

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel  
6 – 8 PM on Tuesday, October 11, 2022  
Location: Microsoft Teams

ORCA Media recording of the live meeting:

- <https://www.orcamedia.net/show/october-11-2022-rdap>
- <https://www.youtube.com/watch?v=QJN7HVB3V-k>

Attendance List –

1. Etan Nasreddin-Longo – Chair of the Racial Disparities Advisory Panel
2. Timothy Lueders-Dumont – Legislative & Asst. Appellate Attorney, Vermont Department of State’s Attorneys and Sheriffs
3. Chief Don Stevens of the Nulhegan Band of the Coosuk, Abenaki Nation
4. Xusana Davis – Executive Director of Racial Equity for Vermont
5. Jennifer Firpo – Law Enforcement Certification and Training Coordinator, Vermont Criminal Justice Training Council
6. Grant Taylor – Panel Secretary
7. Erin Jacobsen – Codirector of the Community Justice Division at the Attorney General’s Office
8. Jennifer Poehlman – Director of the Vermont Center for Crime Victim Services
9. Jessica Brown – Assistant Professor at the Vermont Law and Graduate School
10. Elizabeth Morris – Juvenile Justice Coordinator, Vermont Department for Children and Families
11. Superior Judge Mary Morrissey
12. Qing (Tsing) Ren – Evaluation and Program Analyst at Shelburne Farms
13. Heather Simons – Executive Director of the Vermont Criminal Justice Council
14. Shela Linton – Cofounder and Executive Director of the ROOT Social Justice Center
15. Rebecca Turner – Head of the Public Division of the Office of the Defender General
16. Monica Weeber – Administrative Services Director, Department of Corrections
17. Wichie Artu – Data Warehouse Consultant and Social Justice Advocate
18. Reverend Mark Hughes – Executive Director, Vermont Racial Justice Alliance
19. Barbara Kessler – Co-Director of Fair & Impartial Policing and Community Affairs, Vermont State Police
20. Geoffrey Jones – Former Vermont State Police Trooper
21. ORCA Media

Announcements

Evan Meenan has left the group due to other responsibilities and Timothy Lueders-Dumont will be attending in his place.

Monica: Motion to approve the September minutes with corrections.

Shela: Seconded.

Minutes from September were approved.

Etan: The meeting will begin with a discussion of the recently completed audit of the Vermont Criminal Justice Council and the Vermont Police Academy (with reference to potential duties of this Panel).

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Invited Heather Simons to speak about the audit, some history of how it came about, reactions to it, and directions the Council is now planning to go in given the results of the audit. Then a discussion about anything this Panel needs to do next, if anything.

Heather: The nature of the report is comprehensive and specific, and it focuses only on Rule 13 and in-service training. There is a lot in this audit to go back and refer to, topics can be returned to later. The state auditor's office contacted the Council last summer, the auditing process was one of fifty things as priorities. Both the Council and the Academy are notoriously underfunded, people often confuse the two. The academy doesn't have a business office, staff had to move through transitions in leadership, unfunded mandates, and asking for new technology. They welcomed the audit process for multiple reasons, knowing it included a lot of work on their part. They were missing a lot of internal policies, there were procedures and guidelines instead of formal policy. It's not unusual that things become rule without getting written down. The auditors made it clear that their focus was on Rule 13, which are in-service requirements for law enforcement. They reminded everyone that it was the most basic assessment; what is the Vermont Criminal Justice Council mandated to do, and how do they record it? Recording training can be a challenge. Mandating training by number of training hours doesn't measure skill and proficiency. When law enforcement attends a training, the hours were being tracked. Some themes 1) How do we measure hours? For instance, if someone has a 1-hour training online and they finish it in 5 minutes, did they attend 5 minutes of training or an hour of training? Or if a 2.5-hour training has few attendees and the content is covered in 1.5 hours, does it count as 2.5 hours or 1.5 hours? 2) Training to proficiency and competency. It must be clear what they want staff to be able to do when they finish training. The council spent the most staff time on that topic and they knew they would have to provide more guidance on it. It would not be as easy as just changing the requirement for number of hours. The rest of the audit had to do with tracking. Human error is a large part of why they need to move to software and training tracking systems. Manually entering time into their own system is tedious and mistakes happen. Mistakes that were made were not issues of integrity. Need to be very clear when they say "training" and need to be careful when sending folks to events; some trainings are not trainings, they are meetings. Access to trainings has expanded with dozens of more options for people to choose from, causing issues with consistency, relevance, and tracking. Guidance becomes more complicated.

Shela: Why is it more about the time than proficiency? Some training is based on hours, but not about testing out, proficiency, or competency?

Heather: For this audit, they were looking at what the Council was mandated to do.

Shela: So, the training is just about the hours? Who came up with that concept?

Heather: It certainly isn't best practice in training, that is known. There are some trainings that are mandated in terms of numbers of hours. Will need to research where that method of tracking progress originated. When something goes wrong, leadership says "we need to fix it with number of hours of training". Any high liability training (corrections, law enforcement) takes about 30 hours to create 1 hour of in person training. Yes, currently the trainings are measured in hours.

