

From: "Jacobsen, Erin" <Erin.Jacobsen@vermont.gov>

To: "Nasreddin-Longo, Etan" <Etan.Nasreddin-Longo@vermont.gov>

Subject: RE: A Request - RDAP

Date: Tue, 04 Oct 2022 15:49:09 -0000

Importance: Normal

Attachments: 2d_Look_Research_as_of_10-4-2022.docx;
Compilation_of_Reports_and_Recommendations.040622.docx

Hi, Etan, and with apologies for the delay.

I'm attaching 2 documents, which are the only docs in the AGO sharepoint that I believe would be considered RDAP "works-in-progress." They are:

1. The Compilation of Reports and Recommendations doc that Rebecca, Jessica, and Xusana put together earlier this year;
2. The research doc the 2d Look subcommittee has put together, current as of my attaching it just now.

I don't see any other living docs in our Sharepoint. I would note that there is a "Community Safety Reports subcommittee" subfolder, but there is nothing in it. I believe Witchie is heading that up. I checked my emails from the time when Witchie was unable to access the sharepoint and did not find anything that I was supposed to save to that folder. But it is always possible that I missed something.

Let me know if you think I'm missing anything specific, and I'll dig.

Cheers,
ej

From: Nasreddin-Longo, Etan <Etan.Nasreddin-Longo@vermont.gov>

Sent: Monday, October 3, 2022 12:31 PM

To: Jacobsen, Erin <Erin.Jacobsen@vermont.gov>

Subject: Re: A Request - RDAP

Dear Erin:

Whenever is fine. I am just grateful that you can do this. Thank you!

E

From: Jacobsen, Erin <Erin.Jacobsen@vermont.gov>

Date: Monday, October 3, 2022 at 12:29 PM

To: Nasreddin-Longo, Etan <Etan.Nasreddin-Longo@vermont.gov>

Subject: RE: A Request - RDAP

Hi Etan,

I would be happy to do this, but will not be able to get to it until later this afternoon. Meetings Mondays!
erin

From: Nasreddin-Longo, Etan <Etan.Nasreddin-Longo@vermont.gov>

Sent: Monday, October 3, 2022 10:32 AM

To: Jacobsen, Erin <Erin.Jacobsen@vermont.gov>

Subject: A Request - RDAP

Dear Erin:

This is kind of a big ask, and it may not be possible. If you could, could you send me all of the RDAP documents upon which we're working as email attachments? That's all, and yet it is a large ask. I utterly understand if you cannot do this. Please, if you can, just let me know if this is simply not possible.

Fondly,

Etan

Second look in other jurisdictions

Existing second look laws (FAMM)

<https://docs.google.com/spreadsheets/d/13a-FuNUNGaphzq-GsAd8E54veaZhU nWkmh2gxy-iCs/edit#gid=424360088>

Second look legislation in states (FAMM, last updated June 2021)

<https://docs.google.com/spreadsheets/d/13a-FuNUNGaphzq-GsAd8E54veaZhU nWkmh2gxy-iCs/edit#gid=0>

Additional Resources

State	Program/Resource	Link
CA	Recall and Resentencing Referral Program	https://www.cdcr.ca.gov/family-resources/recall-and-resentencing
LA	Louisiana Board of Pardons and Committee on Parole	https://doc.louisiana.gov/imprisoned-person-programs-resources/pardons-parole/
DC	<i>THE EFFORTS TO HELP THOSE ELIGIBLE</i> The Public Defender Service, the Georgetown Law School's Criminal Justice Clinic, the Second Look Project, and the Justice Policy Institute have been working together to identify those people who are eligible to file motions for reduced sentences pursuant to the Second Look Amendment Act and IRAA. The group is also recruiting, training, and consulting with pro bono teams from law firms who are willing to work on Second Look IRAA cases. (These law firm legal teams will be volunteering and working on these cases free of charge). The process of pairing eligible people with pro bono legal teams takes considerable time and effort. There are several hundred people who became eligible for IRAA when the SLAA went into effect. There are more eligible people than there are legal teams able to take the cases pro bono. One key factor for priority is the number of years an eligible person has been incarcerated, with greater priority given to those who have been incarcerated longer. For example, a person who has been in prison for 30 years will likely have higher priority for a pro bono legal team than a person who has been in prison for 15 or 16 years. [Identification of eligible defendants]	https://www.pdsdc.org/need-legal-advice/second-look-amendment-act
IL	Criminal Law Handbook by Chapter	https://www2.illinois.gov/osad/Publications/DigestbyChapter/

	The Illinois Handbook of Criminal Law Decisions contains summaries of significant decisions. The Handbook is organized by topic, and decision summaries are added as cases are decided. Chapter 9. COLLATERAL REMEDIES	CH%2009%20Collateral%20Remedies.pdf
OR	Lane County, OR Discretionary Resentencing Review [Has information about victim notification and input]	https://cdn5-hosted.civiclive.com/UserFiles/Servers/Server_3585797/File/REV.Standards%20for%20Discretionary%20Resentencing.pdf
OR	SENATE BILL 819 PETITIONS Answers to common questions about petitioning for reconsideration of an Oregon conviction and/or sentence. [Easy to read materials for convicted defendants]	https://static1.squarespace.com/static/524b5617e4b0b106ced5f067/t/622b795c0fa08527f55a05ca/1647016285766/SB+819+FAQs.pdf
WA	Department of Corrections - Resentencing	https://www.doc.wa.gov/corrections/justice/sentencing/resentencing.htm
Federal	Debevoise's Holloway Project and "Second Looks": How Challenging One Discrete Racial Inequity in Federal Criminal Justice Can Help Produce Systemic Change [Considers second look as an approach to reduce racial disparities]	https://online.ucpress.edu/fsr/article/33/5/319/117727/Debevoise-s-Holloway-Project-and-Second-Looks-How
Federal	Ameliorating the Federal Trial Penalty through a Systematic Judicial "Second Look" Procedure JaneAnne Murray University of Minnesota Law School [Recommendations made by Model Penal Code of American Law Institute] 1. A "Second Look" After 10 Years in Non-Violent Cases, 15 in Violent Cases. 2. Unconstrained by Mandatory Minimum Penalties. 3. Before the Original Sentencing Judge, Advised by a Panel of Federal District Judges. 4. Substantive Resentencing - federal sentence modification procedure should be a resentencing based on current circumstances.	https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1660&context=faculty_articles

	5. Appointment of Counsel. With de novo sentencing, it is critical that an eligible inmate has counsel. 6. Right to Appeal.	
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Vermont data/data gaps re: disparities

DOC population data

<https://doc.vermont.gov/content/population-data>

Data from other jurisdictions re. disparities

Questions we want to ask and answer - what would the structure of 2d look in Vt look like

What are our metrics for success

RDAP Reports

RDAP Recommendations, December 9, 2019 (p. 4-5) [[link to report](#)]:

- Ensure that Vermont statutes track existing federal requirements with respect to due process for those with limited English proficiency. For example, expand the rights established in 1 V.S.A. §§ 337, 338 for Deaf and Hard of Hearing individuals to those who have limited English proficiency and require use of competent language interpreters as needed. Amend the scope of these statutes to include juvenile delinquency proceedings.
- 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.
- Support the development and implementation of training designed to educate the public on their individual rights under federal, state, local laws and community traditions. The training should be focused on the people most affected by racial disparities and include training on where to report racially disparaging experiences.
- Implement and expand 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. Continue and enforce high standards of training for all law enforcement officers to ensure cultural competency and education about issues related to race, racial disparities, cultural competency, race relations, and data collection.
- Expand and support the use of community policing approaches to law enforcement. Community policing encompasses a variety of philosophical and practical approaches to law enforcement, though at its core, it aims to bridge gaps between police and diverse communities in order to build trust and mutual understanding. The community policing model helps to break down barriers between law enforcement and the communities they serve, resulting in improved information exchanges, more transparency, and less susceptibility for implicit biases to influence decision-making.
- The Panel did not adequately discuss associated penalties. The Panel will discuss this issue and present proposals in the future.

RDAP Non-consensus Recommendations (see report above, p. 9-10):

- 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. [ODG, AGO, judiciary supports; SAS disagrees.]

