

NATIONAL CONSORTIUM ON RACIAL AND ETHNIC FAIRNESS IN THE COURTS

Report on the States: North Dakota, Judge Donovan Foughty DFoughty@ndcourts.gov

The North Dakota Minority Justice Implementation Committee (MJJ) has been working since 2013 to implement recommendations of the Commission to Study Racial and Ethnic Bias in the Courts (Commission). The report presents some highlights of MJJ's and the Courts' work in the past year.

JURY STUDY

The Courts began a long-term survey of minority representation in jury lists in April, 2014. Initial reports from the study will be presented to MJJ during its May 2016 meeting. If data shows disproportion, courts will explore expansion of the jury list sources. MJJ also began efforts in 2015 to collect demographic data from eligible jurors who do not appear on source lists, which is intended to identify any pattern of exclusion of certain communities or minorities.

REFRESHING JURY LISTS/UNDELIVERABLE SUMMONS

North Dakota has begun more frequent refreshing of its jury source lists to capture minorities, who typically have a higher rate of address changes. Because the main jury source list is comprised of actual voters from the most recent general election, North Dakota continues to refresh this list every two years. North Dakota has begun to refresh the supplemental source list of licensed drivers and individuals holding state identification cards on an annual basis.

COURT INTERPRETER RULES/TRAINING

North Dakota Courts has developed an orientation and registration process for court interpreters, which cover court terminology, ethics, and modes of interpreting. At its first offering in June 2015, 12 interpreters passed the test and received the designation of "registered interpreter." They work in American Sign Language, Arabic, Chinese, Kurdish, Nepali, Somali, Spanish, Taiwanese, and Turkish. A roster of interpreters and "registered interpreters" is maintained on the North Dakota Supreme Court website.

RACE IN THE CRIMINAL JUSTICE SYSTEM STUDY

The Commission was not able to gather data on certain key criminal justice study areas within its allotted duration and budget. In October 2015, North Dakota partnered with Council of State Governments Justice Center (CSG) in exploring a "justice reinvestment" approach. CSG is conducting a comprehensive analysis of extensive data sets collected to provide a broad picture of criminal justice trends in North Dakota. MJJ will continue its involvement with the data collection, analysis, and recommendations to the Incarceration Issues Committee to establish reforms which reduce the disproportionate impact on North Dakota's minority populations.

EVIDENCE-BASED SENTENCING

The proportion of minorities incarcerated in North Dakota is substantially larger than the proportion of minorities arrested. The Commission recommended the use of evidence-based tools in decision-making to increase objectivity and help address disproportion rooted in implicit bias, especially at sentencing and in pretrial stages. The Minority Justice Committee is supporting these efforts, primarily through data collection and analysis. One large county has initiated a pilot program to test an evidence-based sentencing tool. Committee members are monitoring the results of this project.

PRETRIAL EVIDENCE-BASED TOOLS

The Commission recommendations call for an objective pretrial tool to aid judicial bail determinations. MJI has examined a variety of assessment tools for their potential for implementation or as models for the development of an original instrument. MJI has also discussed the possibility of seeking outside expertise from one of the national pretrial justice organizations to assist in the development of pretrial services and an assessment tool. Efforts currently continue to identify the appropriate plan of action and garner support for pretrial justice reform.

STATE-TRIBAL RELATIONS – COOPERATIVE AGREEMENTS

MJI participated in the 2015 North Dakota Tribal-State Forum on Cooperative Law Enforcement Agreements, which was attended by representatives from the state and tribal governments. The forum opened the doors of communication about areas where cooperative agreements would benefit all parties involved. Currently, MJI is focusing its efforts on developing Memoranda of Understanding with the tribes in North Dakota for the sharing of information for juveniles that enter both the tribal and state courts. Future efforts will focus on agreements to share all services available to justice system-involved youth, regardless of whether they enter into the system via state or tribal court.

JUVENILE DETENTION TOOL

The Race and Bias Commission recommended statewide adoption of a validated, objective juvenile detention tool. An assessment tool was implemented statewide in 2014. A validation study was performed on the tool in 2015 and the results will be presented to MJI at its May 2016 meeting.

JUVENILE CULTURAL LIAISON PROGRAMS

The Courts established the Youth Cultural Achievement Program (YCAP) in 2008, which provides a juvenile court liaison focused on preventing Native American youth from entering the juvenile justice and child welfare systems, and on assisting the court and families in the South Central Judicial District. A 2014 grant enhanced the YCAP program with greater prevention-focused services for additional counseling, case management, one-on-one mentoring, and a school-based group at the middle school level. Fargo PD also employs a cultural liaison officer for its large New American population (i.e. refugees, immigrants, and asylees) and Native American population. There are plans to further expand YCAP to the Devils Lake area in 2017.

LIMITED-SCOPE AND SELF-REPRESENTATION

The Commission study and a later survey suggested that few attorneys offer limited-scope services because of concerns that judges will not respect limited-scope agreements. MJI proposed clarifications to rules of court to help address concerns, which are currently under consideration.

The North Dakota Legal Self-Help Center has developed a variety of forms and an informational web site to assist users. The project reports significant contact with minority groups in the state. MJI has recommended the project increase information on Indian Law, tribal courts, and limited-scope services and efforts continue to develop more forms and brochures.

EDUCATION PROGRAMS

The Minority Justice Committee is cooperating with law school student organizations and the University of North Dakota Law School to develop education programs to encourage minority students to consider legal careers.

Staff Contact:

Lindsey Nieuwsma, lnieuwsma@ndcourts.gov