Shela: Thank you for being candid and honest in this discussion.

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Heather: This all links together through all the work the Council needs to do to its internal policies and what the Council will require. There's a fair amount of work to do within the rules committee, and even with all those updates they will have to go back post audit to look at the rules that impact what the requirements might be for this in-service training. The in-service Rule 13 training also focuses on firearms, first aid, CPR, domestic violence, fair and impartial policing, and use of force. Wouldn't have gotten there on their own without an audit. Their responsibility to supervise the compliance of the agencies around their consistency and posting policies wasn't apparent. The auditors are very clear in how they interpret the law, and the mandate is that they need to be supervising the consistency with these policies. They agree with the audit and understand they have a lot of work to do. To be honest, most of the staff at the Academy have been asking for assistance for a long time already. They are not fully staffed, there's no IT, and no business office. They are welcoming attention and assistance from groups like this Panel.

Etan: This Panel is mandated to act in a support position to the Council. Are there things the Council needs from this Panel currently?

Heather: Anyone who wants to help, yes please, they need resources. There is not 1 single full time Fair and Impartial Policing trainer for all the efforts statewide. The Council is being asked to do a lot in support of those efforts, but there isn't a position dedicated to it. They have responsibilities regarding traffic stop data, a full curriculum assessment, a 3-year accreditation project; what does this Panel feel like doing?

Etan: The person who was working on that project isn't in the Panel anymore. The Panel is waiting to hear what the Council wants from them.

Heather: This Panel is supposed to give direction to the Council on trainings. What does this Panel want to see as a result of the trainings?

Etan: Okay, that is a clarification. Thank you.

Don: If this Panel is going to work out what it wants to see for outcomes, who determines what happens if those are not met? Two hours doesn't seem like an ample amount of time for the trainings. What would happen to an individual officer if this Panel's outcome measures were not met?

Heather: What needs to happen on the job needs to be determined by agencies and practitioners. Training guides along how to operationalize the change in policy, the shift in mission, or the shift in practices. There is a broad direction to go in or specific topics. Broadly they are moving towards a trauma informed academy, meaning they would be delivering content and scenarios that would be measurably informed, that there would be a full review of all their lesson plans, that this practice would be embedded into instructor development, and that would also be measurable. Specific topics would include one module or one set of activities, like just scenarios and building up scenarios that there is a system for here in Vermont. That we know 1) are relevant to the job, 2) are trauma informed, 3) are inclusive, and 4) cover all the bases in terms of defensible training. That's a big project but not huge, or it can be taken right down to one actual topic which is what the Fair and Impartial Policing committee under the Council is working on, how to direct training content and training content for the academy.

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Mark: We are dealing with some challenges that are systemic, and systemic breakdowns within the Council. We're talking about 1300 officers and 79 agencies, and the safety of 628,000 people across the state of Vermont. We are talking about Title 20, Title 2358, and Title 2368 the Fair and Impartial Policing Policy, race data collection, and training, which is why this Panel was established. When the group was created in 2017 the primary reason was a concern about compliance to Title 20, Title 2358, and Title 2368. Clearly there's some guidance and oversight that's not there. To give the Council some guidance on what these statutes actually mean and what their statutory responsibilities actually are, to make sure we don't have breakdowns like this in the future, that we don't have to rely on individuals to be able to ensure that compliance is sustainable. This is a joint justice oversight and Panel conversation, and the Council should be prescribed very clear guidance on what the expectations are regarding Title 20 as it pertains to them. There seems to be a relationship the Attorney General's office has with the Council. Think about what's hanging in the balance and the gravity this has on communities across the state. The requirements are there for a reason.

Wichie: Nice to be brought back to the original mission of this Panel and contextualize this Panel's existence. With changes always comes the concern about how it gets done. The concept of the amount of the responsibilities under our police forces currently, the police are burdened with too much responsibility when we talk about mental health or stopping homelessness. So when thinking about giving resources to training it's important to think about what we are giving resources to training for. How much are we concentrating on giving resources to diversify the ways we approach public safety?

Heather: The audit is the business of making sure we're heading in the right direction in Vermont. We only have 1 police academy in this state, which is an opportunity to standardize the messaging. Innovation is necessary and need to inspire people that more can be done, and to remember that while figuring out what the legal ramifications are and how much things cost, that someone is waiting on this work getting done, someone vulnerable, someone young, someone who has waited too long, and someone who needs to see change. Those folks don't really care about data and policy, they want to feel better and be safer. De-escalation training is a broad term that can be broken down to what is the quality of the interaction with everyone? How is language being measured? When bringing interpreters into a situation are we also interpreting body language and culture? While the audit brings some anxiety, it also brings optimism.

Feedback from Panel on the draft Language Access Proposal sent out after the last meeting

*Xusana Davis*, Executive Director of Racial Equity

Jennifer P: Shine a spotlight on some of the pieces that need to be bolstered. Vermont is a little different from other states in that it doesn't have a secondary language that is so dominant. How do we think about doing this moving forward?

Xusana: Will provide 3 question feedback form again.

