

**To: The House Judiciary Committee**  
**From: Falko Schilling, Advocacy Director, ACLU of Vermont**  
**Re: H.546 An Act Relating to Racial Justice Statistics**  
**Date: 1-14-22**

Dear Members of the Judiciary Committee,

I am writing today in regard to H.546 an Act Relating to Racial Justice Statistics. The ACLU of Vermont strongly supports the goals of this legislation and appreciates the Committee taking the bill up so early in the session. Comprehensive data collection across the criminal legal system has long been a priority of the ALCU of Vermont. Efforts like Justice Reinvestment have shown how valuable this information can be in helping us create a smarter criminal legal system and to address racial disparities head on.



PO Box 277  
Montpelier, VT 05601  
(802) 223-6304  
aclvt.org

James Duff Lyall  
*Executive Director*

Falko Schilling  
*Advocacy Director*

As you have heard, improved data collection and analysis capabilities have been a top recommendation for numerous groups looking at our criminal legal system including the Council of State Governments, the Justice Reinvestment Working Group, and the Racial Disparities Advisory Panel (RDAP). Specifically, RDAP has called for collection and analysis of high discretion high impact decision points throughout the system in three separate reports.

Speaking to the bill itself, we are supportive of creating a division of racial justice statistics within the office of racial equity or within the Secretary of State's offices as other witnesses have suggested. We recognize that this data will be helpful in addressing a range of issues, not all involving racial disparities, at the same time eliminating racial disparities should be a top priority for the state and it is appropriate for this to be the focus of this new body and this legislation.

That said, we have concerns about the Data Governance provisions of the bill, specifically § 5013(a), § 5013(a)(1) and § 5013(a)(2). First, § 5013(a) states that the division shall establish by rule the data to be collected to carry out the duties of this subchapter. This bill removes language found in H.317, and H.284 of 2019 which both laid out a baseline of data that needs to be collected and analyzed. The data to be collected should be enumerated in statute to start but could be supplemented in future rulemaking. Including this language in statute would create a duty for entities to begin collection on passage of the bill.

Putting this decision off to future rulemaking will create an yet another delay in getting this necessary information. By dragging the process out into rulemaking, the legislature could delay the ability to gather this information by at least a year. Under this legislation the data would not start to be collected until the division was fully staffed and they had completed the statutory rulemaking process all of which is likely to take at least a year or longer. This is unnecessary when the committee already has lists of what information should be collected in H.317 and H.284 of 2019. We support giving the division rulemaking authority to require data collection not enumerated in statute, but we should not create an unnecessary delay in collecting data we already know we need.

We also object to § 5013(a)(1) that would make the information gathered by this division exempt from the public records act. Exempting this entity from the public records act runs counter to the intent of the bill which is providing clear information

about the workings of our government which the public and policymakers can trust. The information gathered by the division will be collected almost entirely from public entities, and there are already provisions within the public records act to help protect personally identifiable information. Making this information available to the public and those interested would be essential in building trust in the information provided by the division and allow for independent analysis.

Finally, we would ask the committee to modify § 5013(a)(2) to require state agencies to grant access to the data the division deems necessary perform their requirements and objectives without them having to designate the agency by rule. All state agencies should be required to be responsive to the division without requiring the division to go through the lengthy and costly rulemaking process. Putting this requirement in statute will allow the division to be more responsive and nimble and will send the message to other state agencies about the importance of being responsive to information requests from the division.

In conclusion, The ACLU of Vermont is very supportive of the goals of this legislation. We ask the committee to make the changes outlined above and continue the process of building the state's capacity to collect and analyze comprehensive data from across our criminal legal system.



PO Box 277  
Montpelier, VT 05601  
(802) 223-6304  
aclvt.org

James Duff Lyall  
*Executive Director*

Falko Schilling  
*Advocacy Director*