

TO: Senate Committee on Judiciary
FROM: Office of Racial Equity
DATE: April 3, 2024
RE: Office of Racial Equity comments on and recommended changes to H.645, An act relating to the expansion of approaches to restorative justice (As Passed by House)

Dear Chair Sears and members of the Senate Committee on Judiciary,

Thank you for considering the following written testimony on H.645, An act relating to the expansion of approaches to restorative justice. The following suggested revisions and comments refer to page and line numbers from [H.645 As Passed By House \(Unofficial\)](#).¹ **The Office's recommendations for changes to H.645 are highlighted in yellow.**

- Recommended provisions to improve Sec. 4. RESTORATIVE JUSTICE; POST-ADJUDICATION REPARATIVE PROGRAM WORKING GROUP; REPORT
 - The Office strongly recommends that racial equity and justice be included as an explicit focus of the Working Group, given the racial disparities in Vermont's criminal justice systems.² In past experiences with other legislatively mandated working groups, the Office has had difficulty convincing other working group members to consider racial equity without explicit direction to that effect from the Legislature in the working group's enabling statute.³
 - To address these concerns, the Office recommends including explicit references to racial equity in Sec. 4. (a) Creation.
 - Modify (a) after page 54, line 5, "that promotes ~~uniform access to~~ **equitable and consistent** access to the appropriate community-based service providers for individuals sentenced to reparative boards and probation pursuant to 13 V.S.A. §7030(a)(2) and (a)(3)."
 - Suggested language to be inserted in (a) after page 54, lines 7-9 "The Working Group shall also...community-based service providers.": **"The Working Group shall review research on racial disparities in Vermont's criminal justice systems, including reports of the Racial Disparities in the Criminal and Juvenile Justice Systems Advisory Panel, to ensure equity is implemented in each phase of the Program development while also establishing equitable outcomes for participants in the Program."**

¹ <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/H-0645/H-0645%20As%20Passed%20by%20the%20House%20Unofficial.pdf>

² For example, see Summary: Justice Reinvestment in Vermont Results of Racial Equity in Sentencing Analysis. Center for State Governments Justice Center; 2022. <https://csgjusticecenter.org/wp-content/uploads/2022/07/JRI-Vermont-Summary-1.pdf>. Full report available at <https://csgjusticecenter.org/publications/justice-reinvestment-in-vermont-results-of-racial-equity-in-sentencing-analysis/>.

³ For further discussion of the difficulty of participating in working groups without an explicit racial equity directive in the enabling statute, see page 15, Davis XR. 2024 Executive Director of Racial Equity Report to the Legislature. State of Vermont Office of Racial Equity; 2024. Accessed April 3, 2024. <https://racialequity.vermont.gov/document/2024-edre-report-legislature>

- The Office further requests (b) Membership (page 54, lines 10-17) be modified to add: “(6) the Racial Justice Data Manager of the Division of Racial Justice Statistics or designee”. If the Committee is not amenable to adding the Manager of the Division of Racial Justice Statistics or a designee as a member of the Working Group, the Office requests that EITHER:
 - the Division of Racial Justice Statistics within the Office of Racial Equity be added as a stakeholder that the Working Group shall consult with in the list of stakeholders under (c)(7) (page 55, lines 14-17) (note that this change would be more effective if (c)(7) were changed to “(d) The Working Group shall consult with the Office of the Attorney General, the Division of Racial Justice Statistics of the Office of Racial Equity...into the program.”)
 - OR
 - add (c) “(8) The Working Group shall consult with the Division of Racial Justice Statistics of the Office of Racial Equity to design equitable data collection, data governance, and data integration practices for the Program.”

