

Utah State Court Report

National Consortium on Racial and Ethnic Fairness in the Courts

As with many organizations in the past year, the Utah Judiciary was spurred to long overdue action. In the spring of 2020, the Utah Judicial Council created the Office of Fairness and Accountability.

In 2001, the Utah Judicial Council's taskforce on racial and ethnic fairness in the justice system issued a final report after four years of work. The report contained many recommendations for all components of the criminal justice system and one of the most important recommendations was for a statewide commission that would include representatives from all agencies involved in the criminal justice system, including community partners. Unfortunately, the effort failed due to a lack of funding from the Utah State Legislature.

The Utah Judiciary continued efforts through its judicial outreach committee and a community outreach subcommittee, but there has been little funding and Utah has not had a full-time person dedicated to fairness in the criminal justice system. The efforts have therefore been limited. Utah has engaged in many other projects to improve access to justice such as improving interpreter services, creating a self-help legal center, creating an indigent defense commission, and implementing the justice reform initiative with an aim to reducing incarceration and promoting rehabilitation. But more focused efforts in fairness have been missing.

The creation of the Office of Fairness and Accountability will allow the Utah judiciary to begin more concerted efforts to study fairness and outcomes and to implement changes as a result of those studies. The office has hired a director and a public outreach coordinator. The director of the office is busily planning the formation of a strategic planning committee. The director's plan will soon be presented to the Utah Judicial Council, which will approve the membership of the committee and establish the committee's charge. The office has also executed an agreement with local university

researchers to begin gathering demographic data to support data driven policy recommendations to address overrepresentation of racial and ethnic minorities in the criminal justice system. The hiring of the public outreach coordinator is an important step toward engaging with historically marginalized communities. The goals of the outreach coordinator include developing trust from individuals in marginalized communities, and identifying rights, needs, and resources.

The Utah Judicial Council has committed to providing the Office of Fairness and Accountability with the autonomy it needs to pose the tough questions and present the difficult answers that will be necessary to improve the Utah judicial system.

There have been other efforts in Utah that will hopefully improve access to justice. In 2020 the Utah legislature created a process for automatic expungement of certain types of cases. The law applies to lower level offenses, but will result in expungements automatically occurring without the need for a person to file a petition for expungement.

Utah has also been busily engaged in pretrial reform. The Utah legislature passed a law in 2020 that requires judges to set the least restrictive conditions possible when ordering pretrial release and to consider an individual's ability to pay when setting financial conditions for release. Although the legislature repealed many of those provisions before they had a chance to be fully implemented, the Utah legislature has formed a commission to closely study the issues. And the Utah Supreme Court and the Utah Judicial Council are committed to implementing those provisions that can be implemented through procedural rules and those provisions that are constitutionally required.

The Utah judiciary also implemented an online dispute resolution program in small claims cases. The program requires litigants to participate in an online dispute resolution process before proceeding to a hearing. The ODR process is facilitated by court volunteers who help litigants evaluate their cases and develop mutually agreeable solutions. The ODR process allows litigants to participate asynchronously and early anecdotes suggest increased participation and fewer defaults. The pilot

project is being extended to other small claims courts throughout the state and will eventually be extended to other case types.

As has occurred with other states, the Utah courts have conducted most proceedings in the past year through remote transmission. Although there have been difficulties, the anecdotes again show that access to justice has improved with failure to appear rates falling. There has also been greater participation in court hearings. Although there will be many proceedings in the future that will need to be conducted in person, it is clear that remote transmission of court proceedings is here to stay and will allow people to avoid the time and expense of traveling to court.

The Utah Supreme Court also approved sweeping changes regarding the practice of law. The Utah Supreme Court approved the Office of Innovation and a regulatory sandbox, loosening some of the requirements or prohibitions on attorneys associating with non-attorneys in business practices. This has resulted in entities becoming creative in how legal services are provided. There are organizations committed to serving marginalized communities that have submitted proposals that will increase access to legal services.