- Clarify that when considering the totality of the circumstances in assessing the lawfulness of a search and seizure, racial bias may be a relevant factor in this analysis, consistent with federal and state law. See, *Zullo v. State*, 2019 VT 1, ¶ 84. [ODG supports; SAS, AGO, judiciary disagree.]
- Expand the list of offenses that qualify for Diversion. All alleged offenders, regardless of criminal history, are presently eligible for Diversion under the Tamarack Program, unless an individual is accused of a listed felony (this list is found at: 13 V.S.A. § 5301). Common Justice, an alternative-to-incarceration and victim service program in New York City at www.commonjustice.org.
- Establish community-level boards made up of local law enforcement, DCF, the State's Attorney's Office, and public defenders, as well as community members, to review and respond to racial justice issues.

Policing

Traffic Stops

- Autilio, P., N. Brooks, and S. Seguino. 2022. "[Did COVID-Induced Reductions in Vermont Traffic Stops Lower Racial Disparities?](#)" (PDF) University of Vermont and Cornell University.
 - Background:
 - Statewide, traffic stops fell by 40% in 2020. But almost one fifth of agencies *increased*, rather than decreased their stops.
 - Amongst agencies that reduced stops in 2020, the lower number of traffic stops appears to have contributed to a narrowing of racial disparities in arrest and search rates. There were 30% fewer arrests of Black drivers in 2020, while arrests of white drivers fell 20%. Thus, although Black drivers are still more likely to be arrested than white drivers in Vermont, arrest rate differences declined in 2020.
 - About 20% of Vermont law enforcement agencies actually increased their traffic stops by 30% last year. Stops by these 17 agencies comprised 7% of all stops in 2019, rising to 16% in 2020. Most notably, Wilmington increased stops by 109%, Dover by 80%, and Franklin County Sheriff's Department by 57%. (See the table below).
 - More than half the agencies that increased stops in 2020 increased stops of Black drivers by a higher percentage than of white drivers.
 - Statewide, there was little impact on racial disparities in stop rates. For the state as a whole, stops of white drivers decreased by 40%, but only 38% for Black drivers.

- Recommendation: Ban pretext stops
 - Philadelphia: Walsh, Sean Collins. "Philly has become the first big city to ban minor traffic stops said to criminalize 'driving while Black.'" The Philadelphia Inquirer, October 14, 2021.
<https://www.inquirer.com/news/philadelphia-city-council-isaiah-thomas-police-driving-while-black-20211014.html>.
 - Virginia: The state passed new legislation that serves to limit pretext stops: <https://justiceforwardva.com/pretextual-policing>; <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5029>
 - Oregon, New Mexico courts have ruled under the state constitution
 - Texas and Massachusetts considering passing similar legislation

Police Accountability and other reform proposals

- **Brattleboro, VT, December 31, 2020, Final Report on the Community Safety Review Process** [\[link to report\]](#)
- **Background:** The Community Safety Review Process sought to understand the current state of the community safety systems in Brattleboro and their impact on community members' actual experiences of safety, danger, or harm.
- **Recommendation #1:** Acknowledge and Reckon with Harm Caused
 - Consider the community experiences, data, findings, and recommendations articulated in the report.
 - Publicly acknowledge and accept the experiences of racism, discrimination, intimidation, fear, terror, and harm detailed in the report, in public forums, and in the community.
 - Publicly commit as a Town/Selectboard to acknowledge and address systemic racism/white supremacy, ableism and sanism, homophobic and transphobic discrimination, and classism in an ongoing way.
 - Operationalize this commitment in budgets, time commitments, and work tasks as part of ongoing regular practices to avoid a return to "business as usual."
- **Recommendation #2:** Increase Accountability
 - Improve data integrity in collection and analysis
 - Address gap in reporting race data in traffic stops and all data collection
 - Address gap in graphic mapping data – obtain functionality to map police contacts and develop a plan to capture and review these data to better analyze and be accountable to geographic data to reduce over-policing of identified neighborhoods
 - Disband the Citizen Police Communications Committee and hold a process centering and compensating people of color leadership to determine the best mechanisms for systemic accountability.
 - Suspend the use of paid administrative leave for police under investigation for acts of harm and for police who are charged with a violent crime through change in policy.

- Withhold pensions and do not rehire police who are involved in excessive force violations.
- Freeze all increases to the training budget and focus on effective and efficient utilization of current training budget.
- Prepare a training plan that includes an assessment of each supervisor's and officer's training needs and level of receptivity and readiness as well as paid consultation with local content experts from impacted communities to develop accountable and effective training plans with demonstrable and measurable outcomes.
- **Recommendation #3: Meet People's Basic Needs and Build Up Alternatives to Policing and Police-Like Safety Responses**
 - Prioritize spending on safe housing for all, food shelves, free meals, community gardens, land trusts that allow marginalized people to take ownership of food production for their communities, and spaces for belonging and connection in neighborhoods for all community members, centering those most in need.
 - Invest resources in new and existing programs that respondents identified as the most helpful to their safety, such as mutual aid support networks, BIPOC-run programs, local organizations that provide voluntary support, and places for belonging and connection that are decoupled from policing.
 - Review and consider models for totally voluntary and noncoercive supports run by the communities they are designed to support, in the form of neurodivergent, psychiatrically labeled, psychiatrically disabled, mad, and psychiatric survivor-led mobile-ready response, a crisis/freak-out space, and unlocked, homelike crisis beds. Work collaboratively toward implementation of alternative mental health supports.
 - Invest in community-sponsored mutual aid and skill sharing.
 - Invest in restorative justice practices at all levels, especially at the neighborhood level.
 - Review and consider models for neighborhood and community training around de-escalation, holding space, and directly supporting those in distress, NOT training that advocates for calling authorities or assessors or that bring people into more contact with police or mental health crisis response. Invest in neighborhood and community groups developing these skills.
- **Recommendation #4: Reduce Police Presence and the Role of Policing**
 - Refuse militarized equipment.
 - Commit to Fair and Impartial Policing, including by adopting ***No Mas Polimigras Fair and Impartial Policing Policy***, which limits police collaboration with ICE.
 - Review Project CARE (Community Approach to Recovery and Engagement) impact and outcomes. Move Project CARE funding to COSU (Consortium on Substance Use) or out of the police department, and have a

transparent, accountable process around its function and any associated hiring.

- Increase accountability around harm, ineffectiveness and inefficiency of use of police resources for traffic stops, including analyzing racial disparities in traffic stop data.
 - Consider steps to decouple traffic safety management from the police with development of a non-police, unarmed traffic safety management division.
 - Eliminate police social work liaison program. Use funding to invest in noncoercive supports as alternatives to police and police-like interventions in mental and emotional health, housing, and access to family support.
 - Work to decouple police from welfare checks.
 - Work toward alternatives that do not use force, coercion, or (psychiatric) incarceration to support individual and community mental health and wellness.
 - Reduce and work towards eliminating public relations/community policing initiatives such as public speaking engagements, which disproportionately alienate marginalized people and do not create safety. Remove community engagement quota for officers. Improve community relations by focusing on acknowledging, reducing, and eliminating harm.
 - Disarm police for nonresponsive tasks like community speaking, meetings, and community events.
 - Decouple responses to animal problems from the police.
 - Commit to no more budget increases for policing (beyond cost of living increases).
 - Reduce overtime budget and usage and work towards reducing the size of the police force over time, as alternative approaches to community safety are created, funded, and implemented.
- [VT-ACLU 10-pt reform proposal](#), with endorsements from Justice for All, Migrant Justice, Outright Vermont, Planned Parenthood Vermont Action Fund, Pride Center of Vermont, Rights and Democracy, Vermont Branches of the NAACP, Vermont Businesses for Social Responsibility, Vermont Center for Independent Living, Vermonters for Criminal Justice Reform, Vermont Human Rights Commission, Vermont Legal Aid, Vermont Public Interest Research Group, Voices for Vermont's Children, Women's Justice and Freedom Initiative.
 - End qualified immunity. Vermont law shields officials who abuse their power from meaningful accountability. State lawmakers need to disincentivize police misconduct.
 - Remove police from schools. The presence of “school resource officers” (SROs) disproportionately harms students of color, students with disabilities, and low-income students. We must end the use of police in schools and invest in educational support services.

