

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, March 21, 2023

Location: Zoom Meetings

ORCA Media recording of the live meeting:

- <https://www.orcamedia.net/show/march-21-2023-rdap>
- <https://youtu.be/8yDblvXKTm4>

Introductions

1. Etan Nasreddin-Longo – Chair of the Racial Disparities Advisory Panel
2. Geoffrey Jones – Former Vermont State Police Trooper
3. Erin Jacobsen – Codirector of the Community Justice Division at the Attorney General’s Office
4. Derek Miodownik – Community and Restorative Justice Executive
5. Chief Don Stevens of the Nulhegan Band of the Coosuk, Abenaki Nation
6. Karen Vastine – Chair of the Children and Family Council for Prevention Programs
7. Grant Taylor – Minute taker for the Panel
8. Shela Linton – Executive Director of the ROOT Social Justice Center
9. Timothy Lueders-Dumont – Legislative and Assistant Appellate Attorney at the Vermont Department of State’s Attorneys and Sheriffs
10. Jennifer Poehlmann – Executive Director for the Vermont Center for Crime Victim Services
11. Rebecca Turner – Head of the Public Division at the Office of the Defender General
12. Julio Thompson – Assistant Attorney General, Director of Civil Rights unit
13. Jennifer Firpo – Training Coordinator at the Vermont Police Academy
14. Xusana Davis – Executive Director of Racial Equity for Vermont
15. Superior Judge Mary Morrissey – Judicial Representative on the Panel
16. Wichie Artu – Health Equity and Data Systems Consultant
17. Jessica Brown – Assistant Professor at the Vermont Law and Graduate School
18. ORCA Media

Approval of the Minutes from the October Meeting

Etan: Let’s discuss the minutes.

Shela: Motion to approve the minutes.

Erin: Only do a “role call” vote if it’s policy related vote.

Votes were presented by show of hand and in the chat, there were 3 abstentions.

Etan: The minutes from January are approved as submitted.

The Mandate of the RDAP/Act 54 of 2017 and its 2021 revision

Etan: The Panel came to be in 2017, as part of Act 54. It was organized within the office of the Attorney General, and it consults with the Human Rights Commission, the Vermont chapter of the ACLU, the

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Police Association, the Vermont Sheriff's Association, the Vermont Association of Chiefs of Police, and others. Initially it was comprised of 13 members, 5 members from diverse backgrounds representing interests of communities of color throughout the state. Including a Criminal Justice Council designee (Jennifer Firpo), an Attorney General designee (Erin Jacobsen), a Defender General designee (Rebecca Turner), a State's Attorneys and Sheriffs designee (Timothy Lueders-Dumont), a Chief Superior Judge designee (Judge Morrissey), a Commissioner of Corrections designee (Derek Miodownik), a Commissioner of Public Safety designee (Captain Barbara Kessler), an Executive Director of Racial Equity (Xusana Davis), and a Commissioner of Children and Families designee (Tyler Allen). The point of the Panel is to go through the criminal and juvenile justice system noting places where there have been significant racial disparities. The Panel is supposed to provide recommendations to the Criminal Justice Council and the Bar association. There's a report that the Panel is supposed to do every 2 years based on 3 prompts – 1) How to institute a public complaint process to address perceived implicit bias across all systems of state government 2) Whether and how to prohibit racial profiling, including implementing any associated penalties 3) Whether to expand law enforcement race data collection practices to include data on non-traffic stops by law enforcement. This was revised in 2021, so that the Executive Director of Racial Equity would become a full member of the Panel. The Executive Director could then appoint 2 more community members to the Panel as well (Qing (Tsing) Ren, and Wichie Artu). Another important revision had to do with the Panel NOT sunseting, it was originally supposed to.

In the original report from the Panel, there was not enough focus on juvenile justice. The Panel didn't pay enough attention to that aspect.

Whether or not to prohibit racial profiling, and if prohibited then what are the penalties? The original report said the Panel would wait on this issue.

The Criminal Justice Training Council has morphed into the Criminal Justice Council. The Panel has been unable to give them the information that Act 54 asked for.

