Equal Access to Alternative Programs

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Contents

Acknowledgements

Executive Summary

Vermont's alternatives to the criminal justice system are available pre-charge, post-charge, and post-sentence. However, there has been some question about the extent to which access to alternative programs might be influencing racial disparities in the criminal justice system. To explore this notion, Crime Research Group (CRG) secured funding to examine whether there are disparities in who is served by alternative programs.[1] By triangulating several data sources, researchers were able to describe who was served by Adult Court Diversion from 2015 through 2019, and who was served by the Treatment Courts from 2013-2018. However, several data quality issues impacted researchers' ability to perform advance statistical analyses capable of identifying factors that significantly contribute to whether an individual is served by an alternative program.

On Measuring Disparities with Administrative Data

Using administrative data to model human decision-making presents several challenges. First, because Vermont is a small state, researchers usually run into the issue of low numbers. This is especially true when trying to examine the experiences of marginalized populations within the state. Oftentimes, data on Asian, Indigenous, and Hispanic Vermonters must be excluded from analyses because there are so few people represented in the data that disclosing numbers has the potential to identify specific individuals. As a result, administrative data is not able to describe the experiences of these individuals. Qualitative research, which captures the themes of people's experiences while masking their identities, is needed to bridge this gap.

Second, issues arise when attempting to match data from one dataset to information stored within another dataset. Researchers were unable to match Treatment Court data with Vermont criminal histories because the data was inconsistent or non-existent. Successful diversion participants have their records expunged two years after the case is dismissed by the prosecutor so if no other record is found, an assumption is made that these are first time offenders. Researchers cannot be sure if an individual is a first-time offender, a consideration that is certainly used by prosecutors when determining whether to refer to Court Diversion.

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[1] The Community Justice Programs funded by DOC were not included in this analysis because of the lack of data.

Court Diversion

Adult Court Diversion is governed by statute, administered by the Attorney General, and delivered by a network of non-profit organizations. CRG used Adjudication Data and Vermont Criminal Histories to test for disparities in who was referred to diversion; both data sets originate from Court records. Analysis of the data revealed that:

- From 2015-2019, there were 6,127 defendants referred to Diversion. Most defendants referred were White (84.9% / 5,204). There were 259 Black defendants, 59 Asian defendants, and 45 Latinx defendants. The race of 530 (8.7%) defendants was either missing, unknown, or not reported. Race is as recorded by law enforcement.

- The most common offense committed by those served in Court Diversion was Motor Vehicle offenses that were not DUI or Gross Negligent related (e.g., Driving on a Suspended License). Public order offenses were the second most common. The offenses include Disorderly Conduct, Trespassing, and Violations of Conditions of Release. For these offenses, 7% of all charges for Black and White offenders were referred to Court Diversion.

- Statistical tests indicate that the race of the Public Order and Motor Vehicle offenders was associated with whether they entered Court Diversion. However, because of the administrative data issues discussed above (page 2), it was not possible to build a statistical model capable of determining exactly how race is related to the Court Diversion participation.

Treatment Courts

In Vermont, Treatment Courts operate as special dockets within the criminal court system. The Judiciary operates a Mental Health Docket and a Drug Treatment Docket in Chittenden County, a Drug Treatment Docket in Rutland and Washington Counties and a Regional DUI Docket serving residents in Windsor, Windham and Orange Counites. The dockets function in a team atmosphere to help the participant access treatment and hold them accountable for the underlying criminal offense. Treatment Courts are evidence-based, and several studies have found them to be effective for reducing recidivism (Gennette & Joy, 2019; Joy & Bellas, 2017; NPC Research Team, 2009; Wicklund & Halvorsen, 2014). Analysis of the Docket databases and the Court Adjudication databased showed that:

- Between 2013 and 2018, 1,076 people entered Phase 1 of the Treatment Dockets. Chittenden's combined dockets served 52% of the people, while the newest docket, the DUI Regional Docket, served the fewest with 57 people served.

