



# Justice Reinvestment in Vermont Results of Racial Equity in Sentencing Analysis

Between January and December 2021—funded by the U.S. DOJ’s Office of Justice Programs, Bureau of Justice Assistance (BJA)—The Council of State Governments (CSG) Justice Center conducted an analysis of racial equity in Vermont’s criminal justice system to support the efforts of the Justice Reinvestment (JR) II Working Group. Earlier data analysis by CSG Justice Center staff, completed in 2019 during the first phase of Vermont’s Justice Reinvestment II Initiative, found initial evidence of Black-White racial disparities in the court and corrections systems. In light of these findings, the JR II Working Group requested further study of racial disparities at sentencing in Vermont’s criminal justice system.<sup>1</sup>

The purpose of this expanded analysis was to investigate patterns of racial disparity over time and provide insight into the drivers behind them, with the goal of offering the JR II Working Group actionable recommendations to address racial disparities moving forward. The CSG Justice Center’s **key findings** from this work include the following:

**In Vermont, Black people are six times more likely to be incarcerated relative to White people.**

**Disparities are present in cases coming to Vermont criminal courts.** Annually, Black people are over 14 times more likely to be a defendant in a felony drug case and over 7 times more likely to be a defendant in a case involving crimes against person(s), relative to White people. In sum, Black people are defendants in criminal cases at rates that exceed those faced by White people.

**Once before the court, Black people are not more likely to be convicted**, for most offenses, or sentenced to longer incarceration terms for any offense relative to com-

parable White people. This suggests that these particular decision-making points are not major drivers of incarceration disparities in Vermont.

**Importantly, however, when similarly situated Black and White defendants are compared, there are statistically significant disparities in who receives an incarceration sentence.** The most dramatic racial disparities are seen for felony property and felony drug offenses, where Black people are 18 percentage points more likely to receive an incarceration sentence relative to comparable White people. This result is consistent when analysis is restricted to Vermont residents alone and accounts for in-state criminal history in addition to other key case and defendant characteristics.

Based on these results, the CSG Justice Center proposes the following **five recommendations** to improve racial equity in Vermont's criminal justice system:

### **1. Apply a race equity lens to the reclassification of drug offenses.**

The findings of this analysis highlight significant disparities in how Black people in Vermont are represented and sentenced in felony drug cases. These findings mirror national trends that show while Black and White people use and sell drugs at similar rates, Black people are more likely to be arrested and incarcerated for drug offenses.<sup>2</sup> The Vermont Sentencing Commission is considering recommendations for a standardized offense classification system, including drug offenses. Vermont has an opportunity to use the findings of this analysis to apply a racial equity lens to the classification process 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.

### **2. Establish non-binding sentencing guidance or 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 presumptive probation for certain offenses to support the use of discretion in determining whether a person should receive incarceration or community supervision. Guidance or presumptive probation should focus on offenses where racial disparities are most pronounced as well as where there is an opportunity to support the use of probation rather than incarceration without compromising public safety.

### **3. Examine racial disparities in diversion and pretrial services.**

National research shows that Black, Indigenous, and People of Color (BIPOC) are less likely to receive diversion than White people.<sup>3</sup> However, the data to understand whether these same disparities exist in Vermont is not readily available. The Vermont Attorney General's Pretrial Services and Court Diversion Report should be required to publicly report race and ethnicity data for people who are eligible, receiving, and declining diversion and pretrial services.

### **4. Develop internal guidance to increase consistency in charging and plea-bargaining decisions within state's attorneys' offices.**

Like non-binding sentencing guidance for judges, guidance for state's attorneys supports the use of discretion and can be limited to specific offenses where racial disparities are most pronounced. To monitor implementation of internal guidance, state's attorneys' offices should also regularly collect and examine charging and plea-bargaining data as well as consider establishing a process for internal charge review prior to filing.

### **5. Improve the collection, analysis, and availability of race and ethnicity data to inform future training and decision-making.**

**Expand availability of Hispanic ethnicity data to law enforcement and the courts.** Currently, the data that the Vermont Judiciary receives from law enforcement do not include Hispanic ethnicity. To better understand and address disparities at sentencing for people who identify as Hispanic, Vermont must ensure that accurate ethnicity data are available in the court's data system.

**Invest in staffing and system improvements necessary to increase future data collection and analysis capacity.** Addressing gaps in racial and ethnic disparity data will require targeted, long-term investments in the people and infrastructure necessary to collect, share, and analyze quality information.

**Collect and analyze sentencing data statewide and by judicial district.** Race and ethnicity data should be collected for each key decision-making point in the court process, including case inflow, conviction, incarceration, and sentence length. Comprehensive data collection should also include information on charging and plea-bargaining decisions.

**Identify opportunities to publish racial disparity data, including an annual report to benchmark and monitor progress.** Racial disparity data should regularly be made available to the public to promote transparency and accountability.

**Use data and community engagement to inform judicial training to support consistent decision-making.** Quantitative and qualitative data can help the Vermont Judiciary identify training opportunities for judges to increase their understanding of how to identify and address racial disparities from the bench, as well as generally support consistency in decision-making across the state.

1. Vermont's Justice Reinvestment II legislation, Act 148 (2020), tasked the Racial Disparities in the Adult and Juvenile Justice System Advisory Panel (RDAP) and other stakeholders to study and make recommendations regarding gaps and challenges in race and ethnicity data collection. RDAP has since delivered two reports to the legislature recommending the creation of an Office of Racial Justice Statistics (Office) to manage the collection and analysis of criminal justice-related race and ethnicity data. This report is intended to complement efforts by RDAP and others.
2. Ojmarrh Mitchell and Michael S. Caudy, "Examining Racial Disparities in Drug Arrests" *Justice Quarterly* 32, no. 2 (2015): 288–313; Jonathan Rothwell, "Drug Offenders in American Prisons: The Critical Difference Between Stock and Flow" (Washington, DC: Brookings Institution, 2015); Jeremy Travis, Bruce Western, and F. Stevens Redburn, "The Growth of Incarceration in the United States: Exploring Causes and Consequences" (Washington, DC: National Research Council, 2014).
3. Mark Mauer and Nazgol Ghandnoosh, *Incorporating Racial Equity in Criminal Justice Reform* (Washington, DC: The Sentencing Project, 2014).

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