

2014

Minority Justice Implementation Committee

Annual Report

Description of current Minority Justice Implementation Committee activities through December, 2014.

12/5/2014



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INTRODUCTION

The North Dakota Minority Justice Implementation Committee (Minority Justice Committee) began work in 2013, following the recommendations of the Commission to Study Racial and Ethnic Bias in the Courts (Race and Bias Commission).¹ The Committee is charged with implementing recommendations from the Commission Final Report, which was based on the findings of a two-year study. The Commission collected testimony and statistical evidence to examine bias in as many areas of the court system as possible. Study areas included access to courts, criminal and juvenile justice, civil courts, the legal profession, court personnel, and public perceptions.

The Minority Justice Committee held its first meeting in July, 2013. Members selected recommendations from each Commission study area for initial implementation. The Committee selected a mix of long- and short-term projects from several different subject areas in order to allow members the opportunities to participate and apply their expertise.

COMMITTEE ACTIVITIES

This report contains short descriptions of study areas, recommendations, and Minority Justice Committee implementation efforts. The recommendations below are categorized according to the original Racial and Ethnic Bias Commission Final Report study areas. The text of the relevant Commission recommendations appears below each implementation subject heading.

ACCESS TO COURTS

The Race and Bias Commission report focused on the issues of representative juries and language interpreter needs throughout the state under the heading of Access to Courts. The Minority Justice Committee selected two jury recommendations for initial implementation.

- **JURY STUDY**

A long-term or permanent study on jury panels must be undertaken before firm statistical conclusions on minority representation can be reached. Such study would provide information for the review of jury source lists. Courts should be required to request racial and ethnic information from all persons summoned, selected for, or granted excuses and deferrals from jury duty. This data must be collected, preserved, and reported yearly to the State Court Administrator.

The main obstacle to assessing North Dakota jury representation has been the level of available data from various stages of the jury process, including the initial jury pools and the final panels. This difficulty increases when attempting to examine jury panels. Because only a small proportion of potential jurors serve on panels, collecting reliable state or county data requires long-term study timelines.

The Minority Justice Committee chose to begin collecting data at the jury pool stage. Implementation required the addition of a single demographic question to the juror questionnaire form. This question requests self-

¹ NORTH DAKOTA COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS: FINAL REPORT AND RECOMMENDATIONS (2012).

identification of race and ethnicity from a multiple-choice selection of Census categories. Members voted to implement the jury pool study recommendation at the November 21, 2013 meeting, and the study is currently underway. The study will require one year to collect sufficient information from many of the smaller North Dakota counties. Once data becomes available, it will be possible to perform analysis at both state and county levels. The survey commenced April 1, 2014 and will run at least until April 1, 2015.

Both online and paper juror response methods have been modified to include the survey question. Additional text appears at the end of the jury questionnaire, after the signature line. The text includes an explanation of the study as well as the need to ensure that jury master lists adequately represent the state population. The explanation clearly indicates that the question is part of the Minority Justice Committee's study and does not require an answer if the potential juror is unwilling to participate. It also clarifies that the question is separate from the rest of the questionnaire and does not affect eligibility for jury service.

Data from this survey will be used to determine whether the current source lists create racial disparity in the jury pool. If the data indicates that disparities exist, that finding will support a decision to expand sources for jury master lists. Members and court administrators have acknowledged that other states, including Minnesota and Nebraska, have employed a similar method to determine jury representation, with positive results.

- **REFRESHING JURY LISTS/UNDELIVERABLE SUMMONSES**

Jury lists should be refreshed at least once per year to reduce undeliverable mailings.

State and national studies have found a pattern of disproportionately low rates of jury summons returns for minorities.² Many states have adopted recommendations to increase the frequency of refreshing jury master lists to help alleviate these problems. The Commission found that most states have updated jury processes to refresh lists at least once per year.³ North Dakota has traditionally updated its jury master lists every two years.