- During the five-year study period, all Treatment Dockets served only 30 black people, and even fewer Asian or Native American persons.

- The Rutland docket served 12 (3.8%) people of color and 296 (95%) White people. The most common charge served by the docket was Violations of Conditions of Release (201). The next two most common charges were Retail Theft (196) and Petit Larceny (129), Burglary was the fourth most common charge (104). Black offenders were less likely than white offenders to be referred for property offenses. This indicates there may be some structural reasons or gatekeeping that are keeping Black offenders from being referred.

- On the Washington County Treatment Docket, burglary offenses were the most common charge (59 charges, not people a person can have more than one burglary charge on the docket). During the study period there were 25 Black people charged with burglary offenses in Washington county, but none appeared in the Treatment Docket database. This indicates that there may be gatekeeping or structural reasons that result in Black burglary defendants not being referred.

- The Southeast Regional DUI Docket served fewer than five people of color between 2013 and 2018. There were 476 White defendants with potentially eligible charges during the study period, there were 8 Black people. One of the program benefits is a shorter incarcerative sentence. Because DUI is not a common crime Black people commit or get sentenced to a correctional facility for, the program will not have the same impact on Black incarceration rates as it does for White incarceration rates.

Recommendations

Vermont policymakers should incorporate racial impact statements when creating criminal justice policies. Racial impact statements are an analysis of the impact the proposed policy would have on marginalized groups. These statements serve as a tool for policy makers to evaluate potential disparities or other collateral consequences that would result from enactment of a particular policy. Typically, racial impact statements are considered prior to the policy's

adoption and implementation. Several states have implemented the use of racial impact statements.

Also, additional information should be recorded so that future efforts to analyze disparities using administrative data might be successful. CRG recommends including the following fields in Court Diversion and Treatment Court data collection by the entity best able to capture the information : whether the defendant was offered Diversion, whether the defendant refused Diversion, and any socio-economic or behavioral risk factors that may affect participation in Diversion or Treatment Court These additional fields will provide a clearer picture of why certain offenders are served by Court Diversion and Treatment Court and why others are not.

Introduction

This project is the product of a discussion at the U.S. Commission on Civil Rights - Vermont Advisory Committee in 2017. The author testified and was part of a panel of subject matter experts called upon to inform the Advisory Committee on factors that contribute to racial disparities in Vermont's incarcerated population. The Advisory Committee decided to focus on the school to prison pipeline in Vermont. However, there was a lively discussion about the role Vermont's alternatives to the traditional process might play in compounding disparities in the facilities.

Vermont's alternatives to the criminal justice system are available pre-charge, post-charge, and post sentence. Each tries to divert individuals away from the system and towards programs that benefit both the offender and society. Ideally, we would study all of them. However, in some cases the data do not exist or are of such poor quality that any meaningful analysis cannot be completed. Therefore, we narrowed our study to post-charge programs that provide a clear benefit to the participants over the traditional criminal docket. These were the Treatment Dockets and Court Diversion. The Vermont Judiciary operates five adult Treatment Dockets: Chittenden County Adult Drug Treatment Docket, Chittenden County Mental Health Treatment Docket, Washington County Drug Treatment Docket, Rutland Drug Treatment Docket, and the Southeast Regional DUI Treatment Docket. The Treatment Dockets are evidence-based programs that have been shown to reduce recidivism (Gennette & Joy, 2019; Joy & Bellas, 2017; NPC Research Team, 2009; Wicklund & Halvorsen, 2014). The Attorney General's office funds Court Diversion programs in all counties and this includes the Court

Diversion program and the Driver's License Suspension (DLS) program. A recent study found that first time offenders who were successful in Court Diversion had a recidivism rate of less than 1% (Joy, Recidvism Study and Cost Anlaysis for Vermont Court Diversion, 2019).

