

STATE-FUNDED RESTORATIVE JUSTICE IN VERMONT

The Future of Structure, Funding, and Flow

IRP Spring 2022

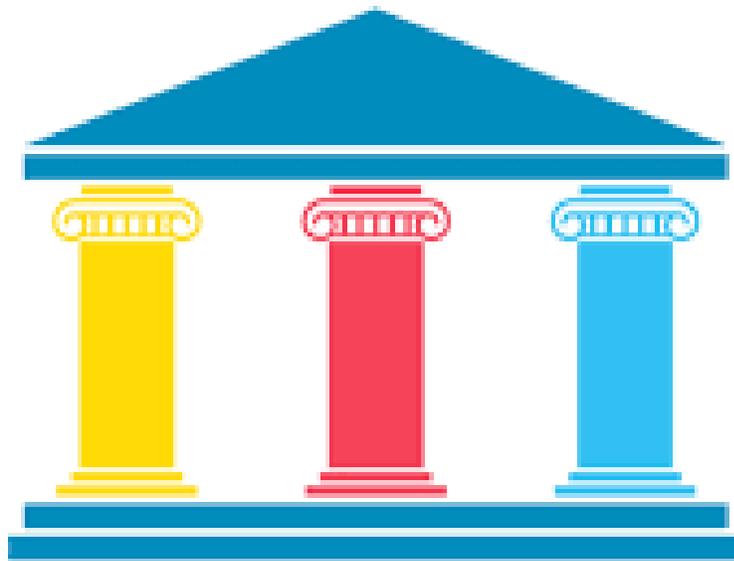
Last Edited: May 2022

Faculty Advisor: Professor Robert Sand

Ping Showalter

pingshowalter@vermontlaw.edu

Vermont Law School, Master of Arts in Restorative Justice



This document aims to provide background and promote conversation around the current landscape of state-funded restorative justice in Vermont. What does it look like? And where can it go?

TABLE OF CONTENTS

<i>INTRODUCTION</i>	3
<i>HISTORY & VISION</i>	4
Community Justice Centers (CJCs)	4
Court Diversion Programs	5
Balanced and Restorative Justice (BARJ) Program	6
<i>STATUTORY FRAMEWORK</i>	8
28 V.S.A. § 2(a) Defining Restorative Justice	9
24 V.S.A. §§ 1961-1967 Community Justice Centers.....	9
3 V.S.A. § 164 Adult Court Diversion Program.....	10
33 V.S.A. § 104 Department for Children and Families	11
33 V.S.A. § 5101 Human Services.....	11
33 V.S.A. §§ 5225-5232 Delinquency Proceedings.....	11
<i>CURRENT LANDSCAPE</i>	12
Breakdown of Structure	13
Breakdown of Funding.....	14
Summary of Pending Legislation.....	15
<i>EXISTING TENSIONS & POSSIBLE SOLUTIONS</i>	17
Existing Tensions in FUNDING.....	18
Possible Solutions for FUNDING	19
Existing Tensions in STRUCTURE.....	24
Possible Solutions of STRUCTURE (rearranging).....	28
Possible Solutions of STRUCTURE (improving)	32
Synthesis of Best Path Forward	37
<i>CONCLUSION</i>	39
<i>RESOURCE APPENDIX</i>	40
Public Documents.....	40
List of Individuals Interviewed	40
List of Individuals Surveyed	40

INTRODUCTION

This project reflects and joins the recent conversations centered on restorative justice providers in Vermont. Restorative justice (RJ) is now rooted in this state, yet it continues to grow and adapt, fracture and perplex. There is a new urgency to understand and improve this alternative form of addressing harm—an urgency found in legislators, Program Directors, and various stakeholders alike. Before us now: how can we make RJ more efficient, more effective, and more equitable?

This project offers a new lens to consider this question, providing some quantitative data and a large array of qualitative data as sourced through interviews and surveys. The synthesis of all such information contributes to the following sections of this report:

- The history and vision of CJs, Court Diversion, and BARJ
- The statutory framework of restorative justice in Vermont
- The current RJ landscape
- Current tensions and possible solutions moving forward
- Synthesis of future best practice

The current structures of RJ in Vermont can be analogized to an old farmhouse—piecemeal add-ons to an infrastructure that is becoming, in places, increasingly disjointed.¹ As RJ in Vermont gains traction and strives to address more needs, we build new walls and extend rooms. We repaint and repolish and revise our existing structures. It is only when we step back do we notice the sagging supports and mismatched additions. This project attempted to explore and critique Vermont’s ‘house of RJ’, one room at a time. This report now considers what the restorative structures were meant to look like at the beginning, how they currently exist, and where we can go in the future.



What can we rebuild and who, exactly, can do it?

¹The specific analogy that compares CJC funding to an old Vermont farmhouse is credited to Derek Miodownik, the Community and Restorative Justice Executive for Vermont’s Department of Corrections.

HISTORY & VISION

John Perry, who served for 30 years as the Director of Planning for Vermont's Department of Corrections, described the growth of alternative justice in Vermont in the following terms: the 1970s focused on closing the state prison in Windsor and on community corrections, the 1980s was a time of risk control and reduction with treatment programs, the 1990s saw the vision and principles of alternative justice paired with intermediate sanctions, and the 2000s saw community justice and restorative justice combined with deinstitutionalization.

The information below elaborates on this later growth, describing the evolution of the three main forms of state-funded RJ: CJs, Diversion, and BARJ.

Community Justice Centers (CJs)

Community Justice Centers seek to address harm through community response. CJs rely on a large network of volunteers to help provide alternatives to incarceration for those who have caused harm. Common services include—but are not limited to—panels, mediations, conferences, and Circles of Support and Accountability (COSAs).

In 1992, John Perry wrote the original grant to create Reparative Boards. The first Board was established in 1995, and soon thereafter five additional Boards were launched in communities across Vermont.ⁱ Conceptually, these Boards were a form of diversion from prosecution for adults, representing a community alternative to traditional punitive measures.

These Reparative Boards quickly grew in popularity, and in 1998 Perry received a \$100,000 Ford Foundation grant to create publicity about these Boards. In 2001, the Department of Corrections (DOC) awarded grants to eight towns (Burlington, Newport, Rutland, Brattleboro, Barre, Montpelier, St. Johnsbury, and White River) to build Community Justice Centers and operate the Reparative Boards from them.ⁱⁱ These CJs took on more programming and more expansive roles, eventually becoming the array of 17 CJs throughout 14 counties that we have today.

A survey distributed for purposes of this report asked: what is the overarching vision and goal of the Community Justice Centers? Below is a sample of the answers provided:

“... to involve the community directly in the continuum of justice, and to bring resiliency and conflict management to communities.”

*(Leitha Cipriano,
Director of the Bennington Center for
Restorative Justice)*

- ⇒ “To provide a restorative option to those who commit harm, to support the victims. To give those reentering from incarceration the support and community they need to be successful.”
- ⇒ To deliver “a full array of restoratively based services for community members involved in the criminal legal system either as victims/survivors of harm, or those charged with committing harm.”
- ⇒ “To be a unified group of restorative justice providers who provide uniform and equitable services to each region of the state.”

Court Diversion Programs

Court Diversion seeks to intercept the traditional court process by providing prosecutors the opportunity to formally divert individuals charged with an offense to restorative panels after a judicial finding of probable cause. Upon such finding, a person can be diverted before, at, or after appearing at arraignment or any subsequent hearings.ⁱⁱⁱ

In addition to the adult Court Diversion program, another program of note is Tamarack.² Although the adult Diversion statute does not reference Tamarack by name, the purpose of this program is similar to adult Court Diversion, yet targeted specifically to individuals charged with a crime—regardless of their prior criminal record—who have substance abuse or mental health treatments needs.³

² Both adult Court Diversion and Tamarack are part of a larger array of programs and services that all receive grant awards from the AGO. These additional programs include the Youth Substance Use Awareness Safety Program, the Civil Driving with a Suspended License Program, and Pretrial Services.

³ The only exceptions to Tamarack eligibility is if the person is charged with a listed offense (the most serious type of felony).

Court Diversion began as a local community justice program in 1979 to divert minors out of the court system, with the use of federal money disbursed by the Vermont Commission on the Administration of Justice. Seven pilot Court Diversion projects then began and were hugely successful, prompting the legislature to make it a statewide option for youth.^{iv}

In 1982, the program was expanded to include adults. There are now 12 Diversion providers in total. 10 counties have their own provider, while one provider serves Franklin and Grand Isle combined and one provider serves Caledonia and Essex combined.^v

A survey distributed for purposes of this report asked: what is the overarching vision and goal of Court Diversion? Below is a sample of the answers provided:

“Diversion is not a criminal response, it is a human response. We look at unmet needs: why is this happening and why are these behaviors appearing?”

(Ellen Wicklum, Director of Valley Court Diversion Programs)

- ⇒ “Provide low-level offenders an opportunity to repair the harm caused and maintain a clean record.”
- ⇒ “Provid[e] justice-involved folks with restorative, community-based alternatives to the traditional legal system. Our programs do a lot more than simply try to reduce recidivism.”
- ⇒ “Address mental health with substance misuse with poverty. The combination of these three things afflicts countless people, and even one of those is tough to deal with.”

Balanced and Restorative Justice (BARJ) Program

The BARJ program seeks to support youth who are involved in, or are at risk of becoming involved in, the juvenile justice system. BARJ provides restorative intervention and includes processes like circles, panels, family group conferences, and restorative and skills-development classes.