- Limit police involvement in low-level offenses. We must prevent unnecessary police interactions which disproportionately impact people of color. That includes limiting police involvement in mental health crises, authority to conduct “consent”-based searches, and discretion to cite or arrest for petty offenses like “disorderly conduct.”
- Ban police use of military-grade equipment and techniques. Police militarization is unnecessary and dangerous. Giving police military equipment encourages the use of paramilitary tactics with civilians, including no-knock raids, as well as abusive “crowd control techniques,” such as use of pepper spray, rubber bullets, tear gas, and sound canons.
- Prohibit use of new and invasive surveillance technologies, including new surveillance technologies, advanced or autonomous weaponry, facial recognition software, and predictive policing technologies.
- Require appointment of independent counsel outside of State’s Attorneys and the Attorney General’s office to review and prosecute police misconduct.
- Increase transparency so that police misconduct cannot be concealed. That includes ending confidentiality for officer disciplinary records and other limits on public access to information.
- Require robust, systemwide data collection and analysis from police, prosecutors, courts, parole board, and Department of Corrections to detect and eradicate systemic racism.
- Establish community control and authority over law enforcement, including over police priorities, transparency, and discipline, and end collective bargaining agreement provisions that limit oversight and accountability.
- INVEST in communities, not policing. It is time to demand that our laws and our investments match our values as Vermonters, and to affirm that Black Lives Matter. Local and state policymakers must prioritize people and communities, not policing and prisons.

Prosecutorial Practices and Policies

Justice Reinvestment II Working Group Recommendations, November 17, 2021:

- Develop internal guidance to increase consistency in charging and plea-bargaining decisions within state’s attorneys’ offices.
 - Ninety-nine percent of cases in Vermont are resolved through the plea-bargaining process.

- State’s attorneys should explore the use of internal guidance to increase consistency in charging and plea-bargaining decisions. Guidance should focus on when and what to charge, particularly for drug-related cases, as well as provide a framework for guiding discretion during the plea-bargaining process.
- To monitor implementation of internal guidance, offices should regularly collect and examine charging and plea-bargaining data as well as consider establishing a process for internal review prior to charging.

Examples of Prosecution Office Policies and Memos:

- Office of the Chittenden County State’s Attorney Non-Public Safety Stop Policy – updated January 7, 2022 [\[link to memo\]](#)
- Former Suffolk County District Attorney Rachel Rollins Policy Memo, Mass, 03/2019 <https://www.suffolkdistrictattorney.com/s/The-Rachael-Rollins-Policy-Memo.pdf>
 - A 2021 study, “Misdemeanor Prosecution”, [link: https://www.nber.org/system/files/working_papers/w28600/w28600.pdf] by Amanda Agan, Jennifer Doleac, and Anna Harvey offers a rigorous analysis of the effects of Rollins’ non-prosecution policy. The study found that by shifting to a presumption of non-prosecution of 15 low-level, non-violent offenses, the DA’s office increased by 15 to 20 percentage points the rates of non-prosecution for all nonviolent misdemeanor cases, not just the 15 on the DA’s list. More importantly, increasing rates of non-prosecution led to reductions, on the order of 56 percentage points, in new criminal complaints within one year of the current case, with no detected increase in reported crime.
- San Francisco District Attorney’s Office policy directive: “Declination of Contraband Charges Based on Pretextual Stops.” [\[https://drive.google.com/file/d/1O5GqKD76M7ystoWaOnKnWnsne9D-hMx0/view\]](https://drive.google.com/file/d/1O5GqKD76M7ystoWaOnKnWnsne9D-hMx0/view)

Decriminalization, Reclassification, Diversion and Pretrial Services, Sentencing Alternatives

Justice Reinvestment II Working Group Recommendations, November 17, 2021:

- Apply a race equity lens to the **reclassification of drug offenses by:**
 - **Reclassifying lower-to-mid level felony drug possession offenses to misdemeanors; and**
 - **Reevaluating the threshold of the highest level of possession and sales to better reflect significant amounts of drugs intended for distribution.**

- Establish **non-binding sentencing guidance** or consider **presumptive probation** for certain drug and property offenses.
 - To address racial disparities in incarceration for felony drug and property offenses for similarly situated defendants, Vermont should pursue either non-binding sentencing guidance or establishing presumptive probation for certain offenses to inform discretion related to incarceration decisions.
- **Identify and address any racial disparities in diversion and pretrial services.**
 - Studies have found that Black, Indigenous, and People of Color (BIPOC) are often less likely to receive diversion than White people.
 - Vermont should require the collection and reporting of race and ethnicity data in the Attorney General’s Pretrial Services and Court Diversion Report, as well as in any other statewide diversion programs, for the purpose of identifying and addressing disparities in program access and use by county.
- CSG presentation, 11/17/21 [\[link to presentation\]](#), Recommendations, 11/17/21 [\[link to recommendations\]](#), Final Report, 01/2022 [\[link to report\]](#)

Decriminalization and Policing Working Group of the Roundtable on Racial Disparities in Massachusetts Criminal Courts, Recommendations, March 2022:

- Background: “Mass misdemeanor criminalization is one major driver of racial disparities in arrests, prosecutions, and convictions, decriminalizing many such offenses should result in reductions in racial disparities. However, reductions in racial disparities have not always followed cities’ and states’ decriminalization efforts.”
 - “[F]our categories of decriminalization include *substitution*, *de facto decriminalization*, *pure decriminalization*, and *reclassification*.”
 - “Attention to categories of decriminalization illuminate ways that such policies can often fall short of stated goals, including reducing or eliminating racial disparities.”
 - “Since narrowing the scope of policing is critical to effective decriminalization, decriminalization should emphasize the enforcement of sanctions as well as the reduction or elimination of sanctions.”
 - Decriminalization policies that have been purely sanction-based have done little to minimize racial disparities in arrests because a primary mechanism for such disparities – law enforcement behavior – remains untouched.
 - Law enforcement maintain essentially unrestrained latitude in who they stop and why. This discretion is a primary reason why disparities can persist and even

worsen: although the absolute number of arrests do decrease, police continue to disproportionately target Black and Brown individuals in enforcement.

- Recommendations:
 - “Pure decriminalization (which is most often accompanied by reclassification) should be more effective in mitigating racial disparities in arrests than the former two approaches as it indirectly limits police’s enforcement powers.”
 - “Reclassifying offenses as civil rather than criminal violations – or even better, completely eliminating the classification of – should limit law enforcement contact as pretextual searches and arrests must theoretically be conducted only on the basis of an alleged criminal, *not civil*, violation.”
 - “Formal reclassification, however, is not always enough to curtail the practices that bring people into the sanction process in the first place: police stops and arrests. [A]bsent legislation that directly narrows police discretion in pretextual stops, changes to the sanction alone can prove insufficient in mitigating disparities in arrests.”
 - <https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pci/files/reducing-racial-disparities-through-decriminalization.pdf>

Vermont Prison Climate Surveys from incarcerated persons and correctional staff, UVM – Justice Research Initiative, December, 2021 [[link to report](#)]

- Background: The purpose of Prison Research and Innovation Network is to better understand prison environments; enhance prisons’ data collection capacities to promote transparency and accountability; and design, implement, and evaluate evidence-based programs and policies to improve conditions for individuals incarcerated in and working in prisons. PRIN is a 4.5 year project taking place from January 2020 to June 2024.
- Phase I (January 2020 – December 2021): Researchers at the University of Vermont developed two Prison Climate Surveys - one for correctional staff and one for incarcerated persons. Both surveys were developed using participatory research methods, elevating the voices and perspectives of correctional staff and incarcerated individuals. Surveys were developed and administered in Southern State Correctional Facility (SSCF), the PRIN pilot facility, in June 2021 - just over one year into the Covid-19 pandemic. More than 70% of SSCF staff and incarcerated persons completed the surveys. Summary results of Vermont's Prison Climate Surveys are presented in this report.

Miscellaneous Racial Equity Topics

Racial Equity Task Force Reports (XD)

Report 1 [[link to report](#)]

- 37 Recommendations on the general state of affairs for people of color in VT. Most are actionable by the Executive, but some require legislative action. Some have been completed and some have been bundled into [H.401](#), which did not leave committee this biennium.
- Specifically discusses disparities in
 - COVID-19 case rates and testing rates;
 - School discipline and bullying;
 - Worker protections, specifically regarding discrimination;
 - Language access in government, schools, and health care settings;
 - Government process including emergency planning, grant distribution, and data.
- Defers community safety issues for a subsequent report due to the magnitude of the issue.