The current study looks at whether there is evidence of racial disparity in who is allowed to participate in these programs, and, if so, what the source of that disparity might be. We propose two sources of the disparity: potential biases of individual gatekeepers, and structural issues that create the disparity.   Disparity can stem from the biases of individual gatekeepers for the programs. As gatekeepers, these individuals decide who can participate in the program. In the Treatment Dockets, the prosecutor and defense counsel have input on the decision, and the defendant must feel comfortable enough to disclose the need for treatment.   Prosecutors alone decide whom to offer Court Diversion. The defendant's participation (or lack thereof) may have more

"REFERRED TO COURT DIVERSION" IN THIS REPORT MEANS PEOPLE THAT HAD A DOCKET ENTRY INDICATING THEIR CASE HAD BEEN REFERRED TO COURT DIVERSION. IT DOES NOT INCLUDE ALL PEOPLE WHO MAY HAVE BEEN OFFERED COURT DIVERSION BUT DECLINED.

structural issues. For example, the programs may not meet the needs of offenders of color because of the offenses served; or the requirements of participation (such as frequent court appearances) may exclude participation by defendants of color[2].

Court Diversion

Adult Court Diversion is governed by statute, administered by the Attorney General, and delivered by a network of non-profit organizations. Adult Court Diversion is offered in all counties and serves adults charged with misdemeanor or felony offenses. Additionally, Adult Court Diversion can assist those with a mental health or substance use disorder contributing to their offending (Adult court diversion program, 1981). Prosecutors have the discretion to refer, and the offender must consent to participate in the program. Programs are restorative in nature, and there is a special DLS program that aims to help people charged with Driving License

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[2] A requirement that appears race neutral on its face may have disparate impact on communities of color resulting in disparities.

Suspended to resolve their suspension. If a person successfully completes Court Diversion, the charges are dismissed and expunged two years after the dismissal The person is not convicted and will never have the case appear on a criminal background check. Successful Court Diversion participants benefit from avoiding a criminal record and the associated collateral consequences of a record. Victims of cases referred to Court Diversion benefit from the opportunity to participate in developing the restorative agreement and payment of restitution.

Analysis

Court Diversion programs, over the years, have relied on spreadsheets and local databases to record information. There has generally been little or no useful information kept by the programs for evaluation or analysis, and no consistency among programs. As of FY 2020, the Attorney General's office moved to a new case management system for the Court Diversion providers that standardizes data collection and includes information necessary to evaluate the programs.

For this study, we relied on data from the Adjudication Database maintained by CRG and Vermont criminal histories. The study period for this analysis was 2015-2019. During that time, 6,127 defendants were referred to Court Diversion. Table 1 shows the breakdown by county and race of the people referred to Court Diversion. People's race is as recorded by law enforcement.

Table 1: Number of People Referred to Court Diversion by Race and County

County	Asian	Black	Indigenous	Latinx	Missing	Multiracial	Not Reported	Other	Unknown	White	Total
Addison	*	11	*	*	16	*	9	*	22	146	209
Bennington	*	21	*	6	20	*	14	*	*	497	567
Caledonia	*	7	*	*	11	*	*	*	*	220	248
Chittenden	31	129	*	7	11	*	29	*	8	1154	1372
Essex	*	*	*	*	*	*	*	*	*	23	23
Franklin	*	9	*	*	22	*	161	*	24	364	581
Grand Isle	*	*	*	*	*	*	*	*	*	58	67
Lamoille	*	11	*	*	19	*	27	*	*	300	367
Orange	*	*	*	*	*	*	*	*	*	228	236
Orleans	*	*	*	*	14	*	8	*	*	216	247
Rutland	*	13	*	*	13	*	*	*	*	365	402
Washington	*	25	*	*	26	*	*	*	13	759	836
Windham	7	14	*	*	*	*	*	*	*	309	346
Windsor	8	15	*	8	12	*	*	*	12	565	626
Total	59	259	*	45	174	*	269	*	107	5204	6127

• indicates 5 or fewer people

Table 2 illustrates the total number of charges referred to Court Diversion by race. If a person had more than one charge referred to Court Diversion, they appear in this chart more than once.

