

## Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, April 11<sup>th</sup>, 2023

Location: Zoom Meetings

### ORCA Media recording of the live meeting:

- <https://www.orcamedia.net/show/april-11-2023-rdap>
- <https://youtu.be/7ROtwkI9fII>

### Welcome – 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. Derek Miodownik – Community and Restorative Justice Executive with Department of Corrections
4. Superior Judge Mary Morrissey – Judiciary Representative on the Panel
5. Rebecca Turner – Head of the Public Division at the Office of the Defender General
6. Attorney General Charity Clark – Attorney General for Vermont
7. Timothy Lueders-Dumont – Legislative and Assistant Appellate Attorney at the Vermont Department of State’s Attorneys and Sheriffs
8. Marshall Pahl – Chief Juvenile Defender, Deputy Defender General
9. Geoffrey Jones – Former Vermont State Police Trooper
10. Xusana Davis – Executive Director of Racial Equity for Vermont
11. Jennifer Firpo – Training Coordinator at the Vermont Police Academy
12. Shela Linton – Executive Director of the ROOT Social Justice Center
13. Grant Taylor – Minute taker for the Panel
14. Chris Louras – Research Associate with Crime Research Group
15. Tyler Allen – Adolescent Services Director, Vermont Department for Children and Families
16. Wichie Artu – Health Equity and Data Systems Consultant
17. Jessica Brown – Assistant Professor at the Vermont Law and Graduate School
18. Christine Hughes – Director of the Richard Kemp Center
19. Jennifer Poehlmann – Executive Director for the Vermont Center for Crime Victim Services
20. Matthew Bernstein – Office of the Child, Youth, and Family Advocate
21. ORCA Media

### Remarks from the Attorney General

*Charity R. Clark, Attorney General, The State of Vermont*

Charity: Is here to say hello and thank the Panel for the ongoing work it’s doing. She has been working in the Attorney General’s office for several years, has always seen strong representation on this Panel. Erin will keep her posted on issues that come up in the Panel. Happy to come back if there’s a topic to speak on, wants to show support for the Panel.

Shela: How can folks understand what you do in layman’s terms? Do you have something 8<sup>th</sup> grade reading level of what you do? Is that something that you have to give out to communities?

Charity: People are sometimes unaware of what the Attorney General does. Sometimes people get disappointed by things the Attorney General doesn’t do, but they are the responsibility of the Office of Public Safety, for example. There is some information on the website. She made a TikTok video explaining the Attorney General office’s work in one minute.

## Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, April 11<sup>th</sup>, 2023

Location: Zoom Meetings

Shela: Always looking for digestible information to share with varying populations. A lot of the language used on official websites is very heady. Sometimes there's confusion as to who is doing what. A quick synopsis for the recorded meeting would be helpful also.

15 minutes

Charity: The Attorney General's office, in short, is the lawyer to the state. They have 150 employees, almost 100 are lawyers. They have lots of different divisions, such as Environmental, Civil (Civil Defense), General Council Administrative Law (Department of Taxes, Agency of Transportation), Criminal (Internet Crimes Against Children Task Force, Medicaid Fraud Unit), Consumer and Environmental Protection (Civil Rights), and their Appellate Unit. They have a division for the Agency of Human Services. The Attorney General's office provides expertise in matters when possible. They provide information and support for legislators. The Consumer Assistance Program is a partnership between their office and the University of Vermont. Most Vermonters who interface with their office do so through the Consumer Assistance Program. They reach out to report scams, or with a consumer complaint they need help resolving. They get thousands of calls and emails every year through that office, and it's the most common way that people interface with their office. That's it in a nutshell.

### Update - Concerns in the Juvenile Justice System

*Marshall Pahl*, Chief Juvenile Defender, Office of the Defender General

Rebecca: Marshall Pahl is the Deputy Defender General, and head of the Juvenile Division at the Defender General. He came to a meeting of this Panel on 7/12/22 and talked about juvenile justice issues. He has been invited back to share some updates about things he spoke about previously.

Marshall: When he was last here, he described his role as Chief Juvenile Defender. Said he would return if there was any legislation that he felt called in the question of racial disparities. There is a bill right now that will have profound impacts on racial disparities in the juvenile legal system, S.4.

Marshall began a Screen Share at this point in the meeting.