Report 2 [[link to report](#)]

- 33 Recommendations on hate speech and on getting more people of color represented in public positions at all levels. Many are actionable by the Executive, but many require legislative action. Some are in progress and some have been bundled into [H.401](#), which did not leave committee this biennium.
- Specifically discusses recommendations to correct the following issues
 - Where we live dictates where we can run for office, but housing is not affordable—or even available—everywhere in the state.
 - Caregivers may not have the time or resources to run campaigns.
 - Being a state Rep/Senator means one can either afford to work for little money due to independent wealth, or that one has an incredibly flexible employer who permits a 6-month sabbatical to serve in office. Recommendations include paying legislators a living wage and/or incentivizing employers who support their employees serving in office.
 - Hate speech and the limitations of first amendment protections make it difficult to curb the problem using legislation or executive order. Instead, focus on educating and preventing the conduct through things like model school policies.
 - Support and engage with the Act 1 schools group on school curriculum standards to enhance the anti-discrimination education in schools.
 - Ease some requirements for attorneys to be considered by the Judicial Nominating Board, such as in-state-years-of-practice and minimum residency.
 - Make racial equity an explicit criterion in redistricting decisions and judicial nominations.

Education

Curtiss Reed et al Dec. 2020, School discipline having disparity impact of students of color [\[link to report\]](#)

- Recommendation 1.1: Institute Equity and Inclusion data reports to collect data to aid in reducing race/ethnicity, household income, disability, gender, or gender orientation as predictors of particular outcomes.
- Recommendation 1.2: Adopt Restorative justice programs to create a safe and inclusive school environment rather than zero-tolerance policies.
- Recommendation 1.3: Hire Equity Instruction Leaders to Create Initiatives of Inclusion to create an inclusive environment and develop better disciplinary processes.
- Recommendation 1.4: End the use of seclusion and restraint techniques.
- Recommendation 1.5: Improve communication with and involvement of families in disciplinary processes.
- Recommendation 2.1: Encourage the implementation of long-term training and evaluation of implicit bias across faculty, staff, and teachers.
- Recommendation 3.1: replace zero-tolerance policies with policies that allow for adjudication of behavioral issues based on factual circumstances and any extenuating needs of the student.
- Recommendation 4.1: Improve access to comprehensive and complete data for activists, advocates, and community organizers.
- Recommendation 5.1: End the practice of informal exclusion.
- Recommendation 6.1: Require classroom management and special education courses for teachers.

Meaningful Access

Language Access – many language access recommendations in RETF report 1. Also, conversations ongoing in Senate GovOps about this, which include Legislature’s IT team, DAIL, Racial Equity office, Judiciary, and advocates.

- **Vermont Judiciary’s Language Access Plan**
<https://www.vermontjudiciary.org/sites/default/files/documents/Language%20Access%20Plan%20Final.pdf>
 - Background: The Judiciary provided interpreters in thirty languages during 2019. The primary languages for which interpreters were provided (in rank order) were Nepali, Somali/Maay Maay, Spanish, Vietnamese, French, Arabic and Swahili. Mandarin, Bosnian, Russian and Haitian Creole were also in the top twelve languages of need. Additional data from the 2018 ACS identified 17,756 individuals over the age of five who do not speak English very well in the Northwest (Chittenden, Franklin, Grand Isle); 5,649 in the Northeast (Washington, Caledonia, Orleans, Lamoille, Essex); 4,686 in the Southeast (Windham, Windsor, Orange); and 6,116 in the Southwest (Rutland, Bennington, Addison).

- In 2017, the Judiciary asked the National Center for the State Courts (NCSC) to provide recommendations and best practices for Language Access Plans. In April 2018, NCSC issued a report, Review and Analysis of the Vermont Judiciary Language Access Plan, which made several recommendations for improvement. In June of 2019, the Judiciary entered into a Collaborative Technical Assistance Agreement with the United States Department of Justice (USDOJ) to help improve language access services for LEP court users. That expired on June 30, 2021.
- In 2019, the Judiciary surveyed judges and Judiciary staff, who reported ongoing concerns that accessibility, affordability and the quality of interpreter services remain barriers to adequate language services for LEP individuals. In 2020, an external survey of attorneys, advocates, interpreters and LEP court users was launched. It remains open. The results of external survey are being collected and analyzed and may provide additional information regarding barriers to access, which should be taken into consideration during implementation of the next steps outlined in Section VIII of this document.
- Recommendations: promoting access to quality interpreter services, training of court staff and judges, develop video remote interpreting, translating vital documents, tracking and reporting of language access data, monitoring and review of work.

- **Vermont Language Justice Project**

Universal Representation for Noncitizens

See e.g., <https://www.vera.org/advancing-universal-representation-toolkit/implementing-the-vision> and NY and CO models.

- Vera Institute (also see NY and CO models)
 - Recommendations: **Every person facing deportation is represented by an attorney.** Where resources are limited, representation for those in detention should be prioritized.
 - **There are no eligibility criteria other than income and a lack of private counsel.** Akin to a public defender system, no one is excluded on the basis of a prior criminal conviction, because they live outside of the funded jurisdiction, or because of the perceived merits of their case.
 - Representation begins as early as possible and continues throughout the life of the case. Although the circumstances of each case may vary, representation should begin as soon as the client is detained or the charging document is filed.

Attorneys represent clients until there is a final decision on the case: from bond hearing.

Remote Hearings and Access to Justice

- Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley, and Next Century Cities released [Cut Off From the Courthouse: How the Digital Divide Impacts Access to Justice and Civic Engagement](#).
 - Background: lack of access to affordable broadband compounds inequality. Lack of access leads to missed court appearances, inability to confer with counsel before life-altering legal proceedings and decisions, isolation from democratic processes, and inability to receive critical government services and safety information. These insights also show that access and affordability are not the only drivers of this inequality. Digital literacy and access to suitable devices are just as important for meaningful and equal participation in remote proceedings as infrastructure and affordability programs.
 - Recommendation: Remote hearings should be optional. In the courts, remote hearings can be effective for ministerial legal hearings and some substantive civil hearings. For civic institutions, remote hearings can increase access, but they can also exclude residents contending with digital access and adoption barriers.
 - Recommendation: Invest in adoption as well as access. Greater access to affordable broadband service offerings and digital skills training must accompany the push for remote judicial and administrative proceedings, civic engagement, and government services. Investments in both access and adoption will help to ensure that residents can be heard, apply for government services, and stay informed about local emergencies.

From: "Jacobsen, Erin" <Erin.Jacobsen@vermont.gov>

To: "Etan Nasreddin-Longo" [REDACTED] "Etan Nasreddin-Longo"
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Subject: RE: RDAP - Minutes and Agendum

Date: Tue, 11 Apr 2023 23:38:08 -0000

Importance: Normal

Attachments: EM_Compilation_of_Reports_and_Recommendations.docx

Inline-Images: image001.png

JJ recs document attached (in blue).

From: Jacobsen, Erin

Sent: Tuesday, April 11, 2023 5:23 PM

To: Etan Nasreddin-Longo [REDACTED] Etan Nasreddin-Longo [REDACTED] Jessica Brown
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Subject: RE: RDAP - Minutes and Agendum

Hi everyone!

I know you have received this link before, but since we'll be discussing our homework tonight (for which you needed to access various documents), I thought I would send it again: here is the link to our RDAP sharepoint site. It should be accessible by all RDAP members, so if it's not accessible to you, please do let me or Anne Walker know.

You can find both the 2019 RDAP report and the Juvenile Justice recommendations in the site. The JJ recommendations are in blue ink in the doc titled *EM_Compilation of Reports and Recommendations*. This is something that Elizabeth Morris emailed us all eons ago, but it is also now saved in our sharepoint site.

As well, and as always, you can find RDAP membership lists, reports, agenda, minutes, and a link to videos of past meetings on our RDAP webpage.

Thanks and see you soon!

erin

Erin Jacobsen (*she/her*)
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From: Etan Nasreddin-Longo [REDACTED]
Sent: Monday, April 10, 2023 9:20 AM
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Subject: RDAP - Minutes and Agendum

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

All:

Sorry for the lateness, but you've likely already done the "homework." As you can see on the agendum, we will be sharing our thoughts.