Table 2: Type of Charges Referred to Court Diversion by Race

Charge Type	Asian	Black	Indigenous	Latinx	Missing	Multiracial	Not Reported	Other	Unknown	White
Ordinance	*	*	*	*	*	*	*	*	*	*
Fish and Game	*	*	*	*	*	*	*	*	*	20
Public Order	19	112	*	31	215	*	126	*	42	2057
Motor Vehicle	22	104	*	17	576	*	76	*	24	2231
Drugs	*	18	*	6	52	*	18	*	7	462
Fraud	*	9	*	*	18	*	7	*	6	160
Theft	8	69	*	7	101	*	60	*	25	1177
GNO	11	12	*	8	14	*	*	*	8	227
DUI	*	*	*	*	*	*	*	*	*	44
Arson	*	*	*	*	*	*	*	*	*	*
Weapons	*	*	*	*	*	*	*	*	*	*
Weapons	*	*	*	*	*	*	*	*	*	*
Assaults	6	37	*	*	50	*	44	*	13	663
VAPOs	*	*	*	*	*	*	*	*	*	15
Robbery	*	*	*	*	*	*	*	*	*	*
Domestic	*	*	*	*	11	*	*	*	*	80
Sex Offenses	*	*	*	*	*	*	*	*	*	*
NA	*	*	*	*	6	*	*	*	*	30
Total	71	370	*	74	1056	*	340	9	127	7174

* Indicates 5 or fewer people

Motor vehicle offenses that were not DUI or Gross Negligent (GNO) related were the most common offenses referred to Court Diversion. These include Driving on a License Suspended, for which Court Diversion has a special program designed for these defendants. Public Order offenses, including Disorderly Conduct, Trespassing, and Violations of Conditions of Release, were the second most common charge category referred to Court Diversion. Overall, about 7% of all charges, for Black and White offenders were referred to Court Diversion for the crime categories of Motor Vehicle offenses and Public Order offenses. Data on few people of Asian, Indigenous, or Hispanic descent were excluded because there were too few people in these categories. We ran the Chi-Squared test, which measures the independence of two variables. In this case, we measured whether the race (Black or White) of the offenders for Public Order and for Motor Vehicle offenses was related to whether they entered Court

Diversion. The probability was .002[3] indicating that race is related to entering the program. The statistic does not tell us how they are related. To attempt to answer that, we created a regression model to test what factors influenced the probability someone would be referred to Court Diversion. Unfortunately, the model was not accurate 76% of the time, so we do not report the findings here. However, we would like to draw attention to some of the problems inherent in using administrative data to model human decision-making in general, and as applied to Court Diversion.

To build the model, we chose defendants from 2015-2019 who had been charged with a public order offense. Because there were too few people of Asian, Indigenous, or Hispanic descent in the data, we had to limit our cohort to Black and White defendants. This illustrates the first problem of using administrative data to measure disparities or explain experiences: we can only use the data to explain the Black experience and the White experience. Rigorous analysis and interviews with offenders of Asian, Indigenous, and Hispanic descent would help bridge that gap.

We then requested the Vermont criminal histories for the defendants. Criminal histories are used by prosecutors to decide who might be eligible or benefit from Court Diversion. There are two problems with using these criminal histories in regression models in trying to understand past decisions. First, Vermont criminal histories only capture Vermont arrests, charges, and sentences. We do not know if someone had an out of state record. Second, there are several reasons that an individual might appear to have no record. In the case of Court Diversion – if a person was successful in completing the program, the record is expunged. This means that there is an underlying assumption that the people who have no records are first time offenders. Additionally, an individual could appear to have no record because of the way the names are recorded in the court data do not match the way the names are recorded in the criminal history data.