S.4 is a big bill, and it does a lot of things. In doing these things, it also expands the Big 12. "The Big 12 are a list of offenses that are considered so serious that a young child – as young as 14 years old – is presumptively treated by the legal system as an adult, not a child." What that means is no confidentiality, a public proceeding, may be held in an adult jail or prison, and not likely to have access to age-appropriate services. Some of the Big 12 expansion makes sense, such as aggravated murder and aggravated sexual assault of a child. He is concerned about some of the expansion to the Big 12, including 1) human trafficking, 2) trafficking a regulated drug, and 3) carrying a firearm while committing a felony. This is where we stand to see the most change in how black and brown kids are charged in Vermont. It's wrong for all kids in Vermont to have these three offenses on the list.

First off, 14-year-olds are just not human traffickers. Any 14-year-old, even if they committed all the elements of the offense of human trafficking, that just means they are another victim of human trafficking. Human trafficking is a sophisticated offense, it's committed by sophisticated adult people. It is not committed by 14-year-olds. So, the idea that there's 14-year-olds out there committing human trafficking, and that they should be treated as an adult because of that, just does not make sense. The same is true for drug trafficking. In Vermont, we do everything that has to do with drugs by weight. Misdemeanor is possession of a small amount, felony is possession of a greater amount, distribution is possession of an even greater amount, and trafficking is you must possess a real lot of expensive drugs to meet the criteria for drug trafficking. This is not something that 14-year-old kids have control over, they don't have enough money, they don't have

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel  
6 – 8 PM on Tuesday, April 11<sup>th</sup>, 2023  
Location: Zoom Meetings

enough power, they don't have enough control to truly be controlling drug trafficking. While it's possible there may be children caught with enough drugs in their possession that they qualify to be titled drug traffickers, they're not. These are 14-year-old kids we are talking about; victims being used by older more sophisticated people. Same with children carrying weapons, children carry weapons. Adolescents like to carry weapons, there's no real racial disparity there.

When we get to the part where this is going to have a disparate impact on black and brown kids, it's not hard to see. Law enforcement came into Senate Judiciary and gave a presentation in support of this bill, and in support of expanding the Big 12 to include these additional offenses. We are already a state where black children are arrested 300% more frequently than their nonblack peers. They gave a presentation where they walked through 13 young people who they felt were particularly dangerous.

30 minutes

The reason for sharing these with you isn't to put these people out there, it's to show law enforcement's target is for the expansion of the Big 12. He scrolled through slides from the presentation showing the 13 cases involving youth, they were all black and brown. In a state where less than 5% of the youth are black or brown. That is the troubling part of this bill, and that's why it's being brought to this Panel's attention. His office opposes the expansion. Brought this to the attention of this Panel because it deals with racial disparities among youth.

Tim: There is a lot in the bill. The Big 12 is the transfer from the family division of the superior court, if looking at the statute. It allows for filing but doesn't demand or command it.

Marshall: Disagrees with that completely. The statute requires that they file in adult court, but then allows that they may not if they don't want to. Prosecutors do not have the discretion to file in juvenile court.

Tim: What I'm saying is that it doesn't demand that they file in criminal court. The senate committee took lots of testimony from different parties on this Bill. There was careful contemplation of the expansion.

Marshall: Prosecutors don't have the discretion to charge in juvenile court, they have the discretion to charge the Big 12 as youthful offender cases. If one is charged as a youthful offender, that is an adult deferred adjudication status. They would be put on probation, and if they violate their probation they will be sentenced as an adult. In an adult proceeding that is subject to an adult sentence, including punishment from adult court.

Tim: That's what I was trying to say, that the discretion to file as a youthful offender is the point I wanted to make.

Etan: Certainly, there was pushback during the testimony from you and your office, what were the responses?

Marshall: My characterization of the responses are as follows: "These are very serious offenses; they have very serious impacts on people and therefore should be treated by the adult criminal legal system. And not by the juvenile legal system." There are several studies looking at serious juvenile offenders, 16, 17, and 18 years old who were charged with serious violent offenses. They show that when these offenders were treated as juveniles, they were less likely to go on to commit further offenses in the future. When they were treated as adults, they were more likely to go on to commit offenses. There is a juvenile system for a reason, and often requires more out of defendants than the adult system.

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel  
6 – 8 PM on Tuesday, April 11<sup>th</sup>, 2023  
Location: Zoom Meetings

Rebecca: I testified on this Bill on behalf of the Office of the Defender General, on a different aspect. What were the committee's reactions to the discussion, as to the concerns of racial disparities? Was that considered by the committee members?

Marshall: My characterization would be no. It was raised but not discussed.

Tim: Marshall raised some issues; Rebecca raised some issues. There was a lot of discussion.

45 minutes

Geoffrey: What is the definition of weapons? There's a lot of room for that.

