

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, July 12, 2022

Location: Microsoft Teams

ORCA Media recording of the live meeting:

- <https://www.orcamedia.net/show/july-12-2022-rdap>
- <https://youtu.be/3dZu7BxkYHc>

Attendance List –

1. Geoffrey Jones – Former Vermont State Police Trooper
2. Grant Taylor – Panel Secretary
3. Tyler Allen – Adolescent Services Director, Vermont Department for Children and Families
4. Jessica Brown – Assistant Professor of Law and Associate Director of the Center for Justice Reform at Vermont Law and Graduate School
5. Elizabeth Morris – Juvenile Justice Coordinator, Vermont Department for Children and Families
6. Evan Meenan – Deputy State’s Attorney, Department of State’s Attorneys and Sheriffs
7. Captain Barbara Kessler – Vermont State Police
8. Rebecca Turner – Appellate Defender, Office of the Defender General
9. Marshall Pahl – Chief Juvenile Defender, Deputy Defender General
10. Jennifer Poehlmann – Executive Director of the Vermont Center for Crime Victim Services
11. Christopher Louras – Research Associate with Crime Research Group
12. Judge Thomas Zonay – Chief Superior Judge in Vermont
13. Robin Joy – Director of Research with Crime Research Group
14. Qing (Tsing) Ren – Evaluation and Program Analyst, Shelburne Farms
15. Xusana Davis – Executive Director of Racial Equity for Vermont
16. Jennifer Firpo – Vermont Police Academy
17. Shela Linton – Director of the ROOT Social Justice Center
18. Julio Thompson –
19. ORCA Media

Welcome & Introductions –

Each person introduced themselves to the group.

Announcements –

Xusana: Several criminal justice related study/working groups were just created, some of them are temporary. There is lots of analysis going on right now around disparities in different acts of criminal justice and law enforcement, and results will be out in a few months. This Panel should communicate with any of those groups that share overlapping themes.

Etan: Yes, we probably should. Brought up chat etiquette during virtual meetings. Please make statements directly in the meeting instead of using the chat function. It helps maintain the transparency of the meeting, so please make the statement in front of the whole group.

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Xusana: Would you like a tech monitor to pay attention to the waiting room?

Etan: Yes.

Xusana: Agreed to be the tech monitor.

Approval of the Minutes from the June Meeting –

Jessica: Motion to adopt minutes from June 14, 2022.

Shela: Seconded.

All for: 16 yeas.

All against: None.

All abstaining: Tyler, was not in attendance last month.

Continuation of discussion of the Panel's future directions – several subcommittees have been proposed and have met. They will lead discussions into their work, which will help describe these future directions for the Panel.

14 minutes

"Second Look" subcommittee –

Rebecca Turner, Appellate Defender, Office of the Defender General

Rebecca: Here to share information from the Second Look Subcommittee. Members on the Second Look Subcommittee are Evan, Erin, Wichie, Etan, Rebecca, and Qing. Looking to this Panel for feedback which the Subcommittee can use moving forward. When the Subcommittee last met, they discussed the landscape around Second Look legislation here in Vermont. Started with sentence reconsideration laws as enacted in current Title 137042 sentence reviews, which provides very narrow circumstances for a reconsideration of the sentence after it's been imposed. The sentencing commission voted in support of it, but it lost support from some states attorneys offices. Currently there is a 90-day posting limit for filing a request, after that time limit individuals are out of luck asking the court for review. There was a proposal to allow some flexibility in that and take away the time limit. This Panel could weigh in on that issue. Also, there is a midpoint review for probation imposed in both the criminal and juvenile system, which provides a look to see if the probation should continue. A limitation to this process is that it isn't automatic in the juvenile system, which provides for improvement. People have talked about alternative proceedings, getting out of the criminal court system to revisit the civil courts. The Second Look Subcommittee is only concerned with allowing a judge to revisit the sentence imposed. The Subcommittee looked at what other states and congress have done on this issue and found lots of models to work from. They discussed the general concepts that these various laws focused on with a goal of allowing a court to reevaluate previously imposed sentences after a specific amount of time to see if the sentence is still appropriate. There is also opportunity for a meaningful review with input from all sides to inject some objective criteria. Some other states have passed an automatic review of the sentence, so it doesn't require an affirmative action on the part of the juvenile or adult who's been

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sentenced. Various jurisdictions have looked at which sentences deserve a second look. Some jurisdictions have chosen to look at longer convictions to make sure they still match the original reasons for imposing them. Do longer sentences deter poor behavior? There is also some focus on the youth incarcerated and sitting in adult prisons. There has been consideration for the cost savings that comes with a shortened sentence as well.

Jennifer: Should this discussion be happening in the Sentencing Commission? It doesn't sound like victims have had a voice in any of this proposed legislation. What about the overlap between the Sentencing Commission and this Panel?

Rebecca: Both groups are looking at sentencing. There are some different people involved in each group, and this Panel has the specific focus of addressing racial disparities. Overlap is great, crossover committee members are good, but the work is being kept separate for now. The Second Look Subcommittee is focused on reform ideas getting to people who are already incarcerated.