Best,

Etan

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Dr. Etan L. J. Nasreddin-Longo
Co-Director, Fair and Impartial Policing and Community Affairs, Vermont State Police, and Equity Advisor, Department of Public Safety.
Masculine binary pronouns

RDAP Reports

RDAP Recommendations, December 9, 2019 (p. 4-5) [[link to report](#)]:

- Ensure that Vermont statutes track existing federal requirements with respect to due process for those with limited English proficiency. For example, expand the rights established in 1 V.S.A. §§ 337, 338 for Deaf and Hard of Hearing individuals to those who have limited English proficiency and require use of competent language interpreters as needed. Amend the scope of these statutes to include juvenile delinquency proceedings.
- 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.
- Support the development and implementation of training designed to educate the public on their individual rights under federal, state, local laws and community traditions. The training should be focused on the people most affected by racial disparities and include training on where to report racially disparaging experiences.
- Implement and expand 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. Continue and enforce high standards of training for all law enforcement officers to ensure cultural competency and education about issues related to race, racial disparities, cultural competency, race relations, and data collection.
- Expand and support the use of community policing approaches to law enforcement. Community policing encompasses a variety of philosophical and practical approaches to law enforcement, though at its core, it aims to bridge gaps between police and diverse communities in order to build trust and mutual understanding. The community policing model helps to break down barriers between law enforcement and the communities they serve, resulting in improved information exchanges, more transparency, and less susceptibility for implicit biases to influence decision-making.
- The Panel did not adequately discuss associated penalties. The Panel will discuss this issue and present proposals in the future.

RDAP Non-consensus Recommendations (see report above, p. 9-10):

- 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. [ODG, AGO, judiciary supports; SAS disagrees.]

- Clarify that when considering the totality of the circumstances in assessing the lawfulness of a search and seizure, racial bias may be a relevant factor in this analysis, consistent with federal and state law. See, *Zullo v. State*, 2019 VT 1, ¶ 84. [ODG supports; SAS, AGO, judiciary disagree.]
- Expand the list of offenses that qualify for Diversion. All alleged offenders, regardless of criminal history, are presently eligible for Diversion under the Tamarack Program, unless an individual is accused of a listed felony (this list is found at: 13 V.S.A. § 5301). Common Justice, an alternative-to-incarceration and victim service program in New York City at www.commonjustice.org.
- Establish community-level boards made up of local law enforcement, DCF, the State's Attorney's Office, and public defenders, as well as community members, to review and respond to racial justice issues.

Policing

Traffic Stops

- Autilio, P., N. Brooks, and S. Seguino. 2022. "[Did COVID-Induced Reductions in Vermont Traffic Stops Lower Racial Disparities?](#)" (PDF) University of Vermont and Cornell University.
 - Background:
 - Statewide, traffic stops fell by 40% in 2020. But almost one fifth of agencies *increased*, rather than decreased their stops.
 - Amongst agencies that reduced stops in 2020, the lower number of traffic stops appears to have contributed to a narrowing of racial disparities in arrest and search rates. There were 30% fewer arrests of Black drivers in 2020, while arrests of white drivers fell 20%. Thus, although Black drivers are still more likely to be arrested than white drivers in Vermont, arrest rate differences declined in 2020.
 - About 20% of Vermont law enforcement agencies actually increased their traffic stops by 30% last year. Stops by these 17 agencies comprised 7% of all stops in 2019, rising to 16% in 2020. Most notably, Wilmington increased stops by 109%, Dover by 80%, and Franklin County Sheriff's Department by 57%. (See the table below).
 - More than half the agencies that increased stops in 2020 increased stops of Black drivers by a higher percentage than of white drivers.
 - Statewide, there was little impact on racial disparities in stop rates. For the state as a whole, stops of white drivers decreased by 40%, but only 38% for Black drivers.

- Recommendation: Ban pretext stops
 - Philadelphia: Walsh, Sean Collins. "Philly has become the first big city to ban minor traffic stops said to criminalize 'driving while Black.'" The Philadelphia Inquirer, October 14, 2021.
<https://www.inquirer.com/news/philadelphia-city-council-isaiah-thomas-police-driving-while-black-20211014.html>.
 - Virginia: The state passed new legislation that serves to limit pretext stops: <https://justiceforwardva.com/pretextual-policing>;
<https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5029>
 - Oregon, New Mexico courts have ruled under the state constitution
 - Texas and Massachusetts considering passing similar legislation

Police Accountability and other reform proposals

- **Brattleboro, VT, December 31, 2020, Final Report on the Community Safety Review Process** [\[link to report\]](#)
- **Background:** The Community Safety Review Process sought to understand the current state of the community safety systems in Brattleboro and their impact on community members' actual experiences of safety, danger, or harm.
- **Recommendation #1:** Acknowledge and Reckon with Harm Caused
 - Consider the community experiences, data, findings, and recommendations articulated in the report.
 - Publicly acknowledge and accept the experiences of racism, discrimination, intimidation, fear, terror, and harm detailed in the report, in public forums, and in the community.
 - Publicly commit as a Town/Selectboard to acknowledge and address systemic racism/white supremacy, ableism and sanism, homophobic and transphobic discrimination, and classism in an ongoing way.
 - Operationalize this commitment in budgets, time commitments, and work tasks as part of ongoing regular practices to avoid a return to "business as usual."
- **Recommendation #2:** Increase Accountability
 - Improve data integrity in collection and analysis
 - Address gap in reporting race data in traffic stops and all data collection
 - Address gap in graphic mapping data – obtain functionality to map police contacts and develop a plan to capture and review these data to better analyze and be accountable to geographic data to reduce over-policing of identified neighborhoods
 - Disband the Citizen Police Communications Committee and hold a process centering and compensating people of color leadership to determine the best mechanisms for systemic accountability.
 - Suspend the use of paid administrative leave for police under investigation for acts of harm and for police who are charged with a violent crime through change in policy.

- Withhold pensions and do not rehire police who are involved in excessive force violations.
- Freeze all increases to the training budget and focus on effective and efficient utilization of current training budget.
- Prepare a training plan that includes an assessment of each supervisor's and officer's training needs and level of receptivity and readiness as well as paid consultation with local content experts from impacted communities to develop accountable and effective training plans with demonstrable and measurable outcomes.
- **Recommendation #3: Meet People's Basic Needs and Build Up Alternatives to Policing and Police-Like Safety Responses**
 - Prioritize spending on safe housing for all, food shelves, free meals, community gardens, land trusts that allow marginalized people to take ownership of food production for their communities, and spaces for belonging and connection in neighborhoods for all community members, centering those most in need.
 - Invest resources in new and existing programs that respondents identified as the most helpful to their safety, such as mutual aid support networks, BIPOC-run programs, local organizations that provide voluntary support, and places for belonging and connection that are decoupled from policing.
 - Review and consider models for totally voluntary and noncoercive supports run by the communities they are designed to support, in the form of neurodivergent, psychiatrically labeled, psychiatrically disabled, mad, and psychiatric survivor-led mobile-ready response, a crisis/freak-out space, and unlocked, homelike crisis beds. Work collaboratively toward implementation of alternative mental health supports.
 - Invest in community-sponsored mutual aid and skill sharing.
 - Invest in restorative justice practices at all levels, especially at the neighborhood level.
 - Review and consider models for neighborhood and community training around de-escalation, holding space, and directly supporting those in distress, NOT training that advocates for calling authorities or assessors or that bring people into more contact with police or mental health crisis response. Invest in neighborhood and community groups developing these skills.
- **Recommendation #4: Reduce Police Presence and the Role of Policing**
 - Refuse militarized equipment.
 - Commit to Fair and Impartial Policing, including by adopting ***No Mas Polimigras Fair and Impartial Policing Policy***, which limits police collaboration with ICE.
 - Review Project CARE (Community Approach to Recovery and Engagement) impact and outcomes. Move Project CARE funding to COSU (Consortium on Substance Use) or out of the police department, and have a

transparent, accountable process around its function and any associated hiring.