"Second Look" subcommittee - an update

Rebecca: Second Look Subcommittee met 2 or 3 weeks ago and had a good discussion, having not met since before the new year. In January we heard from representatives of the Sentencing Project. They shared a proposal model legislation relating to Second Look. This Subcommittee is now meeting every 2<sup>nd</sup> Thursday of the month. Will begin identifying priorities and what they are hoping to achieve, what the objective is.

Tim: "In order for me to converse with the 14 constitutionally elected state's attorneys on this topic, I will need something to send them. So before talking about things, pre-assuming model legislation etc., I'm not in that space yet. Not to immediately start talking about it, but I think we need to discuss the discussion if that makes sense. Folks like myself then need to send stuff out. I can't represent anything other than having a technical discussion about the current state of the law."

Rebecca: Needed a reminder as members of the Subcommittee what their goals are, how they're going to work with each other, got into a process discussion. Getting ready to dig in, foreseeing some hard work ahead.

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Erin: They have discussed in the Second Look Subcommittee the fact that at one point, the Sentencing Commission also had a Second Look Subcommittee. Not sure if it is continuing work. Really important to keep this Panel's Subcommittee work separate from the other group, because the focus here is on addressing systemic racial disparities. Also, this Panel incorporates community voices where the Sentencing Commission does not.

Discussion of Representation - who is a proxy, and who is representing themselves.

Jessica: Is a community member appointee to the Panel and has been so for about 5 years. TJ Donovan was the Attorney General that appointed her. Upon issuing the first report there wasn't consensus on everything. If there wasn't consensus about a particular recommendation, there were addendum added indicating the opposing position. Talked a lot about process and reached consensus about how to put the report together. Anticipating that's what will be done with this year's report also. Has a new role now at Vermont Law and Graduate School, feels accountable to new colleagues. Would like the members of the Panel to state who they're representing or who they are accountable to.

Etan: Is a community member for the purposes of this Panel. Does informal polling of people in communities of color and LGBTQ communities. For the original report, consulted with the head of the Rutland NAACP, Outright Vermont, the Pride Center, the Sheriff's Association, the ACLU, and many more.

Erin: Is the designee from the Attorney General's office. The lines of communication are open, has lots of opportunities to check in with General Clark. Consults with others in the Attorney General's office as needed. Something like the report is something the Attorney General will see.

Mary: Is the designee from the Chief Superior Judge. Would check in with the chief superior judge in writing this report.

Xusana: Is the Executive Director of Racial Equity for the State of Vermont. Duality between personal opinions and those of the official position.

Shela: Is the founder of The Root Social Justice Center. Connection with the root BIPOC community. Part of that community. Would speak to the board. Doesn't represent everyone in the group.

Tim: Is the designee from the State's Attorneys and Sheriffs. Has worked in state and federal government for 12 and half years. Topic dependent checking. Help with technical assistance, criminal courts, staking out positions.

Rebecca: Is the Defender General's designee to this Panel. Unlike any other government entity represented on this Panel. Represent individuals, client centric. Communicates regularly with the Defender General.

Jennifer F: Designee of the Executive Director of the Vermont Police Academy. Will go back through the chain of command when signing off on the report.

Wichie: Wears different hats, brings in personal lived experience and organizational work. Health equity consulting.

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Geoffrey: Sees a sliding scale for most, the value of people on this Panel is the totality of their experience.

Derek: Is the Commissioner of Corrections designee to the Panel. Committed to a civil society model. Robust participatory democratic processes. Wants to be fully accountable. Institution is striving to be more permeable, more intersectional, and more emotionally intelligent about how it goes about doing its work.

Jessica: Appreciates everyone's willingness to participate in the discussion.

