that may not be viable. If we're asking someone for race or ethnicity, we're doing that because there's disparities in the system. People in the BIPOC community feel as though that's being used against them in some way. Is there some space to put in the "why" part of it? I'm concerned when anybody will get the chance to self-identify.

Elizabeth: There might be a third option, that at this time the Panel supports law enforcement perception and doesn't have an opinion on the second piece.

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Rebecca: She thinks that language would be fair.

Erin: She feels ill equipped to choose. The first sentence of this section says to “Use best practices for gathering race/ethnicity data in incidence of arrest with youth”. She doesn’t know whose best practices to use.

Etan: When he sees that he’s assuming that people in the field know what that is.

Erin: Is that just about how someone communicates with a child? How they treat the child? Is that opening statement about one of the options we’re going to choose to go into the report?

Elizabeth: She would say that the language of best practices depends on who’s being asked. She would say that it’s this Panel’s opinion as to what is the best practice.

45 minutes

Rebecca: In the 2021 report we dove deeply into how a data entity should be built.

Wichie: He wants to loop back on the third option which excludes self-identification. If the Panel ends up going a route where they’re saying no to that, that this conversation does not get lost. Knowing what the Panel wrestled with to come up with this recommendation.

Etan: A note that there has been a lot of discussion about this, but not a lot of agreement, here are the issues. Having a footnote like that would be good, rather than thinking that we’re going to sit here and work this out. We’ve had this discussion a lot.

Judge Davenport: There was somebody from the National Center for State Courts that suggests there isn’t a best practice out there for this. All the states are wrestling with this, no states stand out as having the right answer.

Etan: He suggests that instead of saying “Use best practices...”, the Panel says “Discern best practices...” Remember that we are making recommendations, not writing the legislation. We’re not the only people who are going to weigh in on this, there will be testimony.

Xusana: Is there appetite for amending that slightly to say “Discern established and emerging best practices...” because some of our institutions have a real adherence to the way things are.

Etan: He likes that change.

Laura: She is thinking about being consistent with whatever best practice the Panel decides. We want to do our due diligence in collecting this data that it needs to be consistent across whatever systems we’re trying to apply those best practices to.

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Elizabeth: The second option is about ensuring there is uniformity. The third is what does that mean? Technically, law enforcement is supposed to send race and ethnicity to the FBI.

Xusana: In terms of ensuring consistency, she thinks it's important we talk about harmony not just across these systems, but also that the policy makers we're talking to recognize that they are all having this conversation in parallel to each other.

Judge Davenport: Currently the information that the court is getting on race and ethnicity from form 101, which the law enforcement officer fills out, depends on whether the juvenile was stopped but never taken to the police department. So, then it's the law enforcement officer's perception because they're trained to not ask about race and ethnicity on a stop, but if they are taken to the police station, they are asked to self-identify. The data that we have is mixed data anyways, it's not all law enforcement perception.

Etan: He asks that the Juvenile Justice subcommittee write another small piece.

Elizabeth: Just to be clear, we are changing the title, and we are theoretically doing the law enforcement perception and then going into the detail of this conversation.

Etan: Are we good with this now? Okay, good. Let's move on to the Community Safety Review portion.

- Community Safety Review subcommittee discussion

Jennifer: For those who don't know, my job at the Police Academy is around training and coordinating training so she's always looking at this through a lens of "What are we doing that people don't already know about?" And "How can we meet the communities needs and expectations with a lack of resources to do so?" She agrees that folks need to be ready to absorb training. Does the Panel know how they would assess somebody's readiness for the training? What is the Panel looking for to happen when somebody's not ready to absorb the training? Complicated by the fact that to retain law enforcement certification they must take Fair and Impartial Policing training every other year. I'd rather hear from this Panel about what we could do, and how we could do it better.

1 hour

Wichie: That's a long-term project that I don't know if we're capable of doing before this report.

Shela: It's not just about what is being taught, it's about being allotted some number of hours for this curriculum. What is the recurrence of the teaching?

Jennifer: The place where they have a finite amount of time is in the basic academy. What people miss a lot of the time is the in service training that police need to maintain their certification annually. Even number years they must get domestic violence training, odd number years they must get Fair and Impartial policing training. Then they have about 30 hours of additional training that they have to get.

