

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, June 14, 2022

Location: Microsoft Teams

ORCA Media recording of the live meeting:

- <https://www.orcamedia.net/show/june-14-2022-rdap>
- <https://youtu.be/n0YdeuOEfpk>

Meeting Minutes

Attendance List

1. Christopher Louras – Research Associate with Crime Research Group
2. Jen Firpo – Training Coordinator at the Vermont Criminal Justice Council
3. Grant Taylor – Panel Secretary
4. Jay Greene – Racial Equity Policy and Research Analyst for the Office of Racial Equity
5. Erin Jacobsen – Codirector of the Community Justice Division at the Attorney General’s Office
6. Jennifer Poehlmann – Director of the Vermont Center for Crime Victim Services
7. Jessica Brown – Attorney General’s Office Appointee to the Panel, and Assistant Professor of Criminal Law and the Associate Director of the Center for Justice Reform at Vermont Law School
8. Elizabeth Morris – Juvenile Justice Coordinator at the Department for Children and Families
9. Qing (Tsing) Ren – Evaluation and Program Analyst at Shelburne Farms, and Community Participant
10. Shela Linton – Attorney General’s Office Appointee to the Panel, and Director of the ROOT Social Justice Center
11. Julio Thompson – Director of Civil Rights at the Attorney General’s Office, and Community Participant
12. Rebecca Turner – Defender General’s Office
13. Monica Weeber – Department of Corrections
14. Thomas Zoney – Chief Superior Judge
15. Evan Meenan – Department of State’s Attorneys
16. Wichie Artu – Data Warehouse Expert, and Social Justice Advocate
17. Xusana Davis – State Racial Equity Director
18. ORCA media

Welcome and Introductions

Each person introduced themselves to the group.

Approval of minutes from the previous meeting

Etan: A new minutes template is being designed for consistency. All comments welcome.

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Monica: Motioned to come up with a shorter version the minutes.

Etan: Seconded.

Monica: Generally, minutes are not this detailed. They capture points of discussion and any decisions that were made. The current minutes are too extensive.

Shela: People depend on this to understand the meeting, and the detail is also an accountability measure. The accuracy is helpful. Supported keeping the minutes open to individual interpretation for future meetings.

Qing: Agreed with both statements. Agreed current minute template is extensive. Reviewed minutes from the past, looked for specific quotes, agreed detailed notes are appreciated. It is helpful to know exactly who said what, that information is important.

Evan: Agreed the current minutes are more detailed than normal, but also agreed there is no prohibition on the minutes being this detailed. Mentioned the public meeting requirement by law for meeting minutes – *“the minutes shall cover all topics and motions that arise at the meeting, and give a true indication of the business of the meeting....the minutes have to include the following minimum information; all members of the public body present, all other active participants in the meeting, all motions, proposals, and resolutions made, offered, and considered, and what the disposition of those were, and the results of any votes with a record of the individual vote of each member if a role call is taken.”* That’s the minimum list, with no maximum.

Rebecca: Agrees with the accuracy for accountability. The purpose of the Panel is to have access and accountability on multiple levels. If we have more detailed minutes than usual in government committee meetings that is a wonderful thing. No change, keep as is.

15 minutes

Monica: Appreciates the conversation and is happy to withdraw motion.

Etan: Motioned to accept minutes as is?

Shela: Motioned.

Evan: Seconded.

Etan: All in favor of accepting the minutes? Unanimously accepted.

Etan: All opposed? None.

Etan: All abstaining? None.

Etan: Agreed to submit the minutes for posting to the state website.

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Announcements

Etan: Brought up discussion of the Panel's legislative responsibilities, Act 54 of 2017 enables the Panel to operate. It also requires a report such as the one from 2019 every biennium. The next one due was at the end of 2021, which was produced. The Panel also produced a report at the end of 2020. The Panel has been putting out the reports annually. The next report is due in Dec of 2023, in 18 months from now. Is hoping we can include the current process of figuring out what we want to look at as a panel, and future directions in that document at the end of 2023. Recommended panel members look at the old one from December of 2019. Email Etan for access to that document if needed.