- Increase accountability around harm, ineffectiveness and inefficiency of use of police resources for traffic stops, including analyzing racial disparities in traffic stop data.
 - Consider steps to decouple traffic safety management from the police with development of a non-police, unarmed traffic safety management division.
 - Eliminate police social work liaison program. Use funding to invest in noncoercive supports as alternatives to police and police-like interventions in mental and emotional health, housing, and access to family support.
 - Work to decouple police from welfare checks.
 - Work toward alternatives that do not use force, coercion, or (psychiatric) incarceration to support individual and community mental health and wellness.
 - Reduce and work towards eliminating public relations/community policing initiatives such as public speaking engagements, which disproportionately alienate marginalized people and do not create safety. Remove community engagement quota for officers. Improve community relations by focusing on acknowledging, reducing, and eliminating harm.
 - Disarm police for nonresponsive tasks like community speaking, meetings, and community events.
 - Decouple responses to animal problems from the police.
 - Commit to no more budget increases for policing (beyond cost of living increases).
 - Reduce overtime budget and usage and work towards reducing the size of the police force over time, as alternative approaches to community safety are created, funded, and implemented.
- [VT-ACLU 10-pt reform proposal](#), with endorsements from Justice for All, Migrant Justice, Outright Vermont, Planned Parenthood Vermont Action Fund, Pride Center of Vermont, Rights and Democracy, Vermont Branches of the NAACP, Vermont Businesses for Social Responsibility, Vermont Center for Independent Living, Vermonters for Criminal Justice Reform, Vermont Human Rights Commission, Vermont Legal Aid, Vermont Public Interest Research Group, Voices for Vermont's Children, Women's Justice and Freedom Initiative.
 - End qualified immunity. Vermont law shields officials who abuse their power from meaningful accountability. State lawmakers need to disincentivize police misconduct.
 - Remove police from schools. The presence of “school resource officers” (SROs) disproportionately harms students of color, students with disabilities, and low-income students. We must end the use of police in schools and invest in educational support services.

- Limit police involvement in low-level offenses. We must prevent unnecessary police interactions which disproportionately impact people of color. That includes limiting police involvement in mental health crises, authority to conduct “consent”-based searches, and discretion to cite or arrest for petty offenses like “disorderly conduct.”
- Ban police use of military-grade equipment and techniques. Police militarization is unnecessary and dangerous. Giving police military equipment encourages the use of paramilitary tactics with civilians, including no-knock raids, as well as abusive “crowd control techniques,” such as use of pepper spray, rubber bullets, tear gas, and sound canons.
- Prohibit use of new and invasive surveillance technologies, including new surveillance technologies, advanced or autonomous weaponry, facial recognition software, and predictive policing technologies.
- Require appointment of independent counsel outside of State’s Attorneys and the Attorney General’s office to review and prosecute police misconduct.
- Increase transparency so that police misconduct cannot be concealed. That includes ending confidentiality for officer disciplinary records and other limits on public access to information.
- Require robust, systemwide data collection and analysis from police, prosecutors, courts, parole board, and Department of Corrections to detect and eradicate systemic racism.
- Establish community control and authority over law enforcement, including over police priorities, transparency, and discipline, and end collective bargaining agreement provisions that limit oversight and accountability.
- INVEST in communities, not policing. It is time to demand that our laws and our investments match our values as Vermonters, and to affirm that Black Lives Matter. Local and state policymakers must prioritize people and communities, not policing and prisons.

Prosecutorial Practices and Policies

Justice Reinvestment II Working Group Recommendations, November 17, 2021:

- Develop internal guidance to increase consistency in charging and plea-bargaining decisions within state’s attorneys’ offices.
 - Ninety-nine percent of cases in Vermont are resolved through the plea-bargaining process.

- State’s attorneys should explore the use of internal guidance to increase consistency in charging and plea-bargaining decisions. Guidance should focus on when and what to charge, particularly for drug-related cases, as well as provide a framework for guiding discretion during the plea-bargaining process.
- To monitor implementation of internal guidance, offices should regularly collect and examine charging and plea-bargaining data as well as consider establishing a process for internal review prior to charging.

Examples of Prosecution Office Policies and Memos:

- Office of the Chittenden County State’s Attorney Non-Public Safety Stop Policy – updated January 7, 2022 [\[link to memo\]](#)
- Former Suffolk County District Attorney Rachel Rollins Policy Memo, Mass, 03/2019 <https://www.suffolkdistrictattorney.com/s/The-Rachael-Rollins-Policy-Memo.pdf>
 - A 2021 study, “Misdemeanor Prosecution”, [link: https://www.nber.org/system/files/working_papers/w28600/w28600.pdf] by Amanda Agan, Jennifer Doleac, and Anna Harvey offers a rigorous analysis of the effects of Rollins’ non-prosecution policy. The study found that by shifting to a presumption of non-prosecution of 15 low-level, non-violent offenses, the DA’s office increased by 15 to 20 percentage points the rates of non-prosecution for all nonviolent misdemeanor cases, not just the 15 on the DA’s list. More importantly, increasing rates of non-prosecution led to reductions, on the order of 56 percentage points, in new criminal complaints within one year of the current case, with no detected increase in reported crime.
- San Francisco District Attorney’s Office policy directive: “Declination of Contraband Charges Based on Pretextual Stops.” [\[https://drive.google.com/file/d/1O5GqKD76M7ystoWaOnKnWnsne9D-hMx0/view\]](https://drive.google.com/file/d/1O5GqKD76M7ystoWaOnKnWnsne9D-hMx0/view)

Decriminalization, Reclassification, Diversion and Pretrial Services, Sentencing Alternatives

Justice Reinvestment II Working Group Recommendations, November 17, 2021:

- Apply a race equity lens to the **reclassification of drug offenses by:**
 - **Reclassifying lower-to-mid level felony drug possession offenses to misdemeanors; and**
 - **Reevaluating the threshold of the highest level of possession and sales to better reflect significant amounts of drugs intended for distribution.**

- Establish **non-binding sentencing guidance** or consider **presumptive probation** for certain drug and property offenses.
 - To address racial disparities in incarceration for felony drug and property offenses for similarly situated defendants, Vermont should pursue either non-binding sentencing guidance or establishing presumptive probation for certain offenses to inform discretion related to incarceration decisions.
- **Identify and address any racial disparities in diversion and pretrial services.**
 - Studies have found that Black, Indigenous, and People of Color (BIPOC) are often less likely to receive diversion than White people.
 - Vermont should require the collection and reporting of race and ethnicity data in the Attorney General’s Pretrial Services and Court Diversion Report, as well as in any other statewide diversion programs, for the purpose of identifying and addressing disparities in program access and use by county.
- CSG presentation, 11/17/21 [\[link to presentation\]](#), Recommendations, 11/17/21 [\[link to recommendations\]](#), Final Report, 01/2022 [\[link to report\]](#)

Decriminalization and Policing Working Group of the Roundtable on Racial Disparities in Massachusetts Criminal Courts, Recommendations, March 2022:

- Background: “Mass misdemeanor criminalization is one major driver of racial disparities in arrests, prosecutions, and convictions, decriminalizing many such offenses should result in reductions in racial disparities. However, reductions in racial disparities have not always followed cities’ and states’ decriminalization efforts.”
 - “[F]our categories of decriminalization include *substitution*, *de facto decriminalization*, *pure decriminalization*, and *reclassification*.”
 - “Attention to categories of decriminalization illuminate ways that such policies can often fall short of stated goals, including reducing or eliminating racial disparities.”
 - “Since narrowing the scope of policing is critical to effective decriminalization, decriminalization should emphasize the enforcement of sanctions as well as the reduction or elimination of sanctions.”
 - Decriminalization policies that have been purely sanction-based have done little to minimize racial disparities in arrests because a primary mechanism for such disparities – law enforcement behavior – remains untouched.
 - Law enforcement maintain essentially unrestrained latitude in who they stop and why. This discretion is a primary reason why disparities can persist and even

worsen: although the absolute number of arrests do decrease, police continue to disproportionately target Black and Brown individuals in enforcement.