Community Safety Reviews from around the State

Wichie: One of the subcommittees formed is called the Community Safety Review Subcommittee. One thing that's come up in the last couple years is what do our systems of public safety, including police, look like? Pressure coming from the community, including a review of School Resource Officers at Brattleboro Union High School, Brattleboro town paid for a community safety review, Burlington did a community focused review of the police department, and Amherst Massachusetts did a public safety review. There are parts of these reviews that make recommendations that can only be made at the state level or could be made at the state level. He thinks it's worthwhile as a legislative advisory group to look at these and see if there's anything worth recommending to our legislature. Screen Sharing – Community Safety Review Workplan. There are 4 reports to look at currently. How often and when to meet needs to be decided by the members of the Subcommittee. Are there any questions?

Mary: What are we trying to achieve with this project?

Shela: This Subcommittee is to divide up the reports so it's manageable to read. Come back with questions, concerns, and ideas that have come out of this around policies. Not reinvent the wheel but make a proposal or suggestion to the Panel based on these other models that are working. Read the reports and bring feedback to the Panel if they have anything substantive in them.

Wichie: Yes, with the added detail that this Advisory Panel likes to think it's community driven, and half of these reports are community driven efforts.

Mary: Will there be follow up with the reports? Have their policies worked? Have they been effective in the way they were designed?

Wichie: From my standpoint we need to look at what policies got recommended. If we decide it's something we want to put in the final report, then we could follow up with the organizations that originally recommended them.

Shela: Yes, we will want to look at the examples, keeping in mind that there are many reasons things may not have gone a certain way. It might not be a state model that can be applicable, it might be where there was resistance in that community. Wants to be mindful that when we go down that road of figuring out have these been successful or not, that it's not the only determining factor about whether we decide to move forward with it. There are many differences within communities, and there's many different politics within communities. When looking at it statewide we should be weighing all these different variables. I will start this off by volunteering to help with this Subcommittee.

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Wichie: I am happy to answer questions through email after the meeting. We now have 3 official Panel members helping with this project.

Discussion of 2019 Report - what has happened, what still needs to happen

Etan: In writing the first report one of the big issues was the notion of protecting the work product as time went forward. We didn't want the recommendations that we came up with that year to somehow evaporate, like racism disappeared. Always wanted to go back to the report and talking about things that have and haven't happened and basing some of the 2023 report on those discussions. Went through the 2019 report and made some notes.

1) How to institute a public complaint process to address perceived implicit bias across all systems of state government. The Panel believes that the Human Rights Commission is the appropriate place to house a public complaint process to address implicit bias across all systems of state government. The Panel believes in agreement with Human Rights Commission leadership that additional resources are needed to prioritize race related bias complaints from across state government and resolve them in a timely manner. Outreach to various communities is needed, hasn't happened.

2) Whether and how to prohibit racial profiling, including implementing any associated penalties. We didn't adequately discuss this, and we promised in the report to discuss this issue and the present proposals in the future. Those proposals as follows – 1) Ensure that Vermont statutes track existing federal requirements with respect to due process for those with limited English proficiency. 2) Support the use of objective and simple screening tools by first responders including 911 operators, to assess the need for mental health or substance abuse treatment and the involvement of behavioral health experts. 3) Support the development and implementation of training designed to educate the public on the individual rights under federal, state, and local laws and community traditions. 4) Implement and expand the training for officers promoted into supervisory and managerial positions to ensure that people occupying those key law enforcement roles will hold all officers accountable on issues of race, racial disparities, cultural competency, and data collection. Xusana, could you speak to the 1<sup>st</sup> proposal?

Xusana: Language Access Proposal Update – Have submitted the language access plan, in January of this year. It went to the Governor, the Secretary of Administration, and the legislature. A few legislators have been championing it. Phase one and phase two project, seeking the rest of the funding in the next budget cycle. Did a webinar walk through for the public because it's 100 pages. Capacity dependent work for vital document translation. Make sure we have solid interpreters for all 3 branches of government. Looking to create a licensure program for language access. Waiting on the budget process to conclude.

Etan: That 1<sup>st</sup> proposal is moving, though not in the way it was originally imagined. The 2<sup>nd</sup> proposal is spotty at best. The 3<sup>rd</sup> proposal hasn't moved at all. The 4<sup>th</sup> proposal is moving along.