The BARJ program was originally funded with Juvenile Accountability Block Grant federal dollars in 1999. In October of 2005, BARJ became funded through the General Fund, streamlined through Vermont’s Department for Children and Families (DCF).^{vi} Now, there are eleven BARJ providers in Vermont. For ten of the providers, the same entities who hold the Court

Diversion grants also hold the BARJ contracts. Five of these ten—the providers of Bennington, Franklin & Grand Isle, Lamoille, Windham, and one provider in Chittenden, also provide CJC services.⁴ Besides these ten providers where BARJ is combined with additional services, in Addison county the BARJ program is provided independently by the nonprofit organization Easter Seals, while the Addison County Restorative Justice Services holds the Attorney General’s Office (AGO) grant for Court Diversion.

In inquiring about the overarching vision and goal of the BARJ program, the Juvenile Justice Director and BARJ Coordinator for DCF, Lindy Boudreau, explained it as follows:

“The BARJ program is an arm of the youth justice system that provides support to youth who have been adjudicated delinquent and are on probation with DCF- Family Services or are at-risk for involvement in the juvenile justice system. The primary goal of the BARJ program is to support youth involved in, or at risk of becoming involved in the juvenile justice system by providing restorative interventions that reduce and eliminate further involvement in the system.”^{vii}

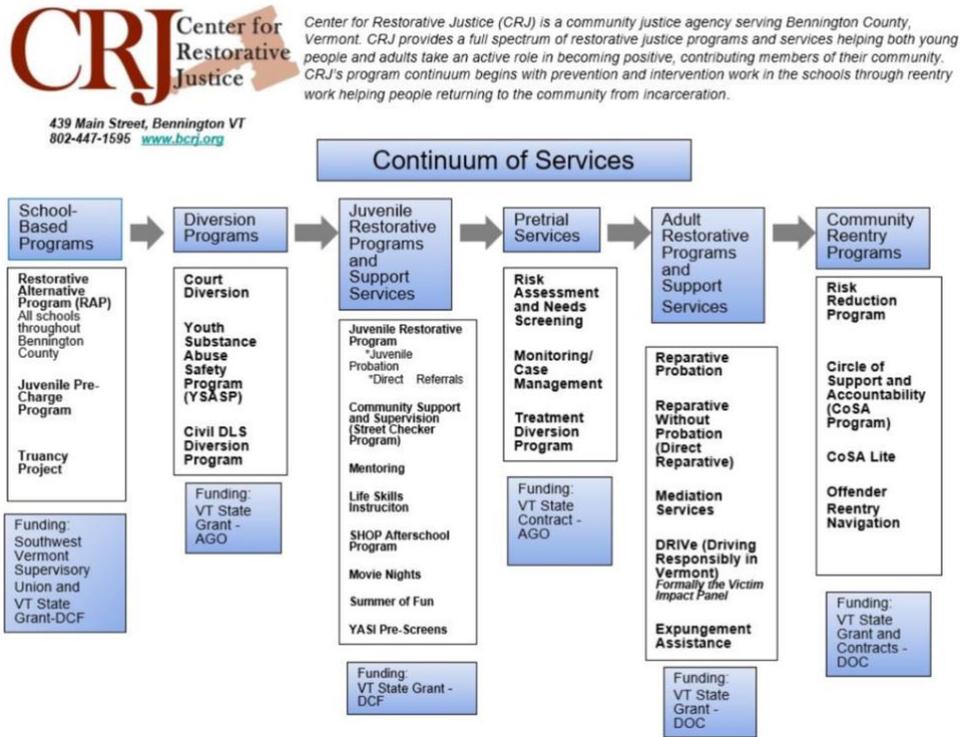


Figure 2⁵ (Example of Various Programs and Services in a County)

⁴ These five providers therefore offer all state-funded RJ services in their region as recipients of grants from the DOC, from the AGO, and from DCF.

⁵ Resource provided by the Center for Restorative Justice in Bennington County.

STATUTORY FRAMEWORK

By statute, Vermont must employ restorative justice “whenever feasible.”^{viii} Three main paths have emerged for such processes: Community Justice Centers, Court Diversion programs, and the Balanced and Restorative Justice program for youth.

CJCs are funded and supported by the Agency of Human Services (AHS), specifically under the jurisdiction of the DOC. The Court Diversion program falls under the auspices of the Attorney General and is funded primarily through the AGO, with just over 13% of funding coming through service fee revenue.^{ix} The BARJ program falls under the Family Services division of the Department for Children and Families, and is funded exclusively through DCF’s portion of General Fund dollars.

These three pillars of state-funded RJ programming seek to lessen the punitive nature of the justice system. While the Vermont Statutes Annotated (VSA) addresses each type of state-funded RJ, there are general concerns about the effectiveness and efficiency of the current statutory framework. As such, there are ongoing conversations about if and how to amend these restorative statutes.

In Summary:

- 28 V.S.A. § 2(a) *Defining Restorative Justice*
- 24 V.S.A. §§ 1961-1967 *Community Justice Centers*
- 3 V.S.A. § 164 *Adult Court Diversion Program*
- 33 V.S.A. § 104, § 5101, § 5225, and §5232 *Department for Children and Families; Human Services; Delinquency Proceedings*

28 V.S.A. § 2(a) Defining Restorative Justice ⁶

- “It is the policy of this state that **principles of restorative justice** be included in shaping how the criminal justice system responds to persons charged with, or convicted of, criminal offenses. The policy goal is a **community response** to a person’s wrongdoing at its earliest onset, and a type and intensity of sanction tailored to each instance of wrongdoing.”
- **NOTE:** it is worth emphasizing that this statutory definition of RJ is found in Title 28, which deals with corrections, instead of Title 13, which deals with the criminal code. *Where do we believe RJ belongs regarding the broader statutory scheme, the back end or the front end?*

24 V.S.A. §§ 1961-1967 Community Justice Centers⁷

- §1961 Legislative Finding
 - “A **system** of CJs will operate under the authority of a single statute.”
- §1963 Authority of Municipalities⁸
 - “The legislative body of any municipality may create within its jurisdiction a community justice center to resolve civil disputes and address the wrongdoing of individuals who have committed municipal, juvenile, or criminal offenses.”
- §1964 Structure of the Community Justice Boards
 - (a) Each CJC shall have: an advisory board comprising of at least 51% citizen volunteers, may use a variety of community-based RJ approaches (panels, conferencing, mediation), shall include programs to resolve disputes, address the needs of victims, address the wrongdoing of the offender, and promote rehabilitation of adult offenders.
- §1965 Duties of the CJs
 - (1) Each CJC: “shall work in close coordination with State agencies, law enforcement agencies, State’s Attorneys, social service providers, victim advocacy organizations, and other community resources.”
- §1966 CJC relationship with State Government Entities
 - (a) Support from Agency of Human Services [AHS will provide information, analysis, and technical support].
 - (b) Funding from Agency of Human Services [AHS may authorize CJs to implement State programs related to juvenile or criminal offenses].
- §1967 Cases Prohibited
 - “No case involving domestic violence, sexual violence, sexual assault, or stalking shall be referred to a CJC except in DOC offender reentry programs pursuant to protocols protecting victims.”⁹

⁶ This language was established in 1999.

⁷ This is 24 V.S.A. chapter 58, and it was established in 2008.

⁸ Municipalities may create a CJC or grant authority to an independent organization (often a nonprofit).

⁹ H.470, an act relating to the expanded referral of domestic violence, sexual violence, and stalking cases to CJs, was read for the first time on 1/7/2022 and is currently in the Committee on Judiciary.

3 V.S.A. § 164 Adult Court Diversion Program

- **Program Description:** (a) “The Attorney General shall develop and administer an adult court diversion program in all counties.”
 - (b) Program shall be designed to: “assist adults who have been charged with a first or second misdemeanor or first nonviolent felony, to assist those charged with an offense who have substance use or mental health treatment needs regardless of person’s prior criminal history record.”
 - (c) “The program shall support the operation of diversion programs in local communities through grants of financial assistance to, or contracts for services with, municipalities, private groups, or other local organizations. The Attorney General may require local financial contributions as a condition of receipt of program funding.”
- **Eligibility Criteria:** (e) “All adult court diversion programs receiving financial assistance from the Attorney General shall adhere to the following provisions: The diversion program shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The prosecuting attorney may refer a person to diversion either before or after arraignment and shall notify in writing the diversion program and the court of his or her intention to refer the person to diversion.”
 - (e)(1) “If a person is charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall provide the person with the opportunity to participate in the court diversion program unless the prosecutor states on the record at arraignment or a subsequent hearing why a referral to the program would not serve the ends of justice.”
- **Record of Participation:** (7)(a) “The... diversion program shall maintain sufficient records so that the reasons for success or failure of the program in particular cases and overall can be investigated by program staff.”
 - (7)(b) “These records shall not be available to anyone other than the participant and his or her attorney, State's Attorneys, the Attorney General, and directors of adult court diversion programs.”
- **Guarantee of Expungement:** (g)(1) “Within 30 days after the two-year anniversary of a successful completion of adult diversion, the court shall provide notice to all parties of record of the court's intention to order the expungement of all court files and records.”
- **Fee Revenue:** (e)(9) “Each participant shall pay a fee to the local adult court diversion program. The amount of the fee shall be determined by program officers or employees based upon the financial capabilities of the participant. The fee shall not exceed \$300.00. Fees collected under this subdivision shall be retained and used solely for the purpose of the court diversion program.”
- **Prosecutorial Discretion:** (c)(4) “Each State’s Attorney, in cooperation with the Office of the Attorney General and the adult court diversion program, shall develop clear criteria for deciding what types of offenses and offenders

will be eligible for diversion; however, the State's Attorney shall retain final discretion over the referral of each case for diversion."