- Recommendations:
 - “Pure decriminalization (which is most often accompanied by reclassification) should be more effective in mitigating racial disparities in arrests than the former two approaches as it indirectly limits police’s enforcement powers.”
 - “Reclassifying offenses as civil rather than criminal violations – or even better, completely eliminating the classification of – should limit law enforcement contact as pretextual searches and arrests must theoretically be conducted only on the basis of an alleged criminal, *not civil*, violation.”
 - “Formal reclassification, however, is not always enough to curtail the practices that bring people into the sanction process in the first place: police stops and arrests. [A]bsent legislation that directly narrows police discretion in pretextual stops, changes to the sanction alone can prove insufficient in mitigating disparities in arrests.”
 - <https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pci/files/reducing-racial-disparities-through-decriminalization.pdf>

Vermont Prison Climate Surveys from incarcerated persons and correctional staff, UVM – Justice Research Initiative, December, 2021 [[link to report](#)]

- Background: The purpose of Prison Research and Innovation Network is to better understand prison environments; enhance prisons’ data collection capacities to promote transparency and accountability; and design, implement, and evaluate evidence-based programs and policies to improve conditions for individuals incarcerated in and working in prisons. PRIN is a 4.5 year project taking place from January 2020 to June 2024.
- Phase I (January 2020 – December 2021): Researchers at the University of Vermont developed two Prison Climate Surveys - one for correctional staff and one for incarcerated persons. Both surveys were developed using participatory research methods, elevating the voices and perspectives of correctional staff and incarcerated individuals. Surveys were developed and administered in Southern State Correctional Facility (SSCF), the PRIN pilot facility, in June 2021 - just over one year into the Covid-19 pandemic. More than 70% of SSCF staff and incarcerated persons completed the surveys. Summary results of Vermont's Prison Climate Surveys are presented in this report.

Fund and promote statewide restorative justice training of law enforcement.

- This includes information on local community-based alternative programs available as alternatives to delinquencies, and the benefits of restorative justice practices for youth. If an officer is familiar with the benefits of the program, pre-charge diversion is a useful tool to deal with non-violent offenses. It provides an immediate opportunity for the juvenile to take responsibility for their conduct while at the same time providing a voice for victims if there are any. By minimizing the degree to which the juvenile/young adult is exposed to the criminal justice system, increased use of pre-charge diversion reduces the likelihood that the juvenile/young adult will commit another crime thereby increasing public safety.
- The SAG is currently funding BCJC to do statewide training on the benefits of pre-charge restorative justice for youth, with a highlight on anti-racism and the disparities of access to pre-charge for youth of color.

Miscellaneous Racial Equity Topics

Racial Equity Task Force Reports (XD)

Report 1 [\[link to report\]](#)

- 37 Recommendations on the general state of affairs for people of color in VT. Most are actionable by the Executive, but some require legislative action. Some have been completed and some have been bundled into [H.401](#), which did not leave committee this biennium.
- Specifically discusses disparities in
 - COVID-19 case rates and testing rates;
 - School discipline and bullying;
 - Worker protections, specifically regarding discrimination;
 - Language access in government, schools, and health care settings;
 - Government process including emergency planning, grant distribution, and data.
- Defers community safety issues for a subsequent report due to the magnitude of the issue.

Report 2 [\[link to report\]](#)

- 33 Recommendations on hate speech and on getting more people of color represented in public positions at all levels. Many are actionable by the Executive, but many require legislative action. Some are in progress and some have been bundled into [H.401](#), which did not leave committee this biennium.
- Specifically discusses recommendations to correct the following issues
 - Where we live dictates where we can run for office, but housing is not affordable—or even available—everywhere in the state.
 - Caregivers may not have the time or resources to run campaigns.
 - Being a state Rep/Senator means one can either afford to work for little money due to independent wealth, or that one has an incredibly flexible employer who permits

a 6-month sabbatical to serve in office. Recommendations include paying legislators a living wage and/or incentivizing employers who support their employees serving in office.

- Hate speech and the limitations of first amendment protections make it difficult to curb the problem using legislation or executive order. Instead, focus on educating and preventing the conduct through things like model school policies.
- Support and engage with the Act 1 schools group on school curriculum standards to enhance the anti-discrimination education in schools.
- Ease some requirements for attorneys to be considered by the Judicial Nominating Board, such as in-state-years-of-practice and minimum residency.
- Make racial equity an explicit criterion in redistricting decisions and judicial nominations.

Education

Curtiss Reed et al Dec. 2020, School discipline having disparity impact of students of color [\[link to report\]](#)

- Recommendation 1.1: Institute Equity and Inclusion data reports to collect data to aid in reducing race/ethnicity, household income, disability, gender, or gender orientation as predictors of particular outcomes.
- Recommendation 1.2: Adopt Restorative justice programs to create a safe and inclusive school environment rather than zero-tolerance policies.
- Recommendation 1.3: Hire Equity Instruction Leaders to Create Initiatives of Inclusion to create an inclusive environment and develop better disciplinary processes.
- Recommendation 1.4: End the use of seclusion and restraint techniques.
- Recommendation 1.5: Improve communication with and involvement of families in disciplinary processes.
- Recommendation 2.1: Encourage the implementation of long-term training and evaluation of implicit bias across faculty, staff, and teachers.
- Recommendation 3.1: replace zero-tolerance policies with policies that allow for adjudication of behavioral issues based on factual circumstances and any extenuating needs of the student.
- Recommendation 4.1: Improve access to comprehensive and complete data for activists, advocates, and community organizers.
- Recommendation 5.1: End the practice of informal exclusion.
- Recommendation 6.1: Require classroom management and special education courses for teachers.

Report from Vermont's Juvenile Justice State Advisory Group: Findings Related to Racial Disparities in Vermont's Youth Justice Response – 2020

Recommendations regarding education:

- Schools are a common area where all youth gather, learn, and grow which creates a unique opportunity to provide crucial supports to youth in a safe, healthy, and nurturing environment. Instead of using punitive measures that perpetuate systemic and institutionalized racism,

interventions, and programs such as School-wide Positive Behavior Interventions and Supports (PBIS), trauma-sensitive training, and Restorative Practices that aim to address root causes of student behaviors and provide needed services both on and off school grounds are a crucial approach to reducing Vermont's ethnic and racial disparities in arrests.

1. After a RFP process, two subgrantees, Burlington School District and Spectrum Youth and Family Services, were each awarded \$70,000 in December 2020 to work to address these issues. Spectrum Youth and Family Services has been implementing their work in Winooski High School. These programs are in adjacent towns in Chittenden County. The SAG has been working collaboratively with the two entities as they begin to implement their programs. The SAG understands that in order to adequately implement the program and see impact within the school systems, work must be implemented over at last a three-year time frame. Given that, the SAG funded an additional year of work for the fall of 2021.

Meaningful Access

Language Access – many language access recommendations in RETF report 1. Also, conversations ongoing in Senate GovOps about this, which include Legislature's IT team, DAIL, Racial Equity office, Judiciary, and advocates.

- **Vermont Judiciary's Language Access Plan**
<https://www.vermontjudiciary.org/sites/default/files/documents/Language%20Access%20Plan%20Final.pdf>
 - Background: The Judiciary provided interpreters in thirty languages during 2019. The primary languages for which interpreters were provided (in rank order) were Nepali, Somali/Maay Maay, Spanish, Vietnamese, French, Arabic and Swahili. Mandarin, Bosnian, Russian and Haitian Creole were also in the top twelve languages of need. Additional data from the 2018 ACS identified 17,756 individuals over the age of five who do not speak English very well in the Northwest (Chittenden, Franklin, Grand Isle); 5,649 in the Northeast (Washington, Caledonia, Orleans, Lamoille, Essex); 4,686 in the Southeast (Windham, Windsor, Orange); and 6,116 in the Southwest (Rutland, Bennington, Addison).
 - In 2017, the Judiciary asked the National Center for the State Courts (NCSC) to provide recommendations and best practices for Language Access Plans. In April 2018, NCSC issued a report, Review and Analysis of the Vermont Judiciary Language Access Plan, which made several recommendations for improvement. In June of 2019, the Judiciary entered into a Collaborative Technical Assistance Agreement with the United States Department of Justice (USDOJ) to help improve language access services for LEP court users. That expired on June 30, 2021.

- In 2019, the Judiciary surveyed judges and Judiciary staff, who reported ongoing concerns that accessibility, affordability and the quality of interpreter services remain barriers to adequate language services for LEP individuals. In 2020, an external survey of attorneys, advocates, interpreters and LEP court users was launched. It remains open. The results of external survey are being collected and analyzed and may provide additional information regarding barriers to access, which should be taken into consideration during implementation of the next steps outlined in Section VIII of this document.
- Recommendations: promoting access to quality interpreter services, training of court staff and judges, develop video remote interpreting, translating vital documents, tracking and reporting of language access data, monitoring and review of work.
- **Vermont Language Justice Project**

Universal Representation for Noncitizens

See e.g., <https://www.vera.org/advancing-universal-representation-toolkit/implementing-the-vision> and NY and CO models.