3) Whether to expand law enforcement race data collection practices to include data on non-traffic stops by law enforcement. The Panel spent a great deal of time on the issue of data collection. The Panel believes data collection is a vital issue, and one that needs to be addressed early as we grapple with the challenges and the injustice represented by racial disparity. Made a 75% move in that direction.

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Rebecca: Has the legislature or any of the chairs of the committees reached out to you (Etan) as Chair of this Panel on any pending legislation or bills?

Etan: Yes, on S14. Which was an act relating to reporting on justice reinvestment expenditures.

Rebecca: S4 directly impacts black and brown youth, possibly implicit because it's about adding more listed offenses requiring 14-year-olds and up to go right into the adult system. Is disturbed at the lack of reaching out to this Panel. There seems to be a strong connection between the Panel and bills relating to data, but not to the other subjects within the mandate.

Etan: Pretrial monitoring and risk assessment. While pretrial services are available statewide, they are not uniformly implemented. The question of encouraging and achieving uniform use of pretrial monitors has been raised with the hope that the legislature would turn some attention to this issue.

Tim: Judiciary put together the Mental Health Commission, which has 4 or 5 subgroups. He is on the Precharge and Post charge subgroups. There's some discussion around having pretrial services help dispose of cases before the typical criminal justice track picks up speed. Will keep this Panel updated on how that's going. Discussion of a summer study committee about alternatives to bail.

Etan: Never put a time schedule in place for any of the propositions in the original report. The 2023 report will reflect on the report from 2019. Mental health and substance use disorders, there's been a fair amount of discussion around that. The Panel believes in the expanded support of response teams that include experts in mental health and substance use disorders, licensed councilors, or clinicians who assist in responding to behavioral health situations and prevent excessive use of force. There are moves on this within the State Police. We did address staffing in the original report. Please look over the report and share what you feel about what progress has been made.

Xusana: Impact statement during the legislative process. In 2020 they had the impact assessment tool, updated it in 2022. Have been contacted by jurisdictions from around the country.

Etan: Establish a separate and independent judicial program that permits the criminal or family courts to divert eligible cases out of the court system pre conviction. Should look over this again to see where we all fall on this issue.

Rebecca: Would encourage the community members on the Panel to also look over the non-consensus report recommendations.

Etan: That is the quick and dirty overview of protecting our work product. Some things are moving, some things are moving despite themselves, some things are moving despite everyone's effort to make sure that they don't. I present this to give everyone a sense of where we're at, where things have gone from that report, so we can get a sense of what we need to write about this report and the recommendations within it in 2023. This is a part of protecting the work product from 2019.

From the chat – Tim: A FYI / Note on Home Detention this Legislative Session: The Administration, in the Budget, Recommended removing Home Detention Program (pre-trial) - this session. House Committee on Institutions halted this attempt to remove the program and made clear they would continue Home Detention DOC programming for the time-being, noting that I think less than 20 people are currently on

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Home-Detention. DOC and the Judiciary noted that they hoped to increase the number of recommendations for potential Home Detention awaiting trial or disposition.

From the chat – Derek: Of interest re: diverting eligible cases:

<https://legislature.vermont.gov/bill/status/2024/H.170>.

Derek: There was a summer session of the joint justice oversight committee that's been looking at the disaggregate way that restorative and alternative justice programs get funded from various state agencies including corrections, the office of the Attorney General, and the Department for Children and Families. There's a move towards some further exploration and streamlining that seems to track with that language from the non-consensus report to divert eligible cases out of the court system pre conviction. The link is to the short form bill that came out of the joint justice oversight committee.

Etan: Look over the 2019 report and double check against the current views of your agencies and offices. If there was a disagreement, is it still there. Some things are moving, some aren't. Use the 2019 report in creating the 2023 report. Make more detailed recommendations.

Shela: Is there a specific assignment from tonight's meeting?

Etan: Everyone go over the 2019 report and pick your top 3 issues. Bring those to the next meeting, April 11<sup>th</sup>.

Jessica: Motion to adjourn.

Shela: Seconded.