The only variables we had to test the model on were county, race, prior criminal history score[4], total number of charges on the current docket, total number of past misdemeanor convictions, and total number of prior felony convictions. These variables were insufficient to

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[3] If the probability is greater than .05 than the result is not significant. Here, the result is less than .05 indicating race and diversion are related.

[4] Calculated as: Number of Prior Misdemeanor Conviction *.5 + Total Number of Felony Convictions = Criminal History.

predict who would or would not get Court Diversion. Our data sources (court data and criminal history - which is based on court data) did not include: whether the defendant was offered Court Diversion, who refused diversion or any socio-economic or behavioral risk factors that may affect someone be referred to or participating in Court Diversion. Collecting some of this information may help the robustness of future analysis on disparities in Court Diversion.

Treatment Courts

Vermont offers several treatment dockets, colloquially known as treatment courts. Treatment dockets are evidence-based approaches that have been proven to reduce recidivism compared to the traditional criminal justice approaches. Docket is the term used in Vermont because it is still the Superior Court Criminal Division that decides the cases, but the cases moved to this Treatment Docket are handled with the nationally recognized principles of treatment courts. Principles and Standards are developed by the National Association of Drug Court Professionals and implemented locally by the Treatment Dockets. There are ten principles and standards that are based on the research. They include a standard on Equity and Inclusion, in addition to how to identify the target population and how to make every aspect of the treatment court comport with evidence-based best practices (National Association of Drug Court Professionals, 2018).

All the Treatment Dockets operate on the idea that the offender is committing crime because of an underlying substance use or mental health disorder. The Treatment Docket operates in a team atmosphere to help the participant access treatment and to hold them accountable for the underlying criminal offense. The Judiciary operates a Mental Health Docket and a Drug Treatment Docket in Chittenden County, a Drug Treatment Docket in Rutland and Washington Counties and a Regional DUI Docket serving residents in the White River Valley and parts of Orange County.

Treatment courts provide a compounding positive effect on a person's life if they are successful in the program. However, to be enter the docket, a person needs to be referred, meet the clinical risk/needs served by the docket and be legally eligible. This analysis looks at whether people of color are being served by the Treatment Dockets and offers suggestions for improving access to these beneficial programs for Vermonters of color.

Data and Approach

The Treatment Dockets use an MS Access database that was created for a Juvenile Treatment Court and modified to serve the Rutland Treatment Docket in 2002. The software and interface have not been updated in the intervening 20 years. They are not linked to the Judiciary's main case management systems. Data entry of fields is cumbersome, time consuming, and inconsistent. This limits the ability to use the data in a meaningful way across the Treatment Dockets. We supplemented these data with the Court Adjudication database we maintain. This includes all criminal charges disposed of by the Vermont Criminal Division. We had access to Vermont criminal histories for this project. However, because of the inconsistent or non-existent information in the Treatment Docket databases we were unable to match cases handled by the Treatment Dockets into the criminal histories of the participants and perform a meaningful analysis.

We used the data from the MS Access databases to describe who the Treatment Dockets served from 2013-2018. The databases have a field for race and conflate race and ethnicity in same field. The databases have a section to describe the docket number and the charges that brought the person into the Treatment Docket. Chittenden's data were unusable[5] to determine what charges brought people into the Treatment Docket. For Rutland, the Regional DUI, and Washington Treatment Dockets, we looked at types of charges and whether they were serving people of color. Using the Court Adjudication Database, we examined whether the Treatment Dockets were serving all potential people of color.

Analysis

The years included in the analysis were 2013-2018. Because of inconsistent data entry in the databases, we limited our analysis to those who were recorded as entering the first phase of the Treatment Docket. Like many criminal justice databases in Vermont, Ethnicity and Race are conflated and recorded in the same field. In the Treatment Dockets' databases the field is labeled Ethnicity. The options available are: African American, Asian or Pacific Islander, Hispanic, Native American, Not Reported, Other, and White. Unknown means that the field was not recorded in the database. Unfortunately, the Treatment Dockets served too few people of color individually. We can only report on the total population served and not by each county's docket

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[5] Chittenden's database did not record the docket number in a majority of cases and did not include a consistent report of crime types. The data could not be extracted in any meaningful way.

to maintain the privacy of individuals who may otherwise be identified or see themselves in this report.