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Wichie: Could the Panel get some language to incorporate in this so that the ask is more appropriate? Whether that's curriculum building, community representation, or more money to help us get closer to what we're trying to recommend.

Jennifer: Yeah, I can take another look at it. The other thing to note is that the Police Academy is in the middle of a 3-year project. Right now, we're doing job task analysis, which is data collection. We're gathering information so we know what cops are doing, so we can teach them to do it better from the beginning.

Etan: If anyone has questions about the basic course in Fair and Impartial Policing just ask him. He designed it a while ago, and it goes through continual revision. We started with 2 hours and now we have 6.

Rebecca: She has one suggestion from the last page, relating to the section – Recommendations Reallocation of Responsibilities, specifically the bullet Decoupling Traffic Stops. The recommendation there was very local, recommending the legislature should make an exception to towns seeking alternative ways. She would suggest doing an “and”. Consider alternatives to traffic law enforcement that do not require police officer-initiated traffic stops.

Tim: We are seeing an increase in crime in Vermont, a 166% increase in homicides since 2012.

Rebecca: She recommends that we don't throw in select data points to this set of recommendations. The issue about data and public safety is complex.

1 hour 15 minutes

Tim: Wichie already has a reference to 2020 Federal Bureau of Investigation data in the Community Safety Review report.

Wichie: He will look through the most recent data and see if anything needs to be updated.

Erin: Speaking about public oversight, citizen review boards specifically, and having the legislature create a model. She doesn't think the legislature would be the one to create a model policy. The Criminal Justice Council could be an option, maybe this Panel as well.

Etan: When you all send new things to me could you include in the subject line “Today's date” 1-9-24. Now let's move on to the Second Look subcommittee.

- Second Look subcommittee discussion

Elizabeth: Do we need a vote about recording Second Look legislation overall? So, there would be 4 votes from Second Look?

Tim: He would appreciate it.

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Etan: If one person on the panel wants to do it, then yes please.

Rebecca: Her understanding is that this Panel landed on this subject as supporting Second Look legislation generally. She thought the Panel already supported Second Look legislation.

Tim: He has dug through this with the Sentencing Commission and others, and they are not supportive of Second Look legislation.

Etan: His sense isn't that it will be cut though. We would do a vote.

Erin: The Attorney General isn't supportive of Second Look legislation. They are supportive of this Panel doing its work on the Second Look subcommittee.

Elizabeth: She was under the interpretation that everything that's been written is going to be in the report, and it will list if there's any dissent. Not taking anything out of the report.

Wichie: He's wondering if there was an accompanying memo as to why there isn't support. Not for discussion necessarily, but just to know why.

Etan: Is that something that we can produce?

Tim: It's been produced and would like it included in the report as an appendix.

Erin: The Attorney General's statement has already been shared.

Etan: His sense is that we have a written explanation of the Second Look thinking from the subcommittee. Then we have a sentence saying "The Attorney General would like this noted, support for what the subcommittee is doing, but does not support the conclusions of the subcommittee at this moment." A similar thing from States Attorneys and Sheriffs, and include those as appendices at the end of the report.

Erin: That sounds good. What would be communicated in that case is that the vast majority of this Panel supports Second Look legislation.

1 hour 30 minutes

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RDAP Second Look Subcommittee, SAS Response, December 20, 2023

JOHN F. CAMPBELL,
ESQ.
EXECUTIVE
DIRECTOR



110 State Street
Montpelier, VT
05633-6401

PHONE: (802) 828-2891

FAX: (802) 828-2881

STATE OF VERMONT
OFFICE OF THE EXECUTIVE DIRECTOR
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS

DATE: December 20, 2023
FROM: Department of State's Attorneys and Sheriffs ("SAS"), Executive Committee of State's Attorneys and SAS Office of the Executive Director
RE: RDAP Second Look Subcommittee, SAS Response

In response to draft recommendations concerning "Second Look" submitted¹ to the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel ("RDAP"), please see below for a list of questions and concerns gathered over time,² including from prior RDAP member, Evan Meenan, from members of the Executive Committee of State's Attorneys, and from Jennifer Poehlmann, Executive Director of the Center for Crime Victim Services ("CCVS").