The following details the Office’s general comments and concerns with H.645 As Passed By House. All line and page numbers refer to [H.645 As Passed By House \(Unofficial\)](#):

- Page 3, lines 12-13 **and later similar provisions** regarding funding of local restorative justice programs:“(2) The Attorney General may require local financial contributions as a condition of receipt of program funding.” The Office is concerned these provisions could create geographic inequities in access to programs in communities with fewer financial resources. The Office recommends that either:
 - The mandatory local financial contribution needs to be capped at a small percent of the total program cost so as not to create barriers for low-income municipalities
 - OR
 - this provision should be re-written as with local financial contributions as an optional instead of mandatory (preferred approach).
- Page 8, lines 11-13 **and later similar provisions**, regarding the requirements for each State’s Attorney to adopt a juvenile and adult pre-charge diversion policy: “(E) A statement reiterating that the State’s Attorney retains final discretion over the cases that are eligible for diversion and may deviate from the adopted policy in accordance with such discretion.” The Office is concerned with the wide level of discretion retained by the State’s Attorney’s Office that could create new racial disparities or exacerbate existing racial disparities in diversion as a result of bias against arrestees of color.⁴ Research into implicit bias shows that people in the US tend to treat Black youth as more culpable and suspicious than White youth.⁵ The Office suggests that this provision could be improved by requiring all State’s Attorneys to adopt uniform statewide guidelines to inform the use of such discretion, including requiring rigorous documentation of the race/ethnicity and other demographic data of those who are deemed ineligible for diversion due to State’s Attorneys’ discretion. It will be impossible to determine if there are racial disparities in use of discretion without consistent data collection on the defendants whose cases are deemed ineligible on a discretionary basis.

⁴ Regarding racial disparities between Black and White defendants in access to alternative programs in Vermont, see Joy R. Equal Access to Alternative Programs. Crime Research Group Vermont; 2022. Accessed May 1, 2023. https://crgvt.org/client_media/files/reports/Equal_Access_to_Alt_Programs_2022.pdf

⁵ Goff PA, Jackson MC, Allison B, Leone LD, Culotta CM, Ditomasso NA. The Essence of Innocence: Consequences of Dehumanizing Black Children. *Interpersonal Relations and Group Processes*. 2014;106(4). doi:10.1037/a0035663. <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf> “We find converging evidence that Black boys are seen as older and less innocent and that they prompt a less essential conception of childhood than do their White same-age peers. Further, our findings demonstrate that the Black/ape association predicted actual racial disparities in police violence toward children.”

- Page 11, lines 16-17 **and any similar provisions related to records access:** “(B) Victim information that is not part of the public record shall not be released without the victim’s prior consent.” “...information that is not part of the public record” is vague and ill-defined in this bill. The Office recommends changing this provision and all similar provisions to incorporate a reference to the Vermont Public Records Act (PRA) or its exemptions⁶, such as “(B) Victim information that is exempt from examination under 1 V.S.A. §317...” This change aligns records access provisions under H.645 with the PRA and clarifies that “public record” is meant to refer to the definition of a public record under the PRA.
- Page 15, lines 4-5 **and any similar provisions related to payment of restitution:** “Payment of restitution is required for successful completion.” The Office notes that the requirement to fully pay restitution could create socioeconomic disparities in who is able to successfully complete a pre-charge diversion program. **The Office is concerned that a system that relies on completion of payment as a measure of success punishes people for poverty.** The Office suggests separating the participant’s ability to pay restitution from whether they are successful in completing the other parts of the pre-charge diversion program AND inserting a provision creating pathways for financially indigent individuals to have alternatives to financial restitution. Another option less preferred by the Office would be to allow financially indigent participants to adopt payment plans that enable them to pay off restitution without being financially burdened by the repayment plan. The last suggestion is less preferred because being “financially burdened” by payments is a highly subjective, case-specific experience. Decision makers who determine the terms of repayment plans may not fully understand each participant’s personal financial situation; disclosing financial information in exchange for benefits is a highly invasive requirement that disproportionately affects recipients of public assistance programs in the US.⁷
- Support for expungement of diversion records: the Office supports the provisions of H.645 As Passed By the House creating a pathway for expungement of diversion records.

⁶ The Vermont Public Records Act comprises 1 V.S.A. §315-320. Exemptions to the Public Records Act are found in [1 V.S.A. §317](#). “Definitions; public agency; public records and documents; exemptions” and other references in statute.

⁷ For further discussion of income data, social welfare programs, and racial inequities, see Institute for Research on Poverty. UNDERSTANDING SYSTEMIC RACIAL AND ETHNIC INEQUITIES IN HUMAN SERVICES PROVISION. Published online August 21, 2021. Accessed April 3, 2024. <https://www.irlp.wisc.edu/wp/wp-content/uploads/2021/08/Memo-1-Systemic-Inequities-08212021.pdf>