Table 3. Number and Race of Individuals Served by Treatment Courts, 2013-2018

Characteristic	N = 1,076[1]
Court	
Chittenden	563 (52%)
DUI	57 (5.3%)
Rutland	311 (29%)
Washington	145 (13%)
Ethnicity	
African American	30 (3.1%)
Asian or Pacific Islander	6 (0.6%)
Hispanic	12 (1.3%)
Native American	6 (0.6%)
Not reported	1 (0.1%)
Other	6 (0.6%)
White	892 (94%)
Unknown	123

[1]n (%)

One thousand and seventy-six people (1,076) entered Phase 1 of the Treatment Dockets. Chittenden's combined dockets served 52% of the people. The Regional DUI Docket served the fewest people at 57 people served. However, it is also the newest Treatment Docket and was expanded during the study period to be regional. Prior to the expansion it served mostly people in the Upper Valley.

During the five-year study period, the Treatment Dockets served only 30 black people and even fewer Asian or Native American persons. We had hoped to use the Treatment Docket databases to build an understanding of who was being served by the Treatment Dockets and then compare them to the Adjudication Database to see if there was evidence of implicit bias in who was being referred and if there was a structural bias. An indicator of structural bias would be that the Treatment Dockets do not meet the need of people of color because of the offenses served, requirements, or other reasons inherent in the design or implementation of the Treatment Dockets rather than the discretion of an individual State's Attorney, Defense Attorney, or Docket Coordinator. Because the data quality was so poor, we cannot do this. [6] We can, however, provide the reader and policy makers with some information that begins to explore whether these Treatment Dockets meet the needs of people of color. As mentioned above, Chittenden's data is

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[6] The data quality is poor not just because of the workers entering the data in an inconsistent manner. The data quality is also poor because the databases are antiquated, having been created 20 years ago for a Juvenile treatment docket. We are pleased that the Judiciary has chosen a vendor for a more automated data collection. We also encourage a review of staffing needs and time for accurate and complete data entry.

unusable for analysis. We present information on the other 3 Treatment Dockets and the people of color who were served by those dockets in the same jurisdictions.

Rutland County Treatment Docket

The Rutland Treatment Docket is the oldest in Vermont. It serves people whose substance use disorder is contributing to their criminal behavior. In 2009, the Treatment Docket was found to be cost effective and reduce recidivism, while adhering to the SAMSHA principles (NPC Research Team, 2009). A 2014 report drew similar conclusions finding that the recidivism was reduced for program participants compared to an administrative control group (Wicklund & Halvorsen, 2014).

During the study period, the Treatment Docket served 12 (3.8%) people of color and 296 (95%) White people[7]. The most common charge was Violations of Conditions of Release (201). The next two most common charges were Retail Theft (196) and Petit Larceny (129). Burglary was the fourth most common charge (104). People of color make up about 3% of the people charged with these crimes in Rutland County. However, people of color participating in the Treatment Docket were more likely to have drug charges than retail theft, burglary, or petit larceny. This could indicate that some type of bias is influencing which individuals are referred to the Rutland Treatment Docket. For example, a gatekeeper bias may be occurring if those responsible for making referrals to alternative programs are more apt to view any White criminal behavior as related to drug use and question the defendant about the circumstances surrounding their behavior, while only viewing Black criminal behavior as related to drug use if the offense specifically involves drugs. Alternatively, a structural bias could be occurring if Black defendants feel less comfortable disclosing drug use or substance use to criminal justice practitioners figure and they are, therefore, not coming to the attention of the Treatment Docket. Stakeholders should explore these issues. Rigorous qualitative analysis may be necessary to understand these dynamics.