The Commission was unable to collect sufficient data to definitively prove disproportion in undeliverable mailings at the county level. However, available evidence suggested that several North Dakota counties bordering Indian Reservations appear to follow the broader national trend.⁴

Court administrators identified additional benefits from more frequent refreshing of lists beyond addressing any existing disproportion from undeliverable mailings. For example, more frequent refreshing would allow more efficient use of resources by avoiding re-mailings. Administrators indicated that the process of refreshing and updating master lists has become easier than in the past because of improvements in technology.

The Commission recommended refreshing jury lists on an annual basis. The Minority Justice Committee discussed this recommendation during its February 13, 2014 meeting, and implementation is underway. The Committee plans to continue to investigate methods and best practices to address undeliverable summonses.

² See NORTH DAKOTA COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS: FINAL REPORT AND RECOMMENDATIONS 28-30 (2012); see also Kim Forde-Mazrui, *Judicial Districting: Selecting Impartial Juries Through Community Representation*, 52 Vand. L. Rev. 353, 356 (1999).

³ See NORTH DAKOTA COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS: FINAL REPORT AND RECOMMENDATIONS 27 (2012).

⁴ See *Id.* at 26-27.

CRIMINAL AND JUVENILE JUSTICE

The Commission study covered many criminal and juvenile justice issues. The Minority Justice Committee chose to focus initially on recommendations to adopt evidence-based tools at sentencing and pretrial stages. The Committee also encouraged the statewide expansion of a validated juvenile detention tool and analyzed re-assessment of driving under suspension penalties.

- **EVIDENCE-BASED SENTENCING**

Along with the sentencing factors of N.D.C.C. § 12.1-32-04, evidence-based sentencing practices and risk-assessment tools should be used.

Courts should provide training to judges in the use of research-based tools to incorporate sentencing practices.

The Commission study found that racial and ethnic disparities increase over the course of the state criminal process from arrest to incarceration. Data revealed that the proportion of incarcerated minorities is substantially larger than the proportion of minorities arrested.⁵ The Commission could not isolate and identify specific causes of disproportion during intervening stages because it lacked sufficient data on many system decision points. A complete determination would have required long-term case studies with large samples, and a comparison with control groups. Causes of the increase between arrests and incarceration could include explicit or implicit bias, other causes correlating with bias, such as poverty, economic or social factors, or some combination of both.

The Commission found that providing evidence-based tools in the judicial decision process would create an objective reference point to combat any real or potential bias. An objective assessment tool would also help to address any effects of implicit bias, unconsciously applied stereotypes that affect decision-making.⁶ Research supports the conclusion that decision makers can limit the effect of their own implicit bias if they are conscious of its existence.⁷ Judges could apply an assessment tool to gain objective information, to increase their awareness of any unconscious bias in their decisions, and to help ensure consistent, reliable decision-making.

Evidence-based tools can provide many additional benefits, including increased program efficiency and increased cost-effectiveness. Many tools are capable of measuring both offender needs and the risk of future offenses. Matching offender needs to existing resources allows application of more effective treatment and support programs, which can help to reduce or eliminate future contact with the justice system. Research compiled by the National Institute of Corrections shows that benefits include reduction of inappropriate lockups,

⁵ The population of minorities arrested, in turn, is significantly larger than the proportion of minorities in the state population. See NORTH DAKOTA COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS: FINAL REPORT AND RECOMMENDATIONS 75 (2012). The Commission study also notes that disproportion must be considered in light of jurisdictional limits between state authorities and Indian Reservations.

⁶ See Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L. J. 346, 363 (2007); Timothy D. Wilson et al., *A Model of Dual Attitudes*, 107 PSYCHOL. REV. 101, 103-104 (2000).