31 minutes

Jennifer: People who have been harmed by crime also need to have their voices heard.

Evan: Shares concerns around victims that weren't referenced at the last Second Look Subcommittee meeting. It is unfortunately very easy for victims to get lost in criminal justice reform conversations. We need to be keeping victims in mind as well when we're talking about disparities. Doesn't recollect the Subcommittee deciding to work separately, but for the Subcommittee to work together with this Panel. Need to keep in mind how a second look is connected to this Panel's mission overall. Where are the disparities in sentencing? What are the causes of those disparities? Would second look legislation address those disparities? Wants to move forward in the correct manner, the Panel hasn't reached consensus on these points.

Etan: What parts of this are most important to this Panel? Marijuana legislation was used to get people off the street and put them away with the 3 strikes ruling. We are still cleaning up from that today. What do we have in Vermont that would be an analog to that?

Evan: What offenses are going to be eligible? At what point in someone's sentence are we going to start reviewing that kind of thing? 10-15 years seems to be the time some people have suggested should be used in second look legislation.

Shela: Acknowledged the depth of the conversation. Why the 90-day time limit? What's the why behind the creation of the law? What happens when laws change? What happens when laws change? Is there a second look for currently incarcerated individuals? Does it matter what the crime is when we're looking at racial disparities? Does the crime matter when taking a second look?

44 minutes

Rebecca: While looking for current legislation models for a second look, none seemed to have as a primary focus, or even mention, addressing racial disparities. We know from a lot of different sources that misdemeanors capture many people, bring them into the system, and keep them there. Going

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forward we should be centering the second look legislation on racial disparities. We know more black people in Vermont are likely to be charged with certain types of felony drug offenses. Do we want reform measures to have the retro affect? Understanding how we got to a place is the best way to figure out how to correct it.

Evan: There is a time limitation for seeking sentence reconsideration. This is to create finality for the defendant, finality for the state, finality for the community, and most importantly finality for the victim. The deadline is 90-days as it is in federal law.

Jennifer: Crime Victim Services has never opposed any of the movements towards expungement and sealing with respect to drug crimes. They want victims to be heard when it comes to crimes of personal violence, sexual assault, domestic violence, homicide, aggravated assault, etc. Those are cases where victims' voices should be heard.

Geoffrey: Victims of racial disparities are true victims of crime. When someone is a victim of racial disparities, they are a victim of something, which is illegal. Rejects the fact that that can be challenged. Just look at the disparities in the treatment of some police departments in this state, those people are victims, and that is against the law. They are sentenced and punished inappropriately.

Judge Thomas: Agrees with Evan on the part about the 90-days rule, it follows federal law, though not sure why they chose 90 days. The sentencing commission previously recommended that sentence reconsideration could occur after that 90-day period upon the agreement of the prosecutor who has the case, the defendant, and the judge. That did not go forward, and I would again note that that's an important provision when you're looking at racial disparities. If it's outside the 90 days, it cannot be done, thinks there should be something in the law to allow that to occur. Recognizes there's a second look, and some other aspects that are much more controversial, but hopes that this rule isn't. Everyone gets a seat at the table, the prosecutor has to agree, the defendant has to agree, the victim absolutely has an opportunity to be heard, and the judge has to approve it.

Shela: Is hearing there are some provisions in place for those that were involved in the case to look beyond the 90 days. In Vermont most leadership is white; doesn't that allow for the same racial disparities to occur within that group of prosecutors and judges? They are given the opportunity to have a different thought or understanding about the situation, but that opportunity doesn't mean it's effective in reducing the disparities. If it has reduced disparities in Vermont, wants to know how many times it's happened.

Evan: Right now, the law doesn't allow for a sentence to be reconsidered after 90-days. The sentencing commission proposed changing that but the proposal fell apart. We could create that in the law, but how do we know it will address racial disparities. We may change the law and allow that to happen, but we may find out in 5 years that prosecutors are only asking for a second look for white people. We know that there are biases in the system, and we have an idea for criminal justice reform, but we need to connect the dots between the two, and make sure the reforms don't exacerbate the disparities or create new ones. That should be the goal when coming up with these proposals.

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Shela: Remembers concern from a previous member of this Panel around some of these laws due to who would be liable. What position would it put the lawyers and judges in? Do they have immunity? Where's the accountability? Once recognizing the racial disparities, who's being held accountable?

1 hour

Juvenile Justice subcommittee –

Tyler Allen, Adolescent Services Director, Department of Children and Families

Elizabeth Morris, Department of Children and Families

Robin Joy, Director of Research, Crime Research Group

Marshall Pahl, Deputy Defender General and Juvenile Defender

Tyler: The Juvenile Justice Subcommittee has not met since the last meeting of this Panel. Recognizes there was robust conversation around this topic last meeting and is looking to Panel members for any outcomes or points of interest.