Washington County Treatment Docket

Washington County operates a Treatment Docket focusing on people who commit crimes because of a substance use disorder. A process evaluation of the docket in 2019 found that it was operating as a strong evidence-based model and adhering to National Association of Drug Court

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[7] Race was missing or unknown in 3 cases.

Professionals' principles (Gennette & Joy, 2019) During the study period, six people of color entered phase one, accounting for 4% of the total participants.

The Treatment Docket's database included the defendants' charges that led them to the docket. Burglary offenses were the most common charge served. During the study period there were 25 people of color charged with burglary offenses in Washington County, but none appeared in the Treatment Docket database. That no people of color with burglary charges were served by the Treatment Docket indicates that either there is a gatekeeper bias influencing who gets referred/accepted to the Treatment Docket or there is something structural that is prohibiting the Treatment Docket from serving people of color charged with the same offense as White people. As discussed above in relationship to Rutland, the bias may come from gatekeepers not recognizing Black offenders as having a substance use problem unless drugs are involved in the incident for which they are arrested. There may also be structural reasons that result in Black burglary defendants not being referred (e.g., they do not feel comfortable disclosing substance use issues). This should be further examined by the Judiciary, the Treatment Docket, and stakeholders.

Southeast Regional DUI Docket

The Southeast Regional DUI Docket serves defendants who have a third or higher DUI offense, or who have a second DUI offense and their prior criminal history includes one or more additional factors relating to driving impaired. This DUI Docket is a post-sentence docket and reduces the amount of incarceration a person must serve. A prior interim evaluation of the DUI Docket found that it was on track to reduce recidivism and be a cost-effective use of taxpayers' dollars (Joy & Bellas, 2017)

During the five-year study period, the DUI Docket served fewer than five people of color. All DUI crimes are the second most common charge for White defendants in Windsor, Windham and Orange Counties (See Appendix A for a breakdown of Charge Categories by Race and County). All DUI offenses were the third or fourth most common charges in those counties for defendants of color. There were 476 White defendants with potentially eligible charges during the study period, there were 8 people of color.

Because there are so few people of color charged with DUI, the number of Vermonters of color potentially eligible for the DUI Docket is limited. As such, it is hard to discern if implicit (or explicit) bias by DUI Docket gatekeepers prevents people of color from accessing the

benefits of the program. However, this does offer a possible explanation for the disparities seen in Vermont's correctional facilities. White offenders have the opportunity to receive reduced sentences because the DUI Docket is available for crimes for which White people in Vermont are commonly charged. There are not similar programs for people of color. This is not to argue that the DUI Docket should be abolished. As long as it remains an effective program it should be supported. Policy makers should, however, consider what other programs might be needed to better serve Vermonters whose charges are not eligible for existing alternative programs.

Racial Impact Statements in Policy Making

Vermont should consider creating a formal process for policy makers to evaluate the impact of policies on people of color. Racial impact statements, prepared much like a fiscal note, help lawmakers and other policymakers understand the impact of a proposed law or program on communities of color. Policies often have unintended consequences that are best addressed before implementation to avoid disparities. Racial impact statements draw attention to potential consequences, intended or otherwise, of a policy.

Currently, nine states require racial impact statements as part of the legislative process. Iowa was the first state to do so in 2008, followed by Connecticut in the same year. Florida, Colorado, Maine, Maryland, Virginia, New Jersey, and Oregon all have a mechanism for racial impact analysis of legislation (The Sentencing Project, 2022). The states differ on how the statements can be requested, when they can be requested, what they should include, and how they are used/released to the public.

An analysis of Iowa's process found that lack of available data, lack of requests by the legislature, and lack of consistency all contributed to an underuse of the statements. (National Juvenile Justice Network, 2020). A news account in New Jersey found that the state had only used the system twice in two years (Balcerzak, 2022). Vermont can learn from other states and craft a carefully designed policy that could analyze how a policy will affect people of color.

