



# National Consortium on Racial and Ethnic Fairness in the Courts

## Idaho Report

May 2016

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### Judicial Recruitment Efforts

The Idaho Supreme Court continues to be proactive in its judicial recruitment efforts, developing ongoing strategies for the effective recruitment of highly qualified applicants for appellate, district, and magistrate judgeships. The goal is to attract and advance the most talented individuals with diverse backgrounds and experience, regardless of their sex, race, religion, age, or any other dimension of diversity.

Specially targeted strategies have been employed to address the concerns raised by women, more experienced practitioners, and other under-represented groups to increase confidence in judicial selection procedures and the number of judicial applications from these groups. Of special concern is the continued scarcity of racial and ethnic minorities on the bench. Recruitment workshops have been implemented statewide. Additionally, judicial selection surveys have been developed for candidates to provide feedback about the selection process.

### Language Access Services

Article I, §18 of the Idaho Constitution, requires the courts be open and accessible to every person. In addition, Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968 prohibits recipients of federal financial assistance from discriminating based on national origin by failing to provide "meaningful access" to individuals who have limited English proficiency. In order to meet the requirement of meaningful access, Idaho courts are required to provide language access services for non-English speakers. Additionally, the ADA requires that Title II entities (state and local governments) communicate effectively with people who have communication disabilities.

In 2016, the Idaho Supreme Court requested and received a legislative appropriation for a Statewide Language Access Manager. This position will be responsible to provide language access services to all Idaho Courts, including court interpreting and translation services in the Spanish language. Administrative responsibilities will include assisting trial courts with the coordination of language access services statewide, carrying out the requirements of the Court's statewide language access plan, recruiting and training new interpreters, managing the court interpreter training and testing program, and staffing the Court's standing committee on language access.

Additionally, the Idaho courts have plans to deploy video conferencing statewide. Ultimately, video remote interpreting for courtroom proceedings will be provided using this system. However, this system will not be available to provide services outside the courtroom, such as at the counter in the clerk's office and other court service offices. Separate hardware and software will be required for counties to connect to VRI services from these various offices.

A two-phased approach is recommended to address this need. The first phase will provide hardware and software for trial courts statewide to connect with on-demand VRI services, as well as to provide funding for the per minute charge for direct services. This will allow counties to have a portable system in place that can be utilized by all court programs and service offices, and will also be available for use in court proceedings until the video conferencing solution is in place. The second phase, to be scoped and requested in a later fiscal year, will be to expand the previously funded video conferencing project so that VRI services are integrated into the courtroom audio/video system.

While counties will still be responsible to ensure the necessary bandwidth and network connectivity is in place, providing hardware, software, and direct services for VRI is an expensive burden for county governments and this request is an effort to help counties meet those needs.

### **Improve the Collection of Court Fees, Fines, and Other Obligations**

The Court urges that all three branches of government continue the work approved by the Idaho Criminal Justice Commission to help inform the Legislature when it considers proposals to add new fees, fines, and other obligations. The effort will examine the existing statutory scheme relating to the collection of fees in criminal cases to clarify:

- (a) whether each of the current fees is to be assessed for each case or for each count or charge within a case;
- (b) the priority of how payments are to be applied to the various fees, fines, and restitution when the payment received is insufficient to pay the entirety of the court ordered obligations;
- (c) best practices for the collection of fees, including a clearer definition of the role of probation officers in these collections;
- (d) whether provisions for waiver of the various fees should be made uniform; and
- (e) how the burden placed on offenders by the various fees, costs, and fines should be taken into account, both as to its effect on the ability of offenders to successfully rehabilitate themselves, and with regard to the uncertain and variable level of funding for the judicial system and other agencies that is created by this approach.

The transition to the Court's new case management system Odyssey, by Tyler Technologies, will support this important work and the proper accounting of millions of dollars in court ordered obligations.

### **Criminal Justice Reinvestment**

The 2014 Legislature enacted SB 1357 which amended a number of statutes dealing with probation and parole of felony offenders with an eye toward prudent reinvestment and reallocation of resources to reduce prison costs, enhance rehabilitation and provide greater public safety. Statutory amendments enacted in 2015 adjusted the effective date of some primary provisions to October 1, 2015. Other provisions of SB 1357 require several reports to the Idaho Legislature on a gap analysis in programming and funding, as well as a program assessment.

The need is to continue to strengthen felony probation as an evidence-based sentencing alternative. Significantly improving access to behavioral health treatment for offenders in the community is also necessary to make probation more successful, restore lives, reduce recidivism and improve public safety.

### **Improving the Public Defender System**

The 2013 Legislature began the process of public defense reform by passing three bills dealing with the appointment of counsel and also established a legislative interim committee to continue the analysis of the public defense system. Specifically, in 2013, HB 147 amended provisions of the public defense system for adults, HB 148 provided counsel in child protection cases, and HB 149 dealt with counsel in juvenile cases. Litigation was commenced in 2015 regarding public defense funding and other matters. The Committee is continuing to consider issues relating to the structure and funding of public defense services, including the responsibilities and authority of the Public Defense Commission.

During the 2016 session, the Idaho Legislature enacted House Bill 504 to provide for annual indigent defense grants to counties of 15% of the county's local share, which is based on past indigent defense expenditures, or \$25,000, whichever is greater. This bill also provides for grants of an additional \$25,000 to counties electing to join with other counties in establishing a joint office of public defender. It requires grant applications to state how indigent defense standards will be met and how any identified deficiencies will be cured. The bill gives the State Public Defense Commission authority to establish model contracts and core requirements for indigent defense contracts, to set standards for defending attorneys based on principles of indigent defense set forth in statute, and to review indigent defense providers to evaluate compliance with indigent defense standards.