- Vera Institute (also see NY and CO models)
 - Recommendations: **Every person facing deportation is represented by an attorney.** Where resources are limited, representation for those in detention should be prioritized.
 - **There are no eligibility criteria other than income and a lack of private counsel.** Akin to a public defender system, no one is excluded on the basis of a prior criminal conviction, because they live outside of the funded jurisdiction, or because of the perceived merits of their case.
 - Representation begins as early as possible and continues throughout the life of the case. Although the circumstances of each case may vary, representation should begin as soon as the client is detained or the charging document is filed. Attorneys represent clients until there is a final decision on the case: from bond hearing.

Remote Hearings and Access to Justice

- Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley, and Next Century Cities released [Cut Off From the Courthouse: How the Digital Divide Impacts Access to Justice and Civic Engagement](#).
- Background: lack of access to affordable broadband compounds inequality. Lack of access leads to missed court appearances, inability to confer with counsel before life-altering legal proceedings and decisions, isolation from democratic processes, and inability to receive critical government services and safety

information. These insights also show that access and affordability are not the only drivers of this inequality. Digital literacy and access to suitable devices are just as important for meaningful and equal participation in remote proceedings as infrastructure and affordability programs.

- Recommendation: Remote hearings should be optional. In the courts, remote hearings can be effective for ministerial legal hearings and some substantive civil hearings. For civic institutions, remote hearings can increase access, but they can also exclude residents contending with digital access and adoption barriers.
- Recommendation: Invest in adoption as well as access. Greater access to affordable broadband service offerings and digital skills training must accompany the push for remote judicial and administrative proceedings, civic engagement, and government services. Investments in both access and adoption will help to ensure that residents can be heard, apply for government services, and stay informed about local emergencies.

Juvenile Justice

Recommendations from Vermont's Juvenile Justice State Advisory Group: Findings Related to Racial Disparities in Vermont's Youth Justice Response – 2020

Promote and fund workforce development specifically for youth from marginalized communities. This includes assisting juveniles in making the transition to the world of work and self-sufficiency.

- o There is not enough collaboration between state agencies (DOL, DCF, DAIL, etc.). The status of youth employment support throughout the state agencies needs to be assessed.
- o Aggregate feedback from youth of color about their employment barriers, such as transportation, and provide resources to address those barriers.

Ensure that organizations serving youth do not perpetuate ethnic and racial disparities by supporting, funding and promoting anti-racism training for all stakeholders in the juvenile justice, education, youth mental health system, etc.

Promote raising the baseline age of juvenile jurisdiction (Vermont's current baseline is 10 years old).

Develop strategies to work with all police departments in Chittenden County to gather their town's ERD arrest data, as is done with Burlington.

Continue to address the use of "unknown" and "not reported" race and ethnicity data reporting in the Vermont court data base.

- o In FY2020 (State's fiscal year 7/1/19 – 6/30/20), there were 905 juvenile delinquency cases filed in the Family Division. In 16% (147) of the cases, race or ethnicity was "not reported" by law enforcement. In 3% (25), race/ethnicity was reported as "not known." The SAG has sent a

letter to the Family Rules Committee of the Vermont Supreme Court to address this through a change in rules, and the SAG will continue to assess and address this issue.

Enhance and develop resources and services within communities that minimize their reliance on law enforcement.

Work with the Department for Children and Families to assess family and community engagement in case planning for youth involved in the Juvenile Justice System.

DCF is releasing Practice Guidance for Assessing Cultural Context of the families and youth we work with:

- All families have multiple identity domains (no one is only one identity) and unique cultures that shape child rearing and family functioning and provide valuable context to better assess and plan with families.
- This is a guide for assessing a family's cultural context in practice, both when assessing safety and throughout a case, to learn how culture shapes and influences beliefs and values about child development and parenting norms and strategies. Attention to the cultural context of every family is critical to the development of an individualized and strength-based response.
- This guide is a tool to increase understanding of the value and relevance of cultural context and to provide strategies for applying this understanding to casework and decision making regarding child safety and well being.
- When Vermont Department for Children and Families (DCF) workers set the tone of the relationship and engage families in dialogue about their culture from the start, they can build the trust necessary for ongoing casework. Examining the intersections of different cultures through an equity lens can help workers to more accurately identify a family's protective capacities and actions and determine the appropriate threshold for dangers in the context of the family and community.

CRG Report: Recidivism of Youth Ages 18-19 Adjudicated in Criminal Court (April 2022)

- Vermont's Juvenile Justice State Advisory Group and the Vermont Department for Children and Families (DCF) contracted with Crime Research Group (CRG) to provide a baseline recidivism analysis for youth ages 18 and 19 who were convicted in adult criminal court.
- Of the 400 defendants in the cohort, 379 were eligible to recidivate within one year. Ninety-one defendants committed a new offense within one year of their eligibility to reoffend for a one-year recidivism rate of 24%. Two hundred and seventy-four defendants had least three years to recidivate. Of these, 126 or 45.98% earned a new conviction within three years, with most youth committing a new offense within six months of eligibility.
- Calculating recidivism using the definition outlined in 28 VSA § 4 was not possible because only two defendants had been sentenced to more than one year in jail and were not eligible to recidivate until after the data for this study were collected.
- Of concern is that 14% of all 18- to 19-year-old Black youth were excluded from this study because they were charged with a "Big 12" crime. Only 8% of White defendants were excluded for the same reason. Further research into this disparity should be conducted. It is possible that

the excluded defendants had charges when they were younger that would now be processed in juvenile court. It is also possible that the types of charges that Black youth are charged with are causing the disparities.

DCF's Family Services Division created a Statewide Racial Equity Workgroup (SREW) in 2020

One applicable SREW project is assessing the Youth Assessment and Screening Instrument (YASI) is an evidenced-based risk/needs assessment and case planning tool that ensures that youth receive a level of services that is appropriately matched to the individual's risk of recidivism. YASI:

- Measures both risk and strengths in juvenile populations as well as other high-risk youth.
- Measures protective factors to help case workers build on the strengths of youth to buffer the negative impact of risk.
- Provides pre-screening functionality, critical for settings where triage based on risk principles is required.
- Includes a case planning component designed to help case workers identify and monitor the priority targets for behavior change.

In reviewing the ERD data for the tool, DCF noted that the legal risk of black youth is higher than their white counterparts, and which is stemming from criminal history. This has resulted in a larger percentage of black youth rated as high risk in comparison to white youth. In addition, we think that there may overall be too many youth categorized as high risk, and thus getting a higher level of "touch" by the system then is appropriate.

DCF has obtained funds from the Juvenile Justice State Advisory Group to do an extensive series of analysis of predictive accuracy for the full sample (examining various follow-up periods, e.g., 1 year to 5 years, as available). We are examining how YASI performs for different sub-groups like gender and race, and different client types. It is possible that these analyses would result in recommendations to change some of the scoring weights and score cut points to work better in Vermont. This last component may result in less youth of color being placed in high-risk category.

DCF has learned that when New York State recently changed their "cut-off" points determining what youth are high, moderate, or low, it also significantly decreased their racial disparities within YASI.

UVM Legislative Report: Drivers of Custody

Between the years 2005 and 2018, Black or African American children were more likely than other children to enter custody within a year (14.2% vs. 9.2%), $c2(1) = 29.75$, $p < .001$. This discrepancy emerged for years 2005–2007, 2011, and 2013. White children were less likely to enter custody within a year than non-White children (9.3% vs. 11.7%), $c2(1) = 7.81$, $p = .005$. No difference in custody rates emerged for children of Asian, American Indian or Alaska Native, or Hawaiian or Pacific Islander races.

The UVM Legislative Report recommends taking steps to minimize decision-making bias

Individual bias plays a significant role in child welfare caseworkers' decisions to place a child in foster care. Specifically, study findings show that a caseworkers' different orientations toward risk play an oversized role in decision making, while objective assessments of current and immediate danger are

inconsistently applied. Consistent application of practice strategies may minimize these types of bias, including:

- 1.Embedding training on decision making bias in new employee onboarding.
- 2.Implementing *Blind Team Decision Making*, a teaming model where prior to any custody recommendation caseworkers utilize team decision making without any demographic or socioeconomic information in case presentation.
- 3.Promoting a culture of data-informed practice by FSD and the courts.
- 4.Engaging with the media to explain the impact of the sensationalized high-profile cases on future outcomes for children, families, and caseworkers.