Vermont is already ahead of other states by establishing an Office of Racial Equity and adding the Division of Racial Justice Statistics (the Division) to that office in 2021. Some of the data access issues faced by other states are already being addressed in Vermont with the standing up of the Division. However, the Division should not bear the sole responsibility of analyzing the impact a program or policy will have on people of color. The people advocating for a budget allocation for the program should also bear that responsibility. They know their programs best,
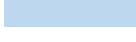
know their data best, and should include racial impact analysis in any proposal and funding request. It needs to be stressed that quantitative data alone will not be able to capture the impact on all Vermonters of color. Even with several years' worth of criminal justice data, we can still only describe the Black and White experience. We cannot say anything about the Asian, Indigenous, or Hispanic experience. Further, administrative data records the actions of the government (or program), it does not reflect the experiences of the people who are the subject of the data. Only qualitative analysis in the form of interviews, surveys, focus groups etc. can begin to understand how people experience the system.

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Appendix A: Number of Charges by Type, County and Race of Defendant

Countyin	Muni Ord	Fish and Game	Public Order	DMV- Other	Drugs	Fraud	Theft	GNO	DUI	Arson	Weapons	Assaults	VAPO	Robbery	Domestic	Sex Offenses	Homicide
Addison			39	21	23		14	12	20			17	*		8	*	
Bennington			102	43	93	9	57	13	43		*	106	9	*	50	14	*
Caledonia			49	10	22	*	7	*	15		*	22	*		13	8	*
Chittenden	*	*	743	395	369	46	339	41	284		8	437	91	16	263	59	10
Essex				*							*						
Franklin		*	84	51	48	*	17	*	26		*	28	13	*	28	7	
Grand Isle		*	*			*		*			*	*		*	*		
Lamoille			11	21	7	*		*	16		*				17	*	
Orange			7	9	26			*	8			6	*	*			
Orleans			24	34	19	*	14	6	12		*	12	*	*	16	*	*
Rutland			88	43	71	10	56	8	52			39	10	*	91	10	*
Washington			126	70	67	9	50	9	55	*	*	40	19	*	45	19	*
Windham			199	106	128	12	59	28	86		*	59	18	*	64	17	
Windsor		*	90	47	78	11	24	22	46			42	*		48	*	*

Most Common Charge in County
Second Most Common Charge

County	Muni Ord	Fish and Game	Public Order	DMV- Other	Drugs	Fraud	Theft	GNO	DUI	Arson	Weapons	Assaults	VAPO	Robbery	Domestic	Sex Offenses	Homicide
Addison	*	23	444	562	113	101	248	79	651	*	7	187	52	*	164	94	*
Bennington		44	1723	940	540	357	923	129	979	*	13	600	250	8	695	282	13
Caledonia		65	857	853	181	163	611	48	1067	12	*	400	189	*	356	150	9
Chittenden	24	93	4110	3331	1119	751	3006	286	2843	21	13	1648	343	45	1017	381	18
Essex		16	114	73	28	17	103	11	89			76	11	*	70	18	*
Franklin		60	1368	1908	370	120	833	138	804	6	*	456	217	14	426	163	*
Grand Isle	*	12	234	185	26	24	84	12	118	*		51	17		46	*	
Lamoille		28	388	482	79	49	195	25	553	*		186	53		154	57	*
Orange		40	438	546	148	82	250	63	491	*	9	199	75	*	194	32	
Orleans		104	808	739	289	65	436	136	622	*	*	342	118	*	379	110	8
Rutland		53	1218	1142	503	229	991	107	1879	*	*	561	223	13	620	124	13
Washington	14	54	2218	1687	435	245	1394	168	1612	12	12	715	141		543	154	*
Windham		100	1953	1480	732	218	1050	225	1770	*	11	632	252	26	738	184	8
Windsor	*	52	1733	1236	703	320	752	217	1325	13	8	644	164	15	621	169	6

Most Common Charge
Second Most Common Charge