33 V.S.A. § 104 Department for Children and Families

- **Function and Powers of Department:** (c) "The Department for Children and Families, in cooperation with the Department of Corrections, shall have the responsibility to administer a comprehensive program for youthful offenders and children who commit delinquent acts, including utilization of probation services; of a range of **community-based** and other treatment, training, and **rehabilitation programs**; and of secure detention and treatment programs when necessary in the interests of public safety, designed with the objective of preparing those children to live in their communities as productive and mature adults."

33 V.S.A. § 5101 Human Services

- Juvenile judicial proceedings shall be construed in accordance with the following purposes: (2) "to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation that ensure:"
 - (A) "balanced attention to the protection of the community"
 - (B) "accountability to victims and the community for offenses; and"
 - (C) "the development of competencies to enable children to become responsible and productive members of the community."

33 V.S.A. §§ 5225-5232 Delinquency Proceedings

- **§5225 Preliminary Hearing; Risk Assessment**
 - (b)(2) "The State's Attorney shall consider the results of the risk and needs screening in determining whether to file a charge. In lieu of filing a charge, the State's Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may **include a community justice center or a balanced and restorative justice program**. Referral to a community-based provider... shall not require the State's Attorney to file a charge. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory... the child's case shall return to the State's Attorney for charging consideration."
- **§5232 Disposition Order**
 - (b)(7) If a child is found delinquent, the court may: "refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include **a community justice center or a balanced and restorative justice program**. Referral to a community-based provider... shall not require the court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program... the child shall return to the court for disposition."

CURRENT LANDSCAPE

Community Based Restorative Justice Providers

January 2022

County	Fundors/Grants		
	AGO	DCF	DOC
	Court Diversion & Pretrial Services (CD/PTS)	Balanced & Restorative Justice (BARJ)	Community Justice Center (CJC)
Addison	Addison County Restorative Justice Services	Easter Seals	Addison County Restorative Justice Services
Bennington	Center for Restorative Justice		
Caledonia & Essex	Northeast Kingdom Youth Services		The Community Restorative Justice Center in St. Johnsbury (& southern Essex County)
Chittenden	Burlington Community Justice Center		
			Essex Community Justice Center
			South Burlington Community Justice Center
			Williston Community Justice Center
Franklin & Grand Isle	Franklin Grand Isle Restorative Justice Center		
Lamoille	Lamoille Restorative Center		
Orange	Orange County Restorative Justice Center	<i>served by neighboring county providers</i>	Orange County Restorative Justice Center
Orleans	Northeast Kingdom Community Action		Orleans County Restorative Justice Center (& northern Essex County)
Rutland	Rutland County Restorative Justice Center		Rutland County Community Justice Center
Washington	Washington County Diversion Program		Greater Barre Community Justice Center
			Montpelier Community Justice Center
Windham	Youth Services/Brattleboro Community Justice Center		
			Greater Falls Community Justice Center
Windsor	Valley Court Diversion		Hartford Community Justice Center

Figure 2¹⁰

¹⁰ Document provided by Leitha Cipriano, Director of the Bennington Center for Restorative Justice.

Diversion: There are 12 Court Diversion providers for the 14 counties. These services are combined in the Northeast Kingdom, where services to Caledonia and Essex counties are combined, as well as in St. Albans, where services to Franklin and Grand Isle are combined.

BARJ: There are 11 BARJ providers for the 12 Agency of Human Services districts. Ten of these providers are housed within the same entity providing the Court Diversion program, while one, Easter Seals in Addison County, exists as an independent non-profit organization.

Breakdown of Funding

The main sources of funding for CJs, Diversion, and BARJ come from program grants distributed by the DOC, the AGO, or DCF. This money is appropriated to these agencies from the General Fund.^{xi}

CJs: According to Derek Miodownik (the Community and Restorative Justice Executive for the DOC) and Chris Barton (the Restorative System Administrator for the DOC), since 2010 the average total amount for the DOC grants to CJs is approximately \$2.98 million, which is then distributed across 17 centers. This means each CJ receives a baseline around \$70,000, with more provided depending on the size and need of the individual CJ.^{xii}

Court Diversion: Funding for Diversion comes primarily through AGO grant awards. In 2020, the Court Diversion and Pretrial Services General Fund appropriation was \$2.7 million, which was an increase of about \$400,000 from the year before. This funding supported Court Diversion, YSASP, DLS, and Pretrial Services.¹³ A 2019 cost-benefit analysis by the Crime Research Group found that Diversion brought concrete savings in traditional criminal justice system costs.¹⁴ For example, a drug charge put through the traditional system costs over \$1,000. Through diversion, the same drug charge would cost an average of \$86.53.^{xiii}

In addition to appropriations from the General Fund, however, about 13% of funding for Court Diversion comes through collected fee revenue, which is

¹³ Information provided in correspondence with Willa Farrell.

¹⁴ Full study found at <https://www.jrsa.org/pubs/sac-digest/vol-30/vt-court-diversion.pdf>.

considered State Special Funds. Although the base fee is \$175 for a criminal case and \$100 for a delinquency case, participants usually pay on a sliding scale. This reduces the fee to between \$90-115 for a criminal case and \$50-60 for a delinquency case, although the fee may still be reduced further or even waived entirely.^{xiv} Most individuals in Court Diversion do not pay the full fee.

BARJ: Currently, BARJ is funded completely by the Family Services division of DCF through program contracts, which are based on the funds appropriated to DCF from the General Fund. BARJ is one of three adolescent programs, the other two being the Youth Development Program and the Prevention, Supports, and Stabilization for Youth and Families. BARJ is the least funded of the three. BARJ funds are then allocated to the 11 providers based upon factors such as service utilization and potential number of youth that could be served.

Summary of Pending Legislation

Below are two introduced bills that reflect the renewed interest in the legislature around restorative justice. The third section discusses the recommendation for the creation of a Restorative Justice Working Group, which was included in the House version of the FY23 Appropriations Bill, but not in the Senate's.

Introduced Bill H.470^{xv}

- By Representatives Dolan and Colburn.
- Read to House for first time on 1/7/22 and referred to the Committee on Judiciary.
- This act relates to referral of domestic violence, sexual violence, and stalking cases to CJs. It would permit referral of such cases to a CJC as of July 1, 2023 in the event that the center has adopted victim safety standards and protocols that would address victim needs (safety, confidentiality, privacy).

Introduced Bill H.249^{xvi}

- By Representatives Grad and Rachelson.

- Read to House for first time on 2/11/21 and referred to the Committee on the Judiciary, now pending in the Committee.
- This act creates the presumption that prosecuting attorneys refer offenders who have “high prognostic risk and high criminogenic needs” to treatment dockets if they have committed an offense associated with substance use disorder.

Restorative Justice Working Group

The House Committee on Corrections and Institutions, working with a member from the Committee on Appropriations, developed and inserted language into the proposed FY23 budget to form a Restorative Justice Working Group, which would be created from the Appropriations budget.^{xvii} The House gave final approval to the FY23 budget March 25, 2022, and passed it over to the Senate.

The Restorative Justice Working Group would “study the roles, relationships, and funding of the various entities providing restorative justice programming and services in the State of Vermont.”^{xviii} It would be comprised of 9 members, including representatives from CJsCs, Court Diversion, and BARJ, as well as members of Vermont’s judicial and executive branches. The ultimate goal of this group is to submit a written report to House and Senate Committees on Corrections and Institutions, Judiciary, and Appropriations with all findings and recommendations.^{xix}¹⁵

The Senate budget bill, and the final decision regarding this Working Group, will be determined around mid-May of 2022. However, in April of 2022 multiple individuals expressed disfavor with the language concerning the Working Group—as currently constructed in the proposed budget—leading to the language being struck from the bill.¹⁶ While it is possible the language will get reinserted or revised at a later date, it is largely unknown at this juncture. However, this Working Group does represent some acknowledgement of the issues with RJ and an attempt to address them.¹⁷

¹⁵ For more information, and to look at the text of the introduced bill in full, please refer to pages 125-128 of <https://legislature.vermont.gov/Documents/2022/Docs/BILLS/H-0740/H-0740%20As%20Introduced.pdf>

¹⁶ Loosly noted are concerns of redundancies and issues of feasibility.

¹⁷ Information in this paragraph is largely provided by Representative Sara Coffey, with other individuals noting the stalled nature of this Working Group.

EXISTING TENSIONS & POSSIBLE SOLUTIONS

The following list has been synthesized from qualitative data that was collected through surveys and direct interviews. The surveys were distributed to CJC and Court Diversion Directors, and the interviews were held with various Directors as well as the individuals listed on page 39.