Presentations/Discussion

Etan: Xusana Davis, Executive Director of the Office of Racial Equity, has requested to participate later than listed in the agenda. Discussion of what the Panel will need to do in facilitating the new Division of Racial Justice Statistics, regarding H.546, will occur later in the meeting. The Panel recognizes some responsibility to facilitate that effort. The Panel has reservations of becoming too focused on raw data management, while understanding they will always be thinking something about data. Continuing with discussion of future directions and Panel Subcommittees, the next group on the list is Juvenile Justice. Edits to the *Compilation of Reports and Recommendations* have been made to focus on Juvenile Justice by Elizabeth Morris and Tyler Allen (not in attendance).

Elizabeth: Explained the Juvenile Justice additions to the *Compilation of Reports and Recommendations*. Agreed data is very important to the work they are doing as far as juvenile justice is concerned, and to update links to everything they added in the document. Asked to share her screen with the meeting for transparency.

Etan: Okayed screen sharing.

Elizabeth: Shared screen with *EM Compilation of Reports and Recommendations* on it. Each Juvenile Justice comment they (Elizabeth and Tyler) added is in blue font for ease of reference. The biggest report they added information from is submitted to the Office of Juvenile Justice and Delinquency Prevention annually by Department for Children and Families (Elizabeth). As part of the Juvenile Justice Reform Act, Department for Children and Families is required to monitor and create a plan to address disparities in the juvenile justice system. The feds have acknowledged these disparities in the system since 1988 and have charged states to utilize federal dollars to address these disparities for decades. While the federal government hasn't been as progressive for adults, they have been for youth. Vermont's Juvenile Justice State Advisory Group creates a plan based on data from that report, and they utilize federal dollars to address those disparities in the juvenile justice system. The feds give a wide overarching ability

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to focus on what they believe is important. The first piece of the juvenile justice additions is included in the *Decriminalization, Reclassification, Diversion and Pretrial Services, Sentencing Alternatives* section of *EM Compilation of Reports and Recommendations*, and it's related to some of the work that State Advisory Group has implemented. Currently they are funding statewide restorative justice trainings for law enforcement on juvenile justice. They posted an RFP that was awarded to the Burlington Community Justice Center. They will begin doing trainings with contractors statewide on the benefits of precharge and restorative justice for youths, with a highlight on racism and the disparities of access to precharge for youth of color. Based on data nationally, and from Vermont, that shows youth of color are not referred to diversion at the same rates as their white counterparts. The first trainings have not started yet but are slated to begin this summer.

Rebecca: Looking at past reports from the Department for Children and Families to the Office of Juvenile Justice and Delinquency Prevention; are the disparities seen year after year?

29 minutes

Elizabeth: Yes, they are seen consistently year after year. The most recent accessible report is from 2020, the report from fiscal year 2021 will be posted this fall. The report does look at an overview of three years, and with a small population in Vermont, small discrepancies can create large impacts. There are high disparities in each contact/discretion point, such as arrest rates. Burlington Police Department reports 46% youth of color arrests, which is much higher than their percentage of the population. Another example is from the now closed Woodside Juvenile Facility, a statewide juvenile correctional facility that is now closed. 18% of the intakes at the facility were youth of color, which is far more than the percentage of youth of color in the state of Vermont.

Erin: Wondering about the law enforcement trainings, who will participate? Does that include States Attorneys as well? Will any trainings be open to the public?

Elizabeth: The trainings are for law enforcement in the broader sense, including States Attorneys. They are not available to the broader public currently; they are specifically for law enforcement professionals.

Rebecca: Would like to focus more time on this data as a group.

Elizabeth: Agrees that we need more dedicated time to review this data. Doesn't want to rush through it.