The SAS Executive Director's Office ("EDO") and the SAS Executive Committee ("EC") have questions and concerns that remain in place after review of the Second Look draft recommendations that have been circulated.³ Further, the SAS EC informed the SAS representative to the RDAP that they are not in support of Second Look legislation.⁴ While the opinions amongst individual State's Attorneys may vary, the SAS EC and SAS EDO are not in support⁵ of Second Look draft recommendations submitted to the RDAP or Second Look legislation.

It was noted by the RDAP Second Look subcommittee⁶ that time constraints prevented full contemplation of SAS concerns and questions, noted below in *italics*. We appreciate that a majority of the RDAP may submit Second Look draft recommendations, in some form, to the legislature. That said, if legislation is to be considered by lawmakers SAS would recommend contemplation and analysis of the SAS concerns and questions. Likewise, SAS believes that further discussion should occur with [victims of crime in Vermont](#).⁷

The SAS EDO and SAS EC request that the questions and concerns listed below, and this memorandum, be included in the RDAP report on Second Look.

[SAS Fundamental Questions and Concerns Regarding Second Look Recommendations/Legislation]

- A. *Will the Vermont Department of Corrections ("DOC") or the Vermont Judiciary present Vermont-specific data?⁸ Were DOC or the Vermont Judiciary invited to present data? An examination of Vermont's data is essential in*

Rebecca: In the second paragraph, around footnote 4. It talks about the questions and concerns and includes an attachment. Can individual statements from each county's State's Attorney be provided on this?

Tim: The Executive Committee is elected by the other State's Attorneys as a leadership group among themselves, which directs the Executive Director's Office. We meet with all the State's Attorneys a couple times per year, even then typically not all 14 show up. However, in a meeting with 11 State's Attorneys, none of those were in favor of Second Look. Before next month he'd be happy to share that and get the tally of votes.

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Wichie: In the first concern listed, not sure if there's more, are they asking if the Department of Corrections or the Vermont Judiciary presented Vermont data to this Panel in our discussion around Second Look?

Tim: Yes, that is one question out of many.

Rebecca: The Second Look subcommittee and this Panel are not actually endorsing a bill.

Etan: Most of this Panel is in support of Second Look legislation. We voted on that a while ago. So, when it says "RDAP Second Look subcommittee" in the subject line, that specificity is somewhat misleading.

Tim: Most of the Panel is mentioned, but not the entire Panel supports it. That subject line can be adjusted.

Judge Morrissey: She would like to alert everyone that while the judiciary supports collecting data in as reliable a manner as possible, it will not be taking a position on the Second Look legislation or on the proposal to raise the age for youth coming into the family division.

Jessica: Every section of this report was developed by a subcommittee, no committee had every voting member of the Panel on it. In our first report, we voted and that's what went in. If there was dissent, then a report could be added as an appendix. Ultimately, every section of the report is going to get voted on, and whatever is supported by a majority of this Panel will be in the report. Dissenting votes can add appendices as we've done in the past.

Etan: Agrees with that. Folks, we've done it. We hashed out the major issues that were in front of us. He can start writing the Executive Summary. He will email that to Panel members.

1 hour 45 minutes

Wichie: So, we put our votes on the spreadsheet and send it to you after we read through it, do we all get together as a quorum to vote?

Etan: Yes, we will do that on February 13th.

Tim: We'll get a copy of stuff before the 13th so we can vote, right?

Etan: Yes. I will send that around.

Rebecca: If we have time at next month's meeting after we vote, she would like to suggest that Chief Steven's email from last month be discussed.

Etan: Agreed. He will ask Chief Stevens to be there as well.

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Erin: Expresses gratitude to Etan, it's been a long process and we're almost at the finish line. Recognizes that Etan still has a lot of labor to do to get us there. Apologizes for procrastinating, we will do better in 2026.

Etan: Thank you.

Jennifer: Moves to adjourn.

Jessica: Seconds that.

Meeting adjourned.