Exploration of FUNDING

Existing Tensions	Possible Solutions
<ul style="list-style-type: none"> • Inadequate funding statewide • Lack of formal inter-agency funding communication • Inadequate collective analysis of data 	<ul style="list-style-type: none"> • INCREASING funds from existing streams • CONSOLIDATING existing funding streams • DIVERSIFYING funding streams

Exploration of STRUCTURE

Existing Tensions	Possible Solutions
<ul style="list-style-type: none"> • No 'geographic justice' • Consolidation vs. localization • Lack of inter- and intra - agency communication • Disparities between providers and participants • Prosecutorial and police officer discretion • Identifying the proper intercept for referral • Not holding high standards for embodying RJ values 	<ul style="list-style-type: none"> • New creation: Department of Community Justice • Complete reorganization: organizing under the Office of Racial Equity • Administrative merge: central entity with 'satellite hubs' • CJC/Diversion/BARJ merge • CJC-only merge • Adopting a Designated Agency structure <hr/> <ul style="list-style-type: none"> • Referral accountability: by legislation/by relationship • Expanding referral capability • Identifying referral intercept • Organizational oversight • Building awareness of disparities • Transparency and accessibility of information

REARRANGING

IMPROVING

Existing Tensions in FUNDING

Inadequate Funding Statewide:

Across the board for individuals involved with CJs, Diversion, and BARJ, there is a general concern regarding the scarcity of funds and the need for more. Most providers are level funded, where the grants given are expected to exactly match the costs incurred. Grants are intended to fund staff positions, where the staff members go on to offer and coordinate the specific services. Concerns for funding scarcity arise when considering that the cost of living has been going up, yet the grant amounts are remaining fairly stagnant. As several of those interviewed noted, this primarily results in staffing cuts or a provider's inability to pay competitive wages. Providers must shift limited funding to the non-negotiable costs, and then are unable to offer staff higher wages to meet the higher cost of living. Overall, many of those surveyed and interviewed expressed a general worry that the base level of funding given to all providers is insufficient.

*"Level funded is now considered underfunded."
(Response from CJC Affiliated Interviewee)*

An additional concern of funding lies with the dependency on fee revenue. As stated earlier, Court Diversion specifically relies on fee revenue for about 13% of their funding. However, such client fees operate on a sliding scale, which offer no guarantee of consistent funding. Concerningly, one survey response noted the increasing levels of financial strain that seem to face those using Diversion services, meaning that Diversion is helping individuals who are unable to pay the complete fee amount. As such, fee revenue funds are drying up. To paraphrase one Diversion Director, ideally these restorative programs should not have to rely on this type of funding, because it only *exacerbates* the challenges facing those using Diversion services.

Lack of Formal Inter-Agency Funding Communication:

Currently, there is no formal framework for coordinated investment between individuals involved with the State's three funding streams—the DOC, the AGO, and DCF. Although representatives from the DOC, the AGO, and DCF do meet on a monthly basis, these conversations do not involve specific funding discussions such as how much is being given to different providers.

“There’s a core thread that runs through the work, but it’s funded by different agencies. That combination of the different state agencies that provide different funding to this linked work, and how it lands on local and regional level, creates opportunities to step back and look at what are the potential pros and cons of moving towards a system design that has some more consistency and simplicity.”

(Derek Miodownik, Restorative and Community Justice Executive for DOC)

Inadequate Collective Analysis of Data:

Beginning in 2014, the Department of Finance and Management was required to provide an annual report of all grants issued.¹⁸ However, there is no rigorous evaluation of who is giving and receiving funding, nor in what exact quantities. Without such a careful evaluation—done either by all the providers themselves, by state agents, or by a neutral third party—it is difficult to understand exactly what the broader funding picture looks like or what possibilities are most logical moving forward. It is also important to note that within the current structure, such analysis would be challenging given the diversity of services funded by each grant and contract.

Possible Solutions for FUNDING

Increasing Funds:

One interviewee acknowledged that the current services are “bargain basement services” offered far more cheaply than their value. While this might make services less expensive for clients, this perspective is dangerous if it causes people—or particularly the legislature—to undervalue staff members or disregard program complexity. One solution could be presenting the legislature with evidence that services rendered are of high quality and value, which staff members’ salaries do not reflect, and it is appropriate to raise the funding to providers to adequately let them continue providing and improving services.¹⁹ A direct increase in funding could quickly result in competitive wages for staff, better retention of quality staff, provision of insurance and retirement plans, or even the addition of other positions such as victim liaisons, among other benefits.

¹⁸ Information available at <https://data.vermont.gov/Finance/State-of-Vermont-SFY2019-Grants-Issued/cn66-5q2t>

¹⁹ This solution would be based on the accrual and presentation of significant quantitative data. Such data acquisition could be part of the duties given to the Restorative Justice Working Group, whose formation is currently in a recommendation before the Senate, or a similar group.

It is also an expressed concern that many CJs, Diversion, and BARJ providers must rely on grants for money. These grants often come in bits and pieces, and are inconsistent without a guarantee of an exact yearly amount. While applying for more grants might increase funds, the particular pursuit of private funding to expand budgets could result in provider competition. Having providers compete for the same funders could exacerbate geographic inequities and limit collaboration. While grants could kick in as supplemental income, they have become a stressful, *necessary* source of funding for some providers.

One interviewee noted that grant money could be pursued most effectively if the DOC or another administrative authority negotiated for “sustainable funds on our behalf, and for federal grants that can be spread among CJC districts.” This potential solution could limit provider competition, yet maximize grants or even federal stimulus dollars as potential funding sources. Recently, the AGO and the DOC did provide grants of federal COVID relief funds within federal funding parameters. This should be regarded as a continued opportunity for funding.

(Justice Reinvestment II)

Through the efforts of Vermont Justice Reinvestment II (Act 148), which began in 2019, the legislature has worked to enact policies to reduce the number of individuals incarcerated in Vermont. In 2020, Governor Phil Scott signed a bipartisan criminal justice bill aimed largely at reducing recidivism. It is expected that more than \$13 million in corrections cost will be averted by 2025 due to a decrease in the state’s prison population and in the population of incarcerated individuals housed out-of-state in Mississippi.^{xx} *The legislature could increase funding for RJ using these averted costs.*

In 2007, Vermont used a Justice Reinvestment approach to mitigate a projected 24% increase in the state’s prison population, and yet in fact this approach aligned with a prison population *decline* of 17%.^{xxi} In 2019, the state pursued Justice Reinvestment II (with technical assistance from the Council of State Governments Justice Center) to again “review analyses and develop policy options” to reduce Vermont’s incarcerated population.^{xxii} So far, Act 148 has included

policies such as implementing a system of presumptive parole and streamlining the furlough system.²⁰

S.339, the official legislation that created some of the Justice Reinvestment II initiatives, states that the purpose of this act is to “improve public safety in Vermont, while creating immediate opportunities to reduce recidivism and achieve long-term savings by reducing contract bed needs significantly.”^{xxiii} The act also states that JR2 will “develop funding and appropriation recommendations” and “make evidence-based programming available to individuals transitioning back into the community.”^{xxiv}

Currently, Vermont has averted corrections costs through the policies of Act 148 and through the reduction of individuals incarcerated out-of-state, which as of April 29, 2022 totals 127 individuals.^{xxv} This is a significant decrease from April of 2020, when Vermont paid for 246 individuals to be housed out-of-state in Mississippi.^{xxvi}

As the legislation states, part of the act also considers funding and appropriation recommendations. In this current session, the House Corrections and Institutions Committee made a recommendation to the Appropriations Committee to direct out-of-state bed savings towards the VT Network Against DV and Sexual Assault, data collection (an annual expenditure), and a one-time allocation of \$417,000 to Community Justice Centers.^{xxvii}²¹

One recommendation would be to build off of this one-time directive and make a standing transfer of averted DOC costs to the General Fund allocation for grants given to RJ providers. This increase could reflect the goals of Justice Reinvestment II, and could emphasize that such policies to reduce incarceration—along with the money subsequently saved—support a genuine commitment to a philosophy of reinvesting in Vermont residents.

²⁰ You may find more information on these goals, and on Justice Reinvestment in general, at <https://csgjusticecenter.org/?s=vermont>.

²¹ For more information, refer to the recommendation letter given from the House Corrections and Institutions Committee to the Appropriations Committee, found here: <https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Appropriations/FY%202023%20State%20Budget/Subject%20Matter%20Committees/W~House%20Corrections%20and%20Institutions%20Committee~FY23%20Budget%20Recommendations~2-23-2022.pdf>

(Cannabis Sales Revenue)

Another possibility for additional funding could be a steady revenue stream originating from legal cannabis sales and subsequent tax revenue. In 2021 alone, more than \$3 billion was generated in cannabis revenue nationally.^{xxviii} Out of the 11 states that collected recreational cannabis tax revenue in 2021, **four** of them explicitly directed such revenue towards restorative justice and equity programs.^{xxix} As Vermont moves to open its first recreational cannabis dispensaries in the fall of 2022, it is worth considering if a portion of the revenue could be directed towards RJ programs and services.^{xxx}

Consolidating Funds:

Another potential solution could be consolidating the current funding streams into one large funding pool, where the money could then be equitably distributed among providers. This method could lessen some of the confusion of different funding streams offering varying amounts. A single funding stream could make the yearly funding process more transparent, could more efficiently allocate money to providers in one large grant, and could generally allow for more equal and equitable distribution.

However, this consolidation to a single stream might obscure the nuances of how funding gets applied, resulting in less accountability both on the providers side and the funders side. Regarding the former, providers might experience more latitude and less oversight in determining where their funds should go. Right now, the DOC, the AGO, and DCF each distribute and oversee the funding going into their respective RJ services. However, a single funding stream could limit such oversight and obscure the funding irregularities.²²

Additionally, as several interviewees mentioned, consolidating funds could result in less accountability by the State in upholding and advancing RJ. If funds were consolidated, the DOC, the AGO, and DCF might feel they have no individual authority—and therefore no individual duty—to maintaining or assisting with RJ services, nor potentially even allocating appropriate money to support providers.

²² Note, this issue only acknowledges the problem of accountability for providers. It does not determine whether such State oversight is necessarily what is most appropriate for providers.

Diversifying Funds:

One widely shared possibility of increasing RJ funding is to widen the net through diversifying funding, in which other beneficiaries of RJ processes contribute to funding these processes. A repeated source of future funding named by several interviewees was the courts. While the courts do not often perceive the immediate benefits of RJ, they are saved time and resources through robust RJ referrals.