Etan: Agreed to add the trainings on the agenda for next month.

Evan: Will the trainings for states attorneys be held remotely? Will they be available to deputy states attorneys from all over the state if schedules allow?

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Elizabeth: Working on figuring that out right now. Looking at a Saturday morning because that's easiest to accommodate for shift changes. Trying to avoid a virtual training due to the method their trying to engage the audience. Mark Wienberg and Rachel Jolly are the leads on the project.

Evan: Mark reached out to Evan about this training 4-6 weeks ago.

Elizabeth: Glad Mark already reached out because he is one of the main leads on the project.

Jay: Please clarify % youth of color stopped in Burlington.

Elizabeth: 46% of youth stopped in Burlington are youth of color, measured over a 3-year time (2018, 2019, and 2020)

Jay: Please explain Woodside for those who don't know?

Elizabeth: Woodside Rehabilitation Center was the only juvenile secure facility in Vermont, that Department for Children and Families used for placement of delinquent youth and youth accused of delinquent charges. Woodside closed in October of 2020, and the state has been using a variety of other options since.

Jennifer: Included a question in the chat.

Qing: Why did Woodside close?

Elizabeth: There were a few reasons for closing Woodside. Low utilization, and multiple federal lawsuits were the two main reasons.

Etan: We'll have a longer breakout session and more discussion about that section at the next meeting.

Elizabeth: The second section of the juvenile justice recommendations provided by the State Advisory Group is included in the *Education* section of *EM Compilation of Reports and Recommendations*. There is a very clear link between school discipline, the juvenile justice system, and the school to prison pipeline. The state advisory group has two current projects they are approaching on: 1 – integrate restorative justice into school discipline, and 2 – keep the justice system out of schools as much as possible. After an RFP process they are funding the Burlington School District and Spectrum Youth and Family Services each awarded \$70,000. Spectrum is focusing their work on Winooski High School, while Burlington is focusing on two of their middle schools. The State Advisory Group is focused on these two locations due to high arrest rates. Both programs have been running for over a year and both plan to continue working to reduce disparities in school discipline. That data has been inconsistent since the beginning of Covid. The overall recommendation is to implement restorative justice practices within school discipline. The third section of recommendations from the State Advisory Group

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are included in the *Juvenile Justice* section of the *EM Compilation of Reports and Recommendations*. Due to delays in funding these projects are on hold currently. The first project mentioned here is creating workforce development for youth in marginalized communities, assisting juveniles in the transition into the workforce. There are a high number of youths struggling in school due to working to support their families. They are also advocating for raising the baseline age for juvenile court jurisdiction. They are working to promote antiracism training for stakeholders in the broader juvenile justice system. They are also focusing on issues with “unknown” or “unreported” race/ethnicity data. Form 101, that law enforcement officers utilize has a race/ethnicity area which is not always filled out and causes issues, about 16% of the court database has unknown race. This can have a really big impact on the disparity when it comes to youth. They are also enhancing and developing resources and services within communities that minimize their overall reliance on law enforcement and assessing family and community engagement in case planning for youth of color involved in the Juvenile Justice system. That’s the overall review of the work Vermont’s Juvenile Justice State Advisory Group is doing.

47 minutes

Elizabeth: The Department for Children and Families has also made additions in the *Juvenile Justice* section of *EM Compilation of Reports and Recommendations*. The Department for Children and Families is releasing practice guidance for assessing cultural context of the families and youth they work with. This will give Department workers the ability to set that tone and engage in that dialogue. The next part of additions is from a report by Crime Research Group, also funded by the Vermont Juvenile Justice State Advisory Group with federal dollars. We are the first state in the nation to raise the age of original juvenile court jurisdiction to include 18-year old’s and will be raising the age to include 19-year old’s in July of 2023. Due to this the State Advisory Group wanted to provide a baseline recidivism for youth ages 18-19 who were convicted in adult criminal court. Creating this baseline would allow them to see any changes after implementing these changes in practice and policy. One clear aspect found is that 14% of all 18- to 19-year-old Black youth were excluded from the study because they were charged with a “Big 12” crime. A “Big 12” crime are crimes that if a youth gets charged with it, they get charged in the criminal division. Only 8% of white youth were excluded for “Big 12” crimes, showing a clear discrepancy.