⁷ See Jeffrey J. Rachlinski, Sheri Lynn Johnson, Andrew J. Wistrich, & Chris Guthrie, *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1223-26 (2009).

more efficient use of incarceration, and more efficient targeting of resource delivery to offenders most likely to respond positively.⁸

The Minority Justice Committee has been investigating evidence-based sentencing tools and validation processes to ensure the objectivity and effectiveness of assessments at a local level. Validation involves extensive testing, including comparisons of assessment predictions against actual outcomes. This process reveals the statistical value of each variable, which allows testers to modify the assessment tool until its predictions are statistically accurate. Because relevant variables can differ between local jurisdictions, validation must be performed at local levels to maintain predictive value.

Cass County recently implemented a program piloting the use of an evidence-based tool on a single judge's docket. At least one Committee member is monitoring this program and will provide feedback and evaluations. The program objective is to implement a tool for use prior to a dispositional conference. This placement is intended to allow attorneys to advocate more effectively for appropriate case outcomes. Though the Cass project does not appear to rely on a full evidence-based process, it will help familiarize participants with relevant tools and techniques.⁹ Increased familiarity will provide a basis of expertise to inform further implementation. Members are monitoring the program and the Committee will review results when they become available.

Effective implementation of evidence-based tools requires significant training. The Minority Justice Committee has reviewed a number of training programs, including *Evidence-Based Sentencing to Improve Public Safety and Reduce Recidivism: A Model Curriculum for Judges*. This program was developed through the cooperation of the National Judicial College, the National Center for State Courts, and the Crime and Justice Institute.¹⁰ The program format was designed to be provided in cooperation between a corrections official and a court official, allowing each to contribute different perspectives and expertise. The Committee found that training for the use of evidence-based tools in North Dakota would be best provided through this NCSC program.

- **PRETRIAL EVIDENCE-BASED TOOLS**

Courts should establish an objective screening tool for determining bail and should standardize bond schedules to ensure the equal treatment of Native Americans living on Indian Reservations.

Evidence-based practices can be effectively applied in areas of the criminal process in addition to sentencing. Commission recommendations call for an objective pretrial tool to aid judicial bail determinations. To be considered objective, pretrial tools must be scientifically validated using a similar process as sentencing tools.

The Minority Justice Committee recognized that an assessment tool could provide information on offender risk and needs to help judges determine appropriate diversion, incarceration, or other decisions. The Committee is reviewing research and models for pretrial implementation. An ideal tool would have a brief completion time. Court administrators have indicated that other state jurisdictions have developed predictive, validated detention

⁸ Research produced and compiled by the National Institute of Corrections is available at <http://nicic.gov/evidencebasedpractices>; For an example assessment of resource targeting for effectiveness see WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, RETURN ON INVESTMENT, EVIDENCE-BASED OPTIONS TO IMPROVE STATEWIDE OUTCOMES (2012); see also CASEY, PAMELA M., ROGER K. WARREN, & JENNIFER K. ELEK, USING OFFENDER RISK AND NEEDS ASSESSMENT INFORMATION AT SENTENCING 2-8 (2011).

⁹ Member assessments indicated that the process implemented appears to lack explanations of measured domains and recommendations.

¹⁰ Available at http://www.ncsc.org/sitecore/content/microsites/csi/home/~/_media/Microsites/Files/CSI/Education/Faculty_Handbook.ashx.

tools containing as few as three questions. The Committee examined a variety of assessment tools for their potential for implementation or as models for the development of an original instrument. The implementation process, whether using a model or an original instrument, would involve working with specialists to norm the instrument to the state population. This process would eliminate or add questions depending on which provide the most predictive results.

Recent research has shown that many administrative arrangements for delivering pretrial assessments can be effective.¹¹ The national trend has been to provide pretrial services through probation departments. This delivery takes advantage of any existing infrastructure and assessment expertise. In North Dakota, the Department of Corrections has an interest in administering a pretrial assessment. A probation officer or a trained vendor could be trained to complete an assessment instrument during a 10 to 15 minute interview before a first appearance.