“We need to raise the water for everyone rather than scooping water out of one bucket and putting it into another.”

(Chris Barton, Restorative Systems Administrator for DOC)

As one individual reasoned in their survey response, CJs, BARJ, and Diversion programs play a significant role in alleviating judiciary workload *as well* as assisting in the behavior changes of clients. This same individual quoted a statement made by a judge: “I spend 15 minutes with an accused, you folks spend hours.”

However, it is also worth considering the limited role courts currently have in relation to RJ programs. As one interviewee stated, the judiciary benefits of RJ are often implied rather than explicit, as judges do not have a direct role in administering any RJ services. This can, for instance, be contrasted with treatment courts, where the judiciary is involved in the administration of the treatment dockets. At issue here is just how peripheral the judiciary is to the implementation of RJ.²³

While there was a dominant focus on the potential role of courts, those surveyed and interviewed did list a number of additional funding streams. For example, some referenced more local town funding or pulling from community taxes. These ideas focus on the local nature of RJ benefits, reflecting the notion that everyone in a community should pay into what serves their community. Another potential funding stream could be the education sector due to the impact and integration of RJ in schools throughout Vermont.

Diversifying funds would also help alleviate a potential concern that DOC funding could be removed from pre-charge cases. It is admittedly curious that the DOC, which focuses on corrections, parole, and post-incarceration relief, is involved with and is a primary funder of RJ at the front end.

Without requisite statutory authority or a clear obligation to continue funding beyond correction and post-conviction related RJ services, it is

²³ A useful step forward would be conducting an analysis to calculate the hours of judiciary staff time that is ultimately saved by referrals. How could this analysis be completed, and by whom?

possible a pre-charge funding gap could emerge if the DOC decides to remove this portion of their funding allocation to the CJs. It is beneficial to ask who or what else could fill a pre-charge funding gap. While many interviewees raised how we might diversify funding, viewing this question in light of a potential funding *loss* could enhance the urgency to locate such additional money.

Summary of Potential Solutions: Funding



Existing Tensions in STRUCTURE

No 'Geographic Justice'

What does it mean when the same crime happens in two different areas and results in two different outcomes? This is the critical question of geographic justice, and it is a crucial question of RJ in Vermont. Despite an abundance of RJ throughout the state, we urgently need to look at its *distribution*. Currently, services are often disparate, unequal, and divided between the vast array of providers.

Lack of geographic justice can manifest in many ways. To name two broad forms, however, such locational inequities can arise when comparing the *type* of response and the *intensity* of a response. With RJ in Vermont, we must question who gets referred where and what services are made available to them. We must also ask what areas provide intensive support, while other areas provide a more streamlined response. Ultimately, the current variation in referrals means differences in where an individual might get referred, followed by potential differences in the services offered to them.

The disparate response is often due to unequal referral rates. One individual surveyed noted that while prosecutorial discretion (discussed later) does impact these referral rates, so does education. This individual noted a concern about the lack of RJ education for

State’s Attorneys, defense attorneys, judges, and probation and parole officers (also relevant to add law enforcement). In this survey response, it was noted that many relevant parties lack the knowledge of how RJ can be used given statutory guidelines and local practices.

Another reason for the lack of geographic justice stems from the varied intensity of an RJ response. Several of those interviewed and surveyed noted how greatly CJs can differ in their functions. The localized structure of CJs means that different providers approach best practice in different ways. For some providers, best practice might demand a deeply individualized and intensive response. For others, it might be a more streamlined and efficient response.

Tension Between Localization v. Consolidation

There is an expressed tension between the intimacy of local responses and the logistics of broader unification. Many interviewees noted that, despite recognizing this as a key issue, it was a hard topic to address neutrally. In particular, thinking of the merits of consolidation creates friction against natural allegiances leaders have to their own organization. The heart of this issue considers *what best enhances a provider’s capacity to serve.*

*“It matters when you say ‘I live here.’
We lose degrees of impact the further
we move away.”*

*(Derek Miodownik, Restorative and Community Justice
Executive for DOC)*

Of the interviewees who discussed localization versus consolidation, all referred to the tantamount importance of a local response. The harm that occurs in a community is best served by an organic, grassroots response fueled by that community’s needs. Local and community justice—although in itself does not automatically equate to restorative justice—offers many benefits. Interviewees mentioned such benefits as: making people aware of what resources are needed in a specific region, creating space for intensive conversations between different groups of shared interests, raising constituents’ levels of investment and ownership in RJ principles, tightening relationships with volunteers and local leaders, and raising levels of connection between volunteers and involved parties.

“It is to the betterment of citizens in the region... to have a one-stop shop for all things justice.”

(Susan Cherry, Director of the St. Johnsbury CJC)

Alternatively, interviewees also expressed a logistical awareness for the benefits of consolidation, albeit at no commonly

agreed-upon level. Those that did refer to the benefits of consolidation were quick to point out that such a solution is not done *instead of* a local response but hopefully *in addition to*, where consolidation could still preserve community-based responses. Without wanting to disengage community members, consolidation raises the logistical necessity of economies of scale. How localized of a response can we justify financially, and justify in terms of equity? When do we need to temper individualized relationality with level-headed cohesion?

Lack of Inter- and Intra- Agency Communication

As one interviewee put it, there is broad “system confusion.” Too many people—from constituents to legislators to prosecutors—are all asking “who does what, and why?” Particularly when considering the broad overlaps of services between RJ providers, it is concerning to note a lack of communication or collaboration between them. As one interviewee noted, there are frequently varying relationships between leaders/Directors of CJs and Court Diversion. Some are in fact the same person,²⁴ some have tightly collaborative interactions, and some are professional where they view the other as a “fellow crusader.” *Most*, this interviewee stated, are at the very least amicable. What unites all providers is the common goal of embodying and using RJ to improve communities. What divides them, however, are the strategies and resources that should be employed to get there.

Another issue is communication and collaboration *within* a group of providers. This was highlighted by several interviewees regarding the loose CJC leadership of the Community Justice Network in Vermont (CJNVT). CJNVT meets monthly, but some interviewees critiqued CJNVT for an inability to speak with one voice, a lack of direct management, and a more informal structure than preferred. A lack of such inter-organizational communication can lead to confusion, lack of unification, and a lack of leadership.

²⁴ This leads to its own set of problems. As one individual who holds all three of the main RJ grants from the state noted, it is difficult to keep up with the various statewide meetings and grant reporting. This can take up valuable time, particularly if such meetings feel redundant.

Disparities between Providers and Participants

The various disparities—namely race, socioeconomic status, and age—between those providing and those receiving services was a key concern of many interviewees. What does it mean when providers are primarily affluent, older, and white, and yet the individuals who are referred to them are often of lower socioeconomic status, younger, or people of color?²⁵ What does it mean when we lack the data to analyze such issues? Where and how does *restorative* justice fit with *social* justice? What is our duty in upholding the latter through the former?

Prosecutorial and Police Officer Discretion

The discretion afforded to those who can choose to prosecute or divert individuals is another key tension. A few of those surveyed and interviewed noted that some prosecutorial discretion is important as it allows for specific consideration of individual cases. However, a key worry of many is the lack of incentives for State's Attorneys (SAs) to incorporate or avail themselves to restorative justice. So much depends on the individual personalities of prosecutors, and service providers are mainly dependent upon their prosecutor for RJ referrals. Although prosecutors now have to indicate why they choose not to refer a case to Diversion, there is still a wide variety of what prosecutors may, and do, write.

Additionally, police officers also have high levels of discretion. There is no oversight on the direct referrals given by law enforcement, although such referral decisions usually need the approval of the local SA. Still, the initial choice to refer often comes from dialogue between the service providers and their police departments, based on the overall relationship and levels of trust between entities. With both prosecutors and police officers, interviewees recognized the issue of discretion and the need for greater, state-wide accountability.

Identifying the Proper Intercept for Referral

Cases may be diverted pre-trial directly to a CJC, to BARJ for delinquency cases, or they may be diverted at court after a judge finds probable cause—usually at arraignment. One tension listed by those surveyed and interviewed are the relative merits of each of the two referral intercepts. Benefits for pre-trial referral include fully preventing the participating individual from entering the court system,

²⁵ This generalization is a broad concern of individuals spoken with, yet such discussions occurred without referencing hard statistics. Current statistics of such disparities do not exist.

faster response by community, and less formal, potentially aggravating procedures for parties involved.

However, various individuals interviewed and surveyed said that referral at arraignment through Court Diversion has several benefits over direct referrals. Critically, Diversion ensures confidentiality and eventual record expungement. Additionally, going through Court Diversion can offer more structure to the process. It can help keep the case moving through more formalized procedures, and there are more prescribed checks if an individual does not engage with the restorative process. As someone surveyed wrote, a Court Diversion referral can potentially “hold more weight” through its closer relationship to the criminal-legal system.

High Standards of Embodying RJ Values

This importance of authentically embodying RJ values runs as a thread throughout all the other issues. Although only one interviewee highlighted this concern, it is important to note that we must uphold the integrity of restorative responses across the wide variety of the programs and services we offer in the name of RJ. Every alternative to incarceration *is not necessarily* a restorative response.

Possible Solutions of STRUCTURE (rearranging)²⁶

New Creation: Department of Community Justice

One potential solution that multiple interviewees brought up was the creation of an entirely new Department of Community Justice in Vermont. Looking at the benefits, such a Department could more deeply invest in the spectrum of preventative measures, through a holistic and unified approach to RJ rather than stratified services at specific intercepts. A new Department could evaluate and assess RJ processes and programs, holding providers more accountable under one clear authority, possibly even through a designated oversight board. A Department of Community Justice would be the large umbrella that service providers could be housed under and where funding could be streamlined from, granting more clarity, accountability, and efficiency to existing structures.