Evan: Having trouble following the last point. What does it mean to be excluded? What inferences can be drawn?

Elizabeth: Youth black population has more “Big 12” charges than white youth.

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Evan: When this says that they were excluded from the study, does that mean that individuals regardless of their race who were charged with a “Big 12” crime, the study did not look at what their recidivism was?

Elizabeth: Yes, that is what it means. The reason it was done that way was to create a baseline recidivism analysis of the youth that will be coming, or already are in the system. Basically, to evaluate Act 201, to see if it’s reducing recidivism rates. The theory is that youth are better served in the family division for a variety of reasons, including their likelihood to commit another crime. The state will conduct another recidivism analysis after 5 years to see if it benefits the current group of 18- to 19-year-olds.

Chris: Most important thing is to bring Robin in for specifics. What definition of recidivism will be used into the future?

Elizabeth: The recidivism definition and statute are pretty useless currently, the State Advisory Group found 3 versions of recidivism.

Monica: The recidivism statute was originally developed several years ago and was developed primarily for adults, to separate out jail and prison, and to compare Vermont to other states.

Elizabeth: As mentioned in the document, calculating recidivism using the definition outlined was not possible because only two defendants had been sentenced to more than 1 year in jail, and were ineligible for to recidivate until after the data for the study was collected.

Chris: Made it clear that this report belongs to Department for Children and Families. Crime Research Group was just a research partner.

58 minutes

Elizabeth: Department for Children and Families has a Statewide Racial Equity Workgroup that was created in 2020. One applicable project the Workgroup is using is the Youth Assessment and Screening Instrument, which is an evidence-based risk/needs assessment that ensures youth receive a level of services that is appropriately matched to their individual risk of recidivism. It measures both the risk and the strength of each individual youth, it does prescreening in addition to a full screen, and is utilized in a variety of different ways. Questions on how the Screening Instrument is implemented and how the Department uses it can be directed to Elizabeth. Some specific consequences have been found using the Screening Instrument. Legal risk of black youth is higher than white youth, which is stemming from their criminal history. The Screening Instrument rates each youth as high risk, medium risk, or low risk, and has a large impact on how youth are treated in the justice system. New York state had the same disparity of black youth designated as high risk, so they changed their “cut-off” points determining what youth are high, medium, and low risk. This significantly decreased their racial

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disparities with the Youth Assessment and Screening Instrument, moving individuals from high risk to medium risk.

Shela: What is mandated of you all with regards to the things, initiatives, projects that you are involved in? What is the recommendation from other committees? What work is being done to remain in compliance versus other work? Is there anything you are wondering about transparency and accountability within the Department for Children and Families.

Elizabeth: The federal government requires the Department for Children and Families to perform these activities to address racial disparities in the juvenile justice system if they continue to receive this formula grant. If they were to choose to no longer apply for that solicitation, theoretically they would be saying we don't want the money, so we don't have to do this. Pretty typical of the federal government, they will attach mandates to federal dollars. The Department is saying that by accepting these dollars they will gather data, aggregate it, and provide it to the Office of Juvenile Justice and Delinquency Prevention. A portion of the funds must go to reducing the disparities but will allow Vermont's Juvenile Justice State Advisory Group to focus the spending. The Advisory Group is made up of people who are not state employees, and they decide how the Department will spend the money.

Shela: What would be really helpful is having that explanation at the beginning of the report. So, people know what is mandated, where things are coming from, and what things really are.

