Summary of Recommendations for November 17, 2021
Results of the Racial Equity in Sentencing Analysis
Justice Reinvestment II Working Group Meeting

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

    Key Vermont Findings:
    - In 2019, Black people were over 14 times more likely than White people to be defendants in a felony drug case each year.
    - After adjusting for case and defendant characteristics, Black defendants are more likely to be incarcerated for a felony drug offense than White defendants.
    - This finding mirrors national trends indicating that despite similar rates of drug use and sales for Black and White people, Black people are more likely to be arrested and incarcerated for drug offenses.

    Recommendation:
    - Vermont is currently considering a classification structure for drug offenses. The state should utilize the results of this analysis to apply a racial equity lens to the classification process for drug offenses 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. **Recommendation:** Establish non-binding sentencing guidance or consider presumptive probation for certain drug and property offenses.

    Key Vermont Findings:
    - Black defendants are more likely to be incarcerated for a felony property or drug offense.
    - Non-binding statutory sentencing guidance seems to have ensured that there are no racial disparities in misdemeanor or felony probation term lengths. This is in line with research indicating that sentencing guidelines reduce racial disparities by providing structure to inform judicial discretion.

    Recommendation:
    - 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 establishing presumptive probation for certain offenses to inform discretion related to incarceration decisions.

3. **Recommendation:** Identify and address any racial disparities in diversion and pretrial services.

- Studies have found that Black, Indigenous, and People of Color (BIPOC) are often less likely to receive diversion than White people.
- Vermont should require the collection and reporting of race and ethnicity data in the Attorney General's Pretrial Services and Court Diversion Report, as well as in any other statewide diversion programs, for the purpose of identifying and addressing disparities in program access and use by county.

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

- Ninety-nine percent of cases in Vermont are resolved through the plea-bargaining process.
- State's attorneys should explore the use of internal guidance to increase consistency in charging and plea-bargaining decisions. Guidance should focus on when and what to charge, particularly for drug-related cases, as well as provide a framework for guiding discretion during the plea-bargaining process.
- To monitor implementation of internal guidance, offices should regularly collect and examine charging and plea-bargaining data as well as consider establishing a process for internal review prior to charging.

5. **Recommendation:** Improve data collection practices within law enforcement, courts, and the Department of Corrections.

Data-related recommendations include:
- Expand collection of Hispanic ethnicity data to law enforcement and the courts.
- Invest in staffing and system improvements necessary to increase future data collection and analysis capacity.
- Collect and analyze racial disparity data statewide, as well as by judicial district.
- Identify opportunities to publish racial disparity data, including an annual report to benchmark and monitor progress.
- Engage impacted communities in the collection of quantitative and qualitative data, as well as the development and implementation of racial disparity related policy changes.
- Use data and community engagement to inform judicial training to support consistency in decision-making.