²⁶ These solutions are **not** meant to be viewed as entirely distinct from one another, as many overlap with one another or could be pursued simultaneously with other solutions.

On the other hand, a new Department offers many challenges and potential downsides. First, we must consider the level of investment and buy-in that would be needed to make this change. What does it require to create a whole new Department? The logistics of such a task clearly raise concerns about general feasibility.

Additionally, a few interviewees described a potential hazard in the reduced accountability that might accompany a new Department. Currently, the DOC, the AGO, and DCF all buy into RJ at some level. There could be more merit in holding them accountable to RJ and putting pressure on existing Departments, rather than transferring responsibility for RJ to a new entity. Currently, RJ is a voice at the table for the three existing Departments. Removing that investment and placing it elsewhere could potentially marginalize the importance of RJ at a state level, or most harmfully turn the new Department into a scapegoat for any RJ-related or funding problem.

However, one successful version of such a department exists in Oregon's smallest yet most populous county, Multnomah. In Multnomah, there is a Department of Community Justice that provides a large array of services to youth, adults, families, and communities. It is led by "the core belief that people can change... to address the underlying issues that lead to criminal behavior and to help people heal."^{xxx}

Complete Reorganization: The Office of Racial Equity

One potential solution would house RJ services under the Office of Racial Equity, which is supported by Vermont's Agency of Administration. This solution is based on the perspective that racial equity is at the heart of restorative services. As one CJC Director critiqued, CJs are often white-staffed and white-led, but are deeply embedded in a **system** that disproportionately refers people of color.²⁷ How do restorative providers genuinely represent their community?

Administrative Merge: Central Office with RJ 'Satellite Hubs'

One potential solution would create one administrative center with off-branches of localized RJ services. This central office—a so-called "one-stop shop"—could create efficiencies, simplicities, and channels of relationships that our disconnected system is currently unable to do.²⁸ Issues of funding and questions of equal and equitable services

²⁷ One interviewee noted that of their 40 volunteers, there is only one person of color.

²⁸ There is a potential framework for collaboration through letters of intent, yet nothing more explicit.

could be routed to a central entity, and such an entity would offer providers a clear authority to turn to. Again, this entity could be a new department as listed above, but it could also simply refer to an administrative center. A central office with satellite hubs would be a significant change, but it could be a relatively flexible one.

Importantly, this solution would still recognize the value of highly localized services. Satellite hubs in counties would maintain the integrity of responsive, community RJ. Although with this project those interviewed and surveyed did not specify the level of integration within the satellite hubs, these hubs could consolidate all CJC, Diversion, and BARJ services such that each hub was a unified RJ provider, housed under one statewide central office. In this way, local control could be preserved even as more consistency and uniform protocols could be introduced.

“...a clearinghouse with offramps and individuality.”

(Lindy Boudreau, BARJ Coordinator for DCF)

CJC, Diversion, and BARJ Merge

Another solution could be merging the forms of state-funded RJ such that one provider in each county holds all three contracts. This amalgamation would preserve local responses, but would clarify the RJ entity in each geographic area and offer some uniformity across the state.

“similar processes are getting stratified out, and it’s inefficient and losing funding.”

(Response from Interviewee)

Having this higher level of cohesion offers various benefits. As interviewees mentioned, it could allow for cases to be referred to one

organization. This could help eliminate some discretion at the intercept point, as an individual referred at pre-charge would go to the same entity as an individual referred after a finding of probable cause.

Such a solution could also allow for more fluidity and cross-training between RJ programs. It could also increase the variety of RJ responses within each entity, allowing for more the attentiveness to the “scale of needs” of those requiring or requesting services.

Recently, several CJs have come to acquire the AGO and DCF grants in addition to the DOC grants, such that they provide all the CJC programs along with Court Diversion, pre-trial services, reentry services, and BARJ services. It is worth noting that the individuals interviewed or surveyed who were part of these combined CJs were pleased with how such a merge operated, mentioning the improved efficiency and ease it gave their organization in addressing participant needs.²⁹

CJC-Only Merge

A CJC-only merge was brought up in several interviews and surveys, although it is specifically a solution to solve an acute problem in Chittenden County. Chittenden currently has four CJs. It is an open concern that this is not sustainable in light of funding limitations. One potential solution that has been voiced would be to merge the South Burlington CJC with the Williston CJC.

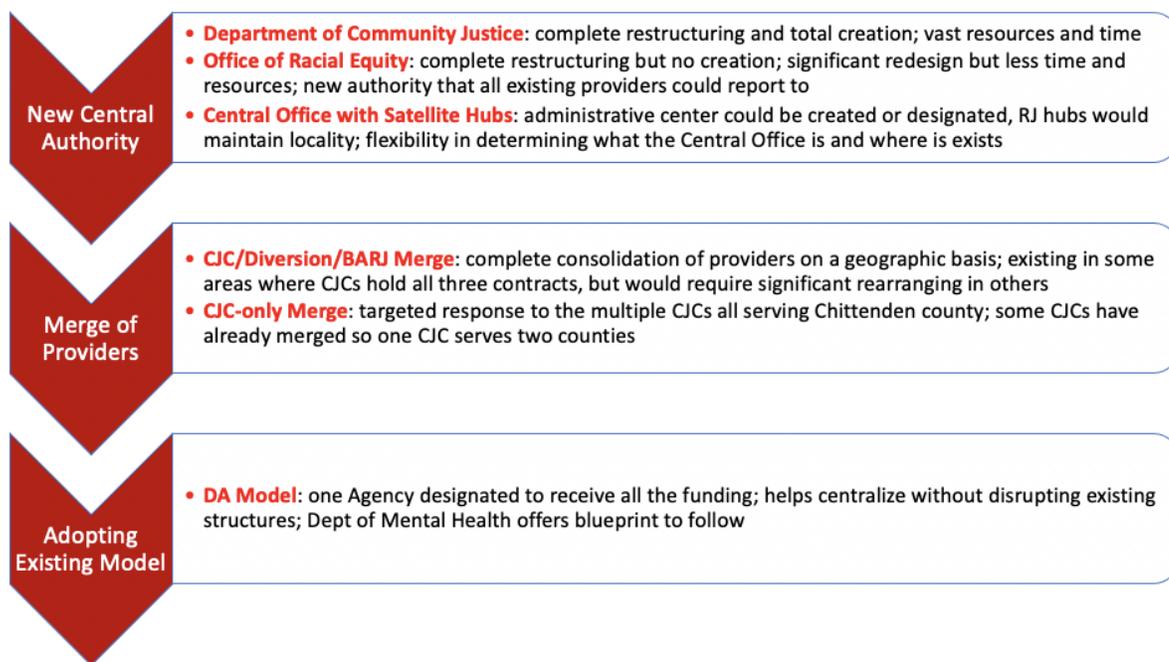
Adopting a DA Structure

Another solution considers adopting the Designated Agency model for restorative services. This model already exists in Vermont with the Department of Mental Health. With this model, the Department assigns one Agency in each geographic region to provide all mental health services. These Agencies are private, non-profit entities that are the sole recipient of funds for all services in that region, which the Agency then distributes to various programs.

If RJ services in Vermont were to adopt such a structure, it would help clarify where all DOC, AGO, and DCF funding would go on a geographic—and ideally county-wide—basis. Additionally, it could be a less invasive restructuring as existing providers could be made *into* Designated Agencies, negating the need for a brand new creation or significant shuffling. This would particularly benefit the six CJs that currently hold all three grant contracts.

²⁹ Note that these interviewees discussed the ease and efficiency of a merge, not necessarily that such a merge created better outcomes or better direct results.

Summary of Potential Solutions: Rearranging Structure



Possible Solutions of STRUCTURE (improving)

Referral Accountability through Legislation

One potential solution to improve equitable referrals is to address it at the statutory level, through an automatic presumption of RJ referral based on certain criteria that prosecutors must follow, unless they choose to override it for a specific reason. Such referral, as one interviewee mentioned, could be broadly inclusive so more individuals had the presumptive right to be referred. This would have the potential to increase referral rates.

A more extreme version of presumptive referral could be mandated referral, which would completely deprive the court the authority to hear a case *until* there has been some sort of RJ response. With this, trial courts would lack jurisdiction to hear a case unless it has gone through an RJ process unsuccessfully.³⁰

However, many of those surveyed and interviewed noted challenges with this. It could aggravate communities by pushing RJ too strongly, and it could aggravate State’s Attorneys (SAs) by forcing them to refer when they are used to the current levels of discretion. One interviewee

³⁰ This becomes complicated when considering just what cases this applies to—if it’s truly all cases or if there are triggers that place some cases outside of such presumption.

noted that going through legislation to ensure consistent referrals misses the fact that prosecutors—not legislators—are actively dealing with the nuances of each case and are in a better position to understand exactly if a case should be referred. In this way, referrals are a reflexive response based on SA choice, rather than a more proactive yet standardized response through legislation.

Referral Accountability through Relationship

Another way to increase prosecutorial accountability and equality in referring cases would be through strengthening the relationships between the RJ providers and the local SA, as well as strengthening the communication between SAs statewide about their individual referral process. One prosecutor described their method of consistently meeting with CJC and Diversion directors to talk about what they could do and what their service providers had the capacity to handle. This in turn built trust and a better understanding of how many cases could effectively be addressed through RJ services.