Elizabeth: The next set of juvenile justice additions comes from a University of Vermont legislative report submitted this past fall that had a variety of different recommendations for the Department for Children and Families, for the courts, for other entities that are involved in the system, and for this Panel as well. The study was conducted originally because Vermont has significantly higher rates of custody than other states, Vermont is number five in the nation for % of youth who are in custody. This report made it clear that between the years of 2005 and 2018, Black or African American children were more likely than other children to enter custody. That report provided some recommendations for the Department to minimize decision-making bias. One of the suggestions was Blind Team Decision Making, which ignores demographic and socioeconomic information from the decision-making. However, this has shown to have harmful impacts, ignoring a youth's race can be incredibly harmful. One helpful recommendation for the Department is to engage the media to explain the impact of sensationalized high-profile cases on future outcomes and try to minimize them.

Evan: Is the University's Legislative report talking about children who are taken into custody in Children in Need of Care and Supervision cases as opposed to juveniles and young adults who are placed under the state's custody as part of a delinquency or youthful offender case?

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Elizabeth: Yes, that is correct. There is a clear link between child welfare and the juvenile justice system. This information is more relevant to child welfare than the juvenile justice system, but it shows the disparities in all aspects.

1 hour 15 minutes

Evan: Children in Need of Care and Supervision include children that need assistance and have not engaged in any wrongdoing, and don't need to be found responsible. They are children in need of assistance in making sure they have all the care and supervision that they need.

Rebecca: Appreciation for all Elizabeth and Tyler's juvenile justice additions to the *Compilation of Reports and Recommendations*. Clarify within the University's report the custody breakdown in Family Division of the Department for Children and Families is 90% children in need of care and supervision and welfare, and 10% or less juvenile justice. It has been difficult to find juvenile justice data and reporting, is very grateful for the juvenile justice additions. Suggested bringing in more information like New York's finding with the Youth Assessment and Screening Instrument and the reduction in disparities they noticed when changing their "cut-off" points. Overall comment is that the recommendations listed here don't address the problem, that we have an issue with disparities on enforcement towards youth of color in Vermont in particular counties. Disparate treatment of youth of color on the enforcement side, and at the sentencing or custody side. These reports are showing how youth of color are landing in our adult criminal courts at a disparate rate from White youth.

Elizabeth: The State Advisory Group likes to focus more on prevention than enforcement, which is important to discuss in terms of this Panel. What are other groups doing, and what does this Panel want to do moving forward that isn't being duplicated? Does the Panel want to make recommendations to the State Advisory Group?

Etan: Appreciates the granularity and detail in the report.

Xusana: Looking for ways to streamline communications between this Panel and the Division of Racial Justice Statistics. The Office of Racial Equity currently reports to the Racial Equity Advisory Panel. With the passage of Act 142 (H.546) the Office of Racial Equity will now be reporting to the Racial Equity Advisory Panel, this Panel, and to the Racial Justice Statistics Advisory Council. What does this Panel want that reporting to look like?

Etan: The Panel needs to spend some time talking about what they want from the groups that will be reporting to them. As mentioned, the reporting requirements are under Act 142.

Rebecca: When are the reporting requirements supposed to begin?

Xusana: The Division of Racial Justice Statistics will report to this Panel monthly, the reporting will begin whenever they start the work. They are also reporting in January to the legislature.

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Jay: The Racial Justice Statistics Advisory Council shall be appointed on or by November 1st, 2022. The Racial Justice Statistics Advisory Council has to report monthly on its findings to this Panel, and on January 15th, 2023, to the House and Senate committees on the Judiciary and Government operations.

Etan: The Panel needs to discuss what they want that reporting to look like. What needs to be reported? In what ways? Give some thought to that because it will come up again at next month's meeting.

Xusana: What level of formality does this Panel want? How does the Panel want this information to be transferred? Does the Panel want something in writing?