Marshall: To be clear this one is limited to firearms. Which uses the federal definition of firearms. Which excludes muzzleloaders.

Tyler: Some flexibility built into the system, around entering adult criminal court.

Erin: Flexibility and discretion. In the context of restorative justice, or whose case might be sent to a community justice center or diversion. A lot of people talk about geographic disparities, a lot of the disparities that exist are based on prosecutorial discretion, prosecutors have so much power in determining and deciding which cases go in which direction. Adding racial disparities to the picture, she finds it troubling that we rely on prosecutorial discretion to suggest that a kid might instead of presumably being put in adult court, instead goes to family court. That's where we find a lot of the disparities, is through the decision makers.

Etan: Is disturbed that someone "didn't want to be schooled" in adolescent brain science.

Marshall: General feeling was that the committee was in a rush, had a lot of witnesses, and wanted to move through them quickly. When it came to adolescent brain science, that's where they drew the lines.

Etan: This Panel has brought up the idea that these Bills should be read over by this Panel for crossover review. There has been no ask for this Panel to weigh in at all on this Bill. This is not a new issue.

Shela: Who gave testimony? Was it members of the BIPOC population? Was it impacted folks? There appears to be a difference of perspective around these issues. What I'm hearing is that we're not going to use brain science when it doesn't benefit us.

Marshall: None of the people who testified were from the BIPOC population. No youth testimony. It was the legal system stakeholders that testify on most bills.

Wichie: What is the status of this bill?

Marshall: It has crossed over and has been voted out of the senate recently. It will be in house judiciary sometime in the next couple of weeks.

Wichie: Wondering if it would be advantageous for this Panel to go in, or have a representative go in, to understand more about why this wasn't examined the way we feel it should be.

Matthew: I have not been following this and this discussion is quite useful. Getting those voices to testify on Bills like this is something that the Office of the Child, Youth, and Family Advocate can do going forward.

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel  
6 – 8 PM on Tuesday, April 11<sup>th</sup>, 2023  
Location: Zoom Meetings

1 hour

Erin: Important for us to raise our collective voice as a Panel. This Bill is only halfway through the process. We still have time to add perspective as a Panel. So, it's not always left to us to go knocking on the door, but it's up to lawmakers to come knocking on our door too.

Tim: Most of the Department of States Attorneys and Sheriffs supports S.4. Let's reduce the number of cases that are filed each year, we have an overworked system. Not in favor of slowing down S.4.

Xusana: This goes back to the idea of role and representation that we had last meeting. This is testament to why we need to have those conversations. The Bill that has been introduced is after vehement and stressful opposition from the Office of Racial Equity. Multiple rounds of the Bill have been submitted, and this is what they ended up with after the Office of Racial Equity went in on it. There have been some curious instances this session where the legislature isn't bringing in obvious entities on issues and bills, they should be brought in on. Is shocked that this Panel wasn't consulted on this Bill.

Etan: A letter from the Panel might be useful at this point. Is shocked because the Office of Racial Equity put together a good equity impact assessment tool. It's been talked about a lot. It doesn't seem that anyone looked at that while this Bill was drafted. We don't meet as a Panel again until May. It seems we all need to read this Bill and take some time to come back and talk about it.

Tyler: There are some elements of S.4 that the Department for Children and Families wants to see pushed through. My interest here is seeing the expansion of juvenile jurisdiction happen in a way that is meaningful and fruitful and that can continue in a way past what we've already envisioned. Able to support the needs of youth, able to do so with humility, and with an understanding of how our movement can lean into creating further disproportionality.

Rebecca: This is the correct time to make comments on the Bill. The point of the process is to review a bill in its pieces. House Judiciary sets their schedule on Fridays for the next week or so. We should know when S.4 will be taken up.

1 hour 15 minutes

Etan: Will email everyone about the Bill tomorrow morning.

Tim: We could invite a sponsor of the Bill to come and speak with us as a Panel.

Etan: I will send a link to the Bill to everyone in the morning and make inquiries further in the day.

Shela: From Marshall's presentation we see there are 3 specific things that we're looking to not have in the Big 12. Tyler referred to his office being in favor of parts of S.4.

Tyler: They have been having conversations about building out their residential system of care. One of the things this Bill does is it has a delay of the implementation of Raise the Age. That has to do with workforce capacity to manage the population. He wants to see Raise the Age go forward, but not in the wrong way. Several individuals from the presentation were 18-19 years old, and he wants to envision a juvenile justice system that can manage the needs of 18-19-year-old populations. He and the Department for Children and Families are for the delay of implementation.