Additionally, building communication across the state would allow counties to better understand what each is doing, generating more comparative analysis in light of different methods. Currently, interviewees note little communication throughout the state about how each locality refers cases. Growing communication could strengthen collaboration and uniformity in the referring process.

Expanding Referral Capability

If Vermont is serious about diverting more people out of the court system, why limit such a choice to prosecution? In questioning the current separation of powers, a few interviewees discussed the possibility of expanding the referral ability to judges. With this solution, if prosecutors initially choose not to divert, judges would have the opportunity to override this decision and make the choice to refer an adult or youth to Diversion. This could help alleviate concerns of conservative prosecutors declining to refer, putting more pressure on prosecutors to explain why they chose not to refer a case.³¹

"I find it ironic that on one hand a judge's discretion is interpreted to be broad enough to impose the most severe penalty under Vermont law, but on the other so narrow as to lack the authority to divert someone from the court process."

(Brian J. Grearson, Retired Chief Superior Judge)

³¹ This idea was brought before the legislature before, and has been voiced previously by retired Chief Superior Judge Brian Grearson, yet did not advance due to pushback from State's Attorneys.

Identifying Preferred Intercept for Referral

At one end of the spectrum, one interviewee discussed *ending* pre-charge cases to become wholly dependent on referrals to Court Diversion. At the other end, another interviewee suggested establishing a *statewide standard* for cases to be considered at a pre-charge level.

Although no clear majority has emerged in favor of either intercept point, it is worth reiterating that the two points of referral to two different services create disparate services.³²

Organizational Oversight

Several interviewees noted the need for a clearer hierarchy and more direct oversight for each type of provider *by* each provider. This was particularly directed towards the loose oversight of CJs. One interviewee noted the tighter structure of the Vermont Association of Court Diversion (VACDP). Led by Willa Farrell, all directors for Court Diversion providers meet on a monthly basis. The interviewee noted the VACDP structure seemed to function smoothly, in which it seemed clear when there were collective VACDP opinions and when individual voices were represented. Such a member-based organization provides more communication, better management of funds, and a clearer sense of hierarchy.

One potential improvement could create a similarly effective group for CJs, or could combine groups for CJC, Diversion, and BARJ directors to streamline efficiency of such meetings. As CJs, Diversion, and BARJ providers continue to integrate at different levels, some interviewees expressed the need for greater collaboration to address the current redundancies that are increasingly apparent. Whether on Zoom or in a neutral location for the parties involved, such meetings could adequately share information and address issues or concerns as a collective.³³

Building Awareness of Disparities

Building awareness of such disparities, and subsequently addressing them, could be approached from two different directions. On one hand, it is important to recognize the individuals who get put into the system

³² This particular point is worth far more discussion among stakeholders.

³³ For example, a potential neutral—and fairly central—location could be VLS campus.

and then the individuals who get referred to restorative justice. As one interviewee noted, participants for RJ programs are referred from a system that, collectively, has a disproportionate number of marginalized and poor individuals. However, it is important to question which individuals receive RJ referrals, and if such referrals are disproportionately geared towards white or more affluent individuals who might have a better ability to fulfill RJ contracts, for instance. Analyzing and considering who participates in RJ programs can build awareness around the systemic disparities and biases of our criminal-legal system, and those involved or peripheral to it.

On the other hand, building awareness could also mean looking internally at an organization and the volunteers and staff members that compose it. Here, too, the makeup is predominantly white, affluent, and older. A critical look at the composition of RJ providers could strengthen awareness of and prevention of implicit biases, and could lead to efforts to diversify the volunteer pool.³⁴

Transparency, Accessibility, and Development of Data

More data and deep analysis of such data was a frequently discussed improvement for moving forwards. Currently, there is a shared concern among many interviewed and surveyed that there are no clear statistics clarifying RJ 'success' (or even defining success), which impedes a clear understanding of solutions. Currently, CJs only need to report to the DOC the number of referrals received and the number of cases closed. These sparse numbers do not provide enough metrics, nor meaningful ones, as information that does get provided can get easily misconstrued.

For example, while data might show the number of referrals a county has to Court Diversion, this could be misleading depending on their statistic for direct referrals to CJs. While a county might not look like use RJ programming much with extremely low numbers in pre-charge referrals, perhaps they are doing extremely well with their referrals to Diversion. Comprehensive and comparative data is far more useful than disparate statistics about each rate of referral.

Additionally, another glaring insufficiency in data is that different CJs in different counties use DOC resources at varying rates. Since

³⁴ For example, a course at Vermont Law School, *Teaching Restorative Justice*, partnered with Chittenden CJs to lead two workshops about the structural harms and inequities that RJ practitioners must face and must consider in their work.

correctional costs are communalized, larger CJs serving more individuals use a smaller proportion of funding than CJs serving fewer clients, who receive a disproportionate amount of funding. While, as mentioned earlier, more funding is provided based on participation rates and number of cases closed, there is a clear need for more exact, and more transparent, information regarding how such funding get distributed.

Additionally, several interviewees noted that there is no consistent or comprehensive manual for different RJ providers. The AGO provides a manual for a variety of their services, including Court Diversion, YSASP, DLS, and Pre-Trial Services. However, many CJs only have a clear manual for their COSA program. Requiring and creating a uniform manual that would enumerate programs, processes, and general information—perhaps adapted individually based on local needs—would assist stakeholders and community members in understanding the role and functions of RJ entities in Vermont.

Finally, several interviewees discussed the lack of data regarding racial disparities. Along with building awareness, there should be more concrete analysis of who is referred and who participates in restorative justice programs. Improving data in this regard could more clearly expose existing disparities or biases.

Summary of Potential Solution (Improving Structure)



Synthesis of Best Path Forward

Based off of research, interviews, and surveys, below is a list of long and short term objectives. Although these ideas largely originate from common themes that emerged through the progression of this project and accompanied discussion, they are ultimately a collection of proposals as synthesized personally by the author of this document. Further discussion concerning the merit of each of the objectives below (and broadly, all the points written in this report) is welcomed and strongly encouraged.³⁵

Long Term Objectives:

Merge all services by CJs, Diversion, and BARJ under one entity largely on a county-by-county basis; increase and diversify funding; use increased funding to increase wages to staff and eliminate dependence on fee revenue; consolidate under one central authority.

Funding:

- ⇒ **Increase** RJ funding through **JR2**, or support similar efforts³⁶
- ⇒ **Increase** RJ funding through **DIVERSIFICATION**³⁷
 - Acquire funding from judiciary
 - Acquire funding from local municipalities
 - Acquire funding from cannabis tax revenue
- ⇒ **Increase** wages to staff of RJ providers to meet cost of living
- ⇒ **Eliminate** dependence on fee revenue, specifically for Court Diversion

Structure:

- ⇒ **Merge** grants from the DOC, the AGO, and DCF under one RJ provider per county
- ⇒ **Consider** the most appropriate 'central authority'
 - *Rejuvenating* a committee of Directors to provide cohesion, oversight, and clear leadership
 - *Reorganizing* under the Office for Racial Equity
 - *Creating* a new Department of Community Justice

Short Term Objectives:

Clearly establish broadly inclusive standards for pre-charge referrals; allow judiciary to give referrals; incentivize communication and

³⁵ These conversations are critical to continue... perhaps in a fall conference with various stakeholders?

³⁶ For more clarification, refer to section on Justice Reinvestment II on p. 20.

³⁷ A related short term objective could be a workshop to collectively brainstorm additional revenue streams. Even the smallest of streams, when aggregated, could make a significant difference.

collaboration with SAs; fund outside consultants to look at structure; establish better data, metrics, and manuals as relates to all RJ services.

Referral Process:

- ⇒ **Determine** standard for pre-charge referrals to reduce prosecutorial discretion
 - Present to the legislature possible changes in statute for the referral process
 - Indicate as a low a standard as possible
- ⇒ **Expand** ability for referral by judiciary
 - Gives a ‘second look’ at cases and if they should be eligible for Diversion
 - Will provide greater reasoning for the judiciary to fund RJ
- ⇒ **Incentivize** local communication between State’s Attorney, police departments, and principal RJ entities.
- ⇒ **Incentivize** communication between State’s Attorneys at state level to promote uniformity in referrals.
 - Hold limited number of meetings for SAs to discuss their individual referral approach, structured through the Department of State’s Attorneys and Sheriffs.
 - Create a culture of best practice for SAs regarding referrals and the value of RJ.

Additional:

- ⇒ **Advocate** for the creation of the Restorative Justice Working Group or a similar such group.³⁸
- ⇒ **Fund** outside consultants to look at Chittenden model.³⁹
 - Funding should originate from a current funding stream.
 - Specifically, consultants should analyze the efficiency of the four separate CJs in Chittenden and conduct a cost-benefit analysis of combining at least two.
 - If desired, consultants should more broadly consider questions of structure and the most appropriate/cost-effective/timely type of a ‘central authority.’
- ⇒ **Establish** clear funding data and overall metrics about programs and outcomes of RJ providers.
- ⇒ **Create** a comprehensive manual for CJs of their programming and guidelines.

³⁸ See more details p. 15.

³⁹ Previously, the State commissioned RAND Corporation to look at legalization of marijuana. Perhaps a similar process could be done here.

CONCLUSION

This report offers an in-depth look at three prevalent RJ avenues in Vermont: CJs, Court Diversion, and BARJ. This report endeavors to comprehensively describe the history and vision of each of these avenues, outline the statutory framework, and summarize our current landscape. The second half of this report tries to analyze the current issues facing RJ funding and structures, while also considering potential solutions moving forward.