Elizabeth: There were 3 specific asks of the Juvenile Justice Subcommittee from the last Panel meeting: 1 – more detail on the information the Crime Research Group has provided, 2 – what is the Department for Children and Families in charge of, and 3 – data submitted to Office of Juvenile Justice and Delinquency Prevention.

Robin: Crime Research Group did a report (*Recidivism of Youth Ages 18-19 Adjudicated in Criminal Court*) at the request of the Department for Children and Families giving a baseline recidivism for 18- and 19-year-olds that were processed in the adult system. The idea was to see if recidivism would decrease after moving those individuals down to the juvenile system. If charged with a “Big 12” crime, then the individual is not eligible for juvenile court. While looking at that and removing those individuals from the study, a race analysis showed this would disproportionately affect black youth as they wouldn't get the benefit of going to the juvenile system. The benefit of moving to the juvenile court is not getting a criminal record. Examples of “Big 12” crimes are murder, manslaughter, sexual assault, aggravated assault, burglary in an occupied dwelling, mayhem, unlawful restraint, and more depending how they are listed. Most common are burglary of an occupied dwelling, and aggravated assault.

1 hour 15 minutes

Marshall: Chief Juvenile Defender for the State of Vermont since 2010. Focus on areas in the juvenile justice system where racial disparities are the most problematic. Focus tends to go where numbers are the greatest. Wants to focus on kids being charged as adults, which is a small number in Vermont. Even though it's a small number of individuals, the racial disparity is very important to pay attention to. The juvenile probation system is hands down better than the adult system in terms of carrying a criminal record, length of time under supervision, the effects of the supervision, how a person is supervised, what happens in the event of a violation, and what kinds of expectations a person is put under. When youth are put into the adult system, they are more likely to commit offenses in the future, and more likely to recidivate. 5% of the youth in Chittenden County are Black, but they consist of 40% of the youth

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charged as adults, down from over 50% years ago. Even though it's a small number of individuals, this is a persistent disparity. The damage is the greatest when excluding kids from the juvenile system. A lot of what's focused on in the juvenile system is dispositional things, like what happens to kids after they've been charged in the juvenile system, what services should be provided, and what conditions do they have to abide by. What's isn't focused on is the entry point, and the determination of youth or adult court system.

Rebecca: How does Vermont stack up to the rest of the country?

Marshall: There is dramatic racial disparity in every state and Vermont numbers are not the highest.

Rebecca: How do we trust those numbers?

Marshall: Trends are consistent year over year.

Julio: Is that the overall number?

Marshall: Yes, that is the overall number. Youth can only be transferred up to the adult court for a felony or for a "Big 12" offense.

Tyler: That's a thought-provoking statistic even though we are just talking about Chittenden County and not the whole state. The Department for Children and Families serves youths differently due to their emphasis on family, remaining in the community, community placement, and utilizing family support groups. That yields an opportunity for successful intervention around criminal behaviors. The challenge is to provide for public safety within that context. While we are talking about a small number of individuals, they also attract all the attention because the charges inflame and excite communities around public safety. Agrees the focus should be on the entry point first.

1 hour 29 minutes

Elizabeth: Continuing the conversation on what the Department for Children and Families is responsible for collecting and reporting from last month's meeting of this Panel. All the federal requirements stem from the Juvenile Justice and Delinquency Prevention Act which includes a lot of requirements, ethnic and racial disparity work is 1 piece of that. The Juvenile Justice and Delinquency Prevention Act was officially first put into implementation in 1974. In 2018 the Juvenile Justice Reform Act was signed into law, along with a new 3 step plan for addressing racial and ethnic disparities. 1) identify the problem, 2) develop an action plan, 3) evaluate outcomes. The Juvenile Justice Reform Act also required states to collect data related to racial and ethnic disparities among minority youth within the juvenile justice system at five points, including Transfer to Adult Court. They also require data from Arrest, Diversion, Pretrial Detention, and Secure Confinement. Arrests being defined as apprehension, stopping, or otherwise contacting them and suspecting them of having committed a delinquent act. Looking a little closer geographically at just Burlington, black youths make up 15% of overall youth, however they are 46% of youths arrested in Burlington. This is a trend from 3 years' worth of data from 2018-2020. Chittenden County also exhibits a higher rate of holding black youth securely than white youth in 2020, where 55% of youth held securely were black youth as opposed to 35% white youth held securely.

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Community Safety Reviews-Statewide Implications

Wichie Artu, RDAP

Etan: Wichie is looking for other community safety reports from around the state, searching for themes that have statewide application. Suggested the Panel all do that same activity. Recommending that subcommittees meet before next month's meeting.

What the RDAP will need to do in re facilitating the new Division of Racial Justice Statistics.

Answering the questions put to the panel by Xusana Davis at the June meeting

Etan: What does the Panel need from the Division of Racial Justice Statistics as far as reporting? Refresh requirements noted in Act 142, the enabling statute.

Next Meeting – 9 August 2022

Evan: Motioned to adjourn.

Shela: Seconded.

Adjournment