Etan: Would like to move on in the agenda.

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel  
6 – 8 PM on Tuesday, April 11<sup>th</sup>, 2023  
Location: Zoom Meetings

Tim: If people have questions about how the Bill will impact what prosecutors do, he's happy to talk. Happy to talk about any questions people have about S.4.

Etan: Will invite a S.4 sponsor to come speak to the Panel at the May meeting. Possible special meeting needed.

Matthew: Willing to be part of a smaller group to look at this.

Etan: It appears something is needed from this Panel about S.4, maybe a letter.

Shela: Who is on the Panel that is supposed to report about things like S.4? It's not a letter, it's a little more accountability than that. Come to us, be accountable. This is what we're asking for, this is what we've said, this is what we need, this is what would work best for all of us. If that's what we've communicated and those people know that, then somebody could be accountable to this Panel.

Tim: This Panel wants to be one of the usual suspects. He will speak with Martin tomorrow and emphasize that this Panel wants to be heard. I thought we've had members of the legislature that have joined in the past.

Etan: They have joined the panel in the past. It seems they are here when interests align, but not the rest of the time. Mixed messages for the Panel. Sometimes the Panel comes up with great ideas and other times the Panel isn't even consulted. The Panel is interesting because it is made up of community members, governmental actors, and some people who are both.

Shela: This involves our youth of color in Vermont. This is why she wants the Panel to be focused on the juvenile system. Need to go really upstream.

1 hour 30 minutes

Etan: Would like to spend the rest of the meeting on the third item on the agenda, the State of Department for Children and Families Requests of this Panel. There was homework on this. Take good notes on this because it will be part of the framework for the report that is due in December.

### **The State of DCF Requests of the RDAP**

*Tyler Allen and/or Elizabeth Morris, Department for Children and Families  
(Panel members will weigh in here with their commentary upon the work presented to the  
Panel by Elizabeth Morris)*

Etan: What was concerning? Where do you want to go with the requests from the Department for Children and Families? What comments do you have after reviewing Emily Morris' notes?

Tim: He thinks the immigration topic is an important training avenue for prosecutors, defense attorneys, and law enforcement. One thing to add to the first section is immigration consequences, sometimes things seem small and are only a misdemeanor and then result in something greater. One of the ways our justice system could do a whole lot better is by warning people of immigration consequences.

Erin: Will train anyone who wants it about deportability of any criminal conviction or criminal activity. The Defender General's office trains the public defenders. At the next Fair and Impartial Policing training she will be presenting about immigration and what happens when someone is put in Immigration and Customs

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel  
6 – 8 PM on Tuesday, April 11<sup>th</sup>, 2023  
Location: Zoom Meetings

Enforcement custody. So, law enforcement on the ground has a good understanding of what happens to people when their apprehended by Immigration and Customs Enforcement.

Tim: That's stuff that could be included in a response from the 2019 report. Here's some things that are happening, it be good to capture that.

Tyler: If we want to be having a discussion of the juvenile parts of this, those are in blue a few pages down.

Rebecca: Xusana, Jess, and she tried to pull from various sources starting with the report from this Panel to draw out recommendations that they could put in one place. Tonight's discussion is focused on juvenile justice. A lot of these issues could overlap.

Etan: Do we want to spend our energy on having an impact on S.4? If so, we can put this aside for right now.

**Shela: She thinks that S.4 encompasses some of the areas this Panel should be focusing on. Should have a duality of the criminal adult and juvenile system or should focus on the juvenile system. She is really interested in mandated reporting, and how people choose to use that mandate. She is curious about first responders and how that relates to mental health specifically. Know your rights for youth. How are we informing our youth about their rights? These are some of the areas she would like this Panel to work on and support.**

1 hour 45 minutes

Tim: Sounds like the group wants to discuss S.4.

Geoffrey: It's unacceptable that this Panel didn't hear about that Brattleboro report.

Etan: We've had a full meeting.

### **Approval of the Minutes from the March Meeting**

Tim: Motion to approve the minutes from the last meeting.

Rebecca: Seconded.

Motion passed.

### **New Business**

Shela: Youth dance at The ROOT Social Justice Center.

Derek: Is there any intersection between the work of the newly created Truth and Reconciliation Commission and this Panel? What synergies may be explored there?

Etan: Noted for next meeting.

**Next Meeting** – 9 May 2023

Jessica: Motion to end the meeting.

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6 – 8 PM on Tuesday, April 11<sup>th</sup>, 2023

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Tyler: Seconded.

Motion passed.

**Adjournment**