Shela: In section 4 where it says considerate interpretation, being bilingual and being able to interpret are two very different things. I see that starting to get recognized in this document but not fully. When doing professional interpretation there is a question about what is meant.

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Xusana: Will make it clear that being bilingual is not interpretation in the final document. It's important to have proper education in this field and provide recourse to people who use interpretation services.

Shela: Next comment is from section 5 where it says "...multilingual liaisons and encourage their adequate compensation and training" would get rid of "encourage". Would actually like to give people a decent wage. People who are multilingual will often be tokenized for their ability to translate and never be compensated for that.

Xusana: Speaking as someone who has been used as a translator in different jobs, this document is saying that if state staff members are expected to translate or interpret that should be factored into their job expectations and they should be paid accordingly. This is true on the front end during the recruitment phase, and afterwards if modifying someone's duties. So the reason it says "encourage" is because this is a document that makes recommendations to state government, and because the state government does not hire the multilingual liaisons that work in the school district, and due to the advent of local control in Vermont, they are limited as to what they can force the school districts to do when it comes to who their paying and how much. So, what they can do is encourage very strongly the school districts to follow adequate pay protocols.

Shela: In section 11, where it says, "how can we ensure state employees can respond promptly", who exactly is responding to these types of complaints?

Xusana: There is a very broad swath of people who receive complaints, essentially everyone. For example, a complaint about the adequacy of a bathroom at a state park versus a complaint about civil rights violations or a tax department complaint. They each have different methods of responding to the complaints, who responds, when they respond, and through which communication means. This is the reason to create a unified and standardized complaint access policy, trying to create uniformity in the way they receive complaints.

Shela: In section 24, it says "...protocol may be different for state appointed interpreters versus complaints made against independent interpreters". Doesn't want to create us versus them scenario.

Xusana: The state will provide interpreters, but they're not going to force interpreters on people if they come with their own. If the state provides an interpreter and there's a problem, then the state has recourse for how to deal with it. If the interpreter isn't contracted through the state, then they may be limited in addressing the problem. Protocols will be different for dealing with them, the state cannot be every interpreter's boss.

Elizabeth: Department for Children and Families sees kids translating for their parents during hearings. Have there been any conversations about that, and how that could be approached in a better way? They have voiced this concern to the court system.

Xusana: Not everyone who is bilingual is an appropriate interpreter. Ideal outcome is to provide vetted and trustworthy options for interpretation, while not forcing interpreters onto people. People should be allowed to bring their own interpreter, while not feeling like they have to. There may be situations where this ends up happening again and a defendant may not know all their rights, would like to see a do over in those cases.

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Rebecca: Comments from sections 8 and 9, technology and resources. It is recognized that people of color are more likely to rely on mobile phones or tablets to access the internet. Section 9 talks about the 3 branches of government using different platforms to access remote proceedings with the legislature using Zoom, the executive branch using Teams, and the judiciary using Webex. Would like to see focus on uniformity of access itself, because nongovernment litigants can only access by phone putting them at a distinct disadvantage. Related to concerns about best practices, still seeing a failure in the judiciary to record the actual court interpretation. This provides no way to check later on if the interpretation actually meets the standards or is accurate.

Xusana: If we were to go with 1 platform across all government, would probably recommend ZOOM-GOV because it appears to have the greatest accessibility features. Alternately the recommendation would be that everyone knows how to use all 3 different platforms. In a state with broadband issues, simply connecting could be the problem let alone knowing how to use the platform.

Judge Morrissey: Some hearings including sign language, and there's no video recording of the conversation between the litigant and the interpreter. That needs to be addressed as well.

Elizabeth: Thinking about other types of supports for translators, specifically translators the Department for Children and Families might use. Wanting to make sure they don't feel like they're dropped in the middle of something, and that they are paid appropriately.

Xusana: Is the state going to pay for people to get licences or education? Is the state going to pay external entities to get their licences? What should the state be providing to external partners versus what do those external partners need to step up and take on?

Erin: Folks using interpreters should have the ability to reject services due to confidentiality or relationship reasons.

Discussion of the proffered definition of the term "racial disparities"

Etan: "Racial disparity is defined as existing in the criminal justice system when the proportion of racial/ethnic group within the control of the system is greater than the proportion of such groups in the general population". From an article titled "Reducing Racial Disparity in the Criminal Justice System: A Manual for Policymakers and Practitioners". Is this a definition that we can live with?

Timothy: Thinking about disparities across the spectrum, not just within the system, but in contact with the system in multiple capacities. Talking about disparities with respect to victims, victims' advocates, attorneys, judges, and police. Change from "within the control" to something like "in contact with the system in any capacity".

Elizabeth: Following up with what the Juvenile Justice and Delinquency Prevention Act defines as racial disparities, refer to it as a decision point.

Wichie: Doesn't feel the definition is tangible, there's something missing that lets us grab on and dictate policy.

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Shela: Wants more layman's definition, make it much more relatable, experiential; the language needs a shift.

Rebecca: Should be very clear from whose perspective it's being looked at. This is about the person who is charged with an offense.

Etan: No meeting in November. Next meeting will be Tuesday, December 13<sup>th</sup>.

Adjournment