Qing: The format will depend on what kind of feedback you want from the Panel. Maybe to be discussed in the future? Or maybe you have some idea of what kind of feedback you want.

Xusana: Are we on the right track in terms of data we are chasing? Help us identify the links that are worth chasing, and areas we want to revisit. It's criminal justice data but it very much speaks to broader systemic and institutional problems that arise in housing, or education.

1 hour 30 minutes

Etan: It seems the Panel may want to post these reports to the website, just like they post the minutes. Think on it. Read Act 142, think on it, this will come up again next month.

Wichie: Here to talk about the Community Safety Review Subcommittee. Brattleboro did a community safety review, using an implementation team. Things that stood out are that this report centered marginalized folks, those whose voices are not heard. Some limitations are that within that implementation plan there are some things that are not possible at the town level, some aren't legal within state or federal guidelines. Looking to study more towns and see if there are other common themes.

Etan: There is more reading to do. The Community Safety Review Subcommittee didn't meet at the proposed time. Reframing the Community Safety Review Subcommittee to include more than Brattleboro. Email Wichie if interested in joining.

Jennifer: Victims are not treated as seriously based on how they identify and their culture. How are we supporting those people? Are we turning people away? Our system does a poor job supporting those who need help. Trauma presents itself in people perpetuating harm.

Shela: If people are interested in the community safety review report, community policing, or alternatives to policing, then reach out to Wichie or Shela.

Rebecca: What are the next proposed moves for the Community Safety Review Subcommittee? Exploring these same initiatives in other places?

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Shela: This was a Brattleboro thing because it was needed. There is an opportunity to do this all over the state. Recommends folks do something similar in their communities. In Brattleboro the ROOT Social Justice Center came up frequently when asked where people feel safe. This Review shifted not only the conversation, but also how they fund things in Brattleboro. Funding the police department and their initiatives, or their local human service and non-profit organizations.

Wichie: A lot of great stuff came out of the Brattleboro Community Safety Review. That information allowed them to push back against some systems that weren't helpful. Hesitant to try and replicate that process for the entire state. This process will be different for every town and community. In six months, they worked a crazy number of hours and doesn't want to repeat that process around the state. Maybe worth it to explore things that are already done, or to support things that are already happening.

1 hour 45 minutes

Etan: End Community Safety Review Subcommittee report back to the Panel. If you're interested in looking at that, and the ways in which it's been handled in other parts of the state, please contact Wichie because he is organizing the next meeting.

Rebecca: Discussion of the Second Look Subcommittee. A committee to review people who are already charged. Taking a second look at sentence consideration. Reviewed trends from across the country where legislation has already taken hold. The premise is to address and correct errors that occurred at time of sentencing. Some are focused on length of sentence, some on the age of sentenced individuals. Vermont has very little as far as laws allowing for a sentence review currently. Not aware of any second look legislation focusing on racial disparities. Wants to make sure this Panel wants them pursuing the Second Look Subcommittee further.

Etan: Discussion about whether the Panel wants to pursue this further. Agrees that a Second Look Subcommittee is essential to the Panel's work.

Shela: Agrees that it is essential. Yes, it should be a priority for the Panel.

Erin: One aspect discussed is what this legislation would look like and how it would work. Talked about the possibility of restorative justice principles underlying the second look. Considering other lenses, was this person a juvenile at the time? If we look at this and we put aside the victims, this won't be a popular idea.

Etan: There will be neat moments of overlap between these subcommittees. There will be opportunities for people to act as critics of those subcommittees as well. This report would be very flushed out, fully written, and include pros and cons for the legislature to consider.

For next month

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1. Second Look Subcommittee
2. Documents from Elizabeth
3. Look at Act 142 (H.546), determine reporting standards

Next meeting is July 12th, 2022.

Robin Joy will be invited to the next meeting.

Shela: Motion to adjourn, and support Black owned businesses!

Etan: Seconded

Adjournment.

2 hours