Much of the information provided in this document relies on research and on surveys and interviews with key RJ stakeholders. More beneficial documents are listed below in the Resource Appendix, and the Works Cited includes links to many informative websites.

This report was created by Ping Showalter as an independent research project in Spring of 2022 at the Vermont Law School. This report represents the culmination of a semester's worth of work. Yet, it is only the beginning towards more fully knowing, and eventually improving, the structure, funding, and flow of restorative justice in Vermont. It is the author's hope that the information and considerations listed in this report are used not only for understanding, but ultimately for action.

RESOURCE APPENDIX

Public Documents

Below are a few of the public documents consulted that may be especially useful for individuals to consult if looking for more information. Many documents were provided freely by the individuals interviewed and surveyed.

- State Funded Community Based Restorative Justice Programs (Jill Evans)
- Community Based Restorative Justice Providers (Leitha Cipriano)
- Continuum of Services (Center for Restorative Justice)
- Restorative Panel Referral Chart (Center for Restorative Justice)
- Restorative Justice Work Group documents (three reports created in 2014, 2015, and 2017 for the Joint Legislative Corrections Oversight Committee)
- 2020 and 2021 Statistical Data (varying)

List of Individuals Interviewed

1. Chris Barton.....Restorative Systems Administrator for DOC
2. Lindy Boudreau.....Juvenile Justice Director/BARJ Program Manager for DCF
3. Susan CherryDirector of the St. Johnsbury CJC
4. Sara Coffey.....Vermont State Representative, Windham-1 & Vice Chair of the House Committee on Corrections and Institutions
5. Brenna Deavitt.....RJ Specialist for the Williston CJC
6. Willa Farrell.....Court Diversion Director of VT (AGO Office)
7. Sarah George.....State’s Attorney for Chittenden County
8. Ward Goodenough.....State’s Attorney for Windsor County
9. Brian Grearson.....Retired Chief Superior Judge for VT
10. Rachel Jolly.....Director of the Burlington CJC
11. Derek Miodownik.....Restorative and Community Justice Executive for DOC
12. John Perry.....Former Director of Planning of VT Corrections
13. Ellen Wicklum.....Director of Valley Court Diversion Programs

List of Individuals Surveyed

1. Bobby Blanchard.....Director for Lamoille Restorative Center
2. Leitha Cipriano.....Director for Bennington Center for Restorative Justice
3. Catherine Kalkstein.....Director of Washington County Diversion Program
4. Barb Morrow.....Director for Orleans County Restorative Justice Center
5. Mikayla Shaw.....Director of Rutland County Restorative Justice Center
6. Unnamed.....Individual affiliated with Caledonia/Essex Diversion
7. Unnamed.....Individual affiliated with Barre CJC

ENDNOTES

-
- ⁱ John Perry, “The Role of the Community in the Criminal Justice System,” April 30, 2021, Zoom interview, MP4, 56:58, https://drive.google.com/file/d/18QZLc2M_1hva6zUQMIkq9NRH8pi6PrxW/view.
- ⁱⁱ “History,” Burlington Community Justice Center, accessed February 2022, <https://www.burlingtoncjc.org/history>.
- ⁱⁱⁱ Willa Farrell, email exchange with author, March 28, 2022.
- ^{iv} “A Brief History of Court Diversion in Vermont and in Addison County,” *Addison County Restorative Justice Service*, accessed February 2022, <https://www.acrjs.org/history.html>.
- ^v “Court Diversion,” Office of the Vermont Attorney General, accessed February 2022, <https://ago.vermont.gov/court-diversion/>.
- ^{vi} Lindy Boudreau, email exchange with author, March 22, 2022.
- ^{vii} Lindy Boudreau, email exchange with author, March 29, 2022.
- ^{viii} 28 V.S.A. § 2(a)
- ^{ix} Willa Farrell, interview with author, February 11, 2022.
- ^x Benjamin Novogroski, “Community Justice Centers” (official memorandum, State of Vermont: Office of Legislative Counsel, 2022).
- ^{xi} Novogroski, “Community Justice Centers.”
- ^{xii} Jordyn Haime, “Restorative Justice Part 3: In Vermont, Restorative Justice Under Statute May not Lead to Equitable Services,” *Granite State News Collaborative*, April 20, 2021, <https://www.collaborativenh.org/race-and-equity-project-stories/2021/4/20/restorative-justice-part-3-in-vermont-restorative-justice-under-statute-may-not-lead-to-equitable-services>
- ^{xiii} Haime, “Restorative Justice Part 3.”
- ^{xiv} Willa Farrell, email exchange with author, March 28, 2022.
- ^{xv} “H.470,” Vermont General Assembly, accessed March 2022, <https://legislature.vermont.gov/bill/status/2022/H.470>.
- ^{xvi} “H.259,” Vermont General Assembly, accessed March 2022, <https://legislature.vermont.gov/bill/status/2022/H.249>.
- ^{xvii} Sara Coffey, interview with author, March 28, 2022.
- ^{xviii} “BIG BILL—Fiscal Year 2023 Appropriations Act” (Vermont Congress, Introduced House Bill H.470: Committee on Appropriations, 2022), p. 125.
- ^{xix} “BIG BILL—Fiscal Year 2023 Appropriations Act” p. 128.
- ^{xx} Sheridan Watson and Ellen Whelan-Wuest, “Explainer: The Significance of Vermont’s Justice Reinvestment Legislation,” Justice Center, *The Council of State Governments*, July 16, 2020, <https://csgjusticecenter.org/2020/07/16/explainer-the-significance-of-vermonts-justice-reinvestment-legislation/>.

xxi Watson and Whelan-Wuest, “Explainer.”

xxii Watson and Whelan-Wuest, “Explainer.”

xxiii “An Act Relating to Justice Reinvestment” (Vermont Congress, Introduced Senate Bill S.338, General Assembly, 2020) p. 2.

xxiv “An Act Relating to Justice Reinvestment,” p. 2.

xxv “Population Data,” Department of Corrections, accessed March 2020, <https://doc.vermont.gov/content/population-data>.

xxvi “Population Data.”

xxvii Sara Coffey, email exchange with author, March 30, 2022.

xxviii Elliott Ramos, “States, Flush with Marijuana Money, Are Now Fighting Over What to Do with It,” *NBC News*, March 17, 2022, <https://www.nbcnews.com/news/us-news/states-flush-marijuana-money-are-now-fighting-over-what-do-n1291970>.

xxix Ramos, “States, Flush with Marijuana Money...”

xxx “Vermont,” *Marijuana Policy Project*, June 10, 2021, <https://www.mpp.org/states/vermont/>.

xxxi “Department of Community Justice,” Multnomah County, accessed March 2022, <https://www.multco.us/dcj>.

WORKS CITED

- “A Brief History of Court Diversion in Vermont and in Addison County.” Addison County Restorative Justice Service. Accessed February, 2022.
<https://www.acrjs.org/history.html>.
- “An Act Relating to Justice Reinvestment.” Vermont Congress, Introduced Senate Bill S.338, General Assembly, 2020, p 1-31.
- “BIG BILL—Fiscal Year 2023 Appropriations Act.” Vermont Congress, Introduced House Bill H.470, Committee on Appropriations, 2022, p 125-128.
- “Court Diversion.” Office of the Vermont Attorney General. Accessed February 2022.
<https://ago.vermont.gov/court-diversion/>.
- “Department of Community Justice.” Multnomah County. Accessed March 2022.
<https://www.multco.us/dcj>.
- Haime, Jordyn. “Restorative Justice Part 3: In Vermont, Restorative Justice Under Statute May not Lead to Equitable Services.” *Granite State News Collaborative*. April 20, 2021. <https://www.collaborativenh.org/race-and-equity-project-stories/2021/4/20/restorative-justice-part-3-in-vermont-restorative-justice-under-statute-may-not-lead-to-equitable-services>.
- “History.” Burlington Community Justice Center. Accessed February, 2022.
<https://www.burlingtoncjc.org/history>.
- “H.259.” Vermont General Assembly. Accessed March 2022.
<https://legislature.vermont.gov/bill/status/2022/H.249>.
- “H.470.” Vermont General Assembly. Accessed March 2022.
<https://legislature.vermont.gov/bill/status/2022/H.470>.
- Keays, Alan. “Senate Signs off on Creation of Scaled-Back Agency of Public Safety.” March 23, 2022. <https://vtdigger.org/2022/03/23/senate-signs-off-on-creation-of-scaled-back-agency-of-public-safety/>.
- Novogroski, Benjamin. “Community Justice Centers.” Official memorandum. State of Vermont: Office of Legislative Counsel, 2022.
- Perry, John. “The Role of the Community in the Criminal Justice System.” April 30, 2021. Zoom Interview. MP4, 56:58.
https://drive.google.com/file/d/18QZLc2M_1hva6zUQMIkq9NRH8pi6PrxW/view.

“Population Data.” Department of Corrections. Accessed March 2020.

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

Ramos, Elliott. “States, Flush with Marijuana Money, Are Now Fighting Over What to Do with It.” *NBC News*. March 17, 2022.

<https://www.nbcnews.com/news/us-news/states-flush-marijuana-money-are-now-fighting-over-what-do-n1291970>.

“Vermont.” *Marijuana Policy Project*. June 10, 2021.

<https://www.mpp.org/states/vermont/>.

Watson, Sheridan and Ellen Whelan-Wuest. “Explainer: The Significance of Vermont’s Justice Reinvestment Legislation.” Justice Center. *The Council of State Governments*, July 16, 2020.

<https://csgjusticecenter.org/2020/07/16/explainer-the-significance-of-vermonts-justice-reinvestment-legislation/>.