Current plans call for the creation of a pilot program to test and refine methods for applying a pretrial assessment tool. Focus for a potential pilot has been in Burleigh County because of the convenience of implementation, its large jail population, which includes many pretrial detainees, and the significant level of minority contact with the courts. Judicial officials, law enforcement, and representatives from Burleigh County prosecutors and public defenders met with the Minority Justice Committee on May 15, 2014 to discuss implementation of a pretrial pilot of an evidence based assessment tool. All present agreed that a pilot program would be feasible.

The pilot will require the coordination of law enforcement, a judge willing to use the tool on his or her docket, and the Burleigh County Jail to take one-day snapshots of the jail population. Study populations could include felonies, serious misdemeanors, and DUIs. However, officials directly administering the program will most likely have wide discretion to select populations, in a similar manner to the current Cass County sentencing pilot. The instrument will identify people who do not require pretrial jail time. Information would be available to inform future decisions whether to modify bond practices.

The Committee sent a formal letter inviting Judge Gail Hagerty to participate in a Burleigh County pilot program. Judge Hagerty is currently seeking input from the other judges regarding the risk assessment tool. She has indicated that cooperation with the state's attorney and sheriff's office will have to be secured before a pilot project can be undertaken.

- **DRIVING UNDER SUSPENSION PENALTIES**

Driving under suspension penalties should be reviewed because these penalties compound difficulties in obtaining or maintaining employment.

Evidence collected during the Race and Bias Commission study period highlighted difficulties for both minorities and non-minorities in maintaining jobs after release from incarceration. The Commission found that the inability to drive often interferes with securing and maintaining employment. The Minority Justice Committee recognized that other state government organizations have analyzed driving under suspension penalties,

¹¹ See PRETRIAL JUSTICE INSTITUTE & AMERICAN PROBATION AND PAROLE ASSOCIATION, PROMISING PRACTICES IN PROVIDING PRETRIAL SERVICES FUNCTIONS WITHIN PROBATION AGENCIES: A USER'S GUIDE (2010).

including the Commission on Alternatives to Incarceration.¹² The Committee review found that recent program changes appear to have addressed some of the concerns described in the Commission Final Report.

Driving under suspension no longer disqualifies individuals for temporary restricted licenses (TRLs). Driving without insurance has been decriminalized, and will not disqualify a person for a TRL. Program participation is based on court order or law enforcement authorization. TRLs can be used at either post-conviction 24/7 or pretrial, and individuals can volunteer to participate. There has been a substantial increase in the number of TRLs in 2013, and the program appears to be helping to keep people driving and insured.

The Committee discussed potential due process issues related to inconsistent standards for program termination throughout the state. Removal of TRL driving privileges is an administrative decision based on data from law enforcement or courts. In at least some counties, violations require a judicial decision on whether to retain an individual in the program. Sanctions could include suspensions, delays, and other steps that would not revoke the TRL. Programs may require payment of fees in advance. In some counties, non-payment leads to a program fail, while others do not count this as a violation.¹³

Committee members indicated that judges have questioned whether the state should reimburse persons who paid program costs for pretrial TRLs, but who are ultimately acquitted or found not-guilty. Judges have highlighted a difference between the pretrial conditions, where there is a presumption of innocence, and post-trial conditions.

The Committee is considering both of these issues in light of the potential hardship they could cause for low-income individuals in the state. The Race and Bias Commission study found that North Dakota minorities are disproportionately represented at or near the federal poverty level.¹⁴

- **JUVENILE DETENTION TOOL: EXPANSION AND VALIDATION**

A single statewide tool should be implemented to guide the decision to detain. The tool should include criteria that are related to the purpose of detention, measure objectively, and apply uniformly.

The Race and Bias Commission recommended adoption of a juvenile detention tool. The recommendation specifies the need for objective measurement, which would require a tool validated to ensure predictive capability in the same manner as adult pretrial and sentencing tools.

At the November 21, 2013 Minority Justice Committee meeting, members indicated that there was a consensus among juvenile court officials and service providers for statewide implementation of the detention tool used in Burleigh and Morton counties. The initial objective for implementation is effective statewide data collection. One reason for this objective is that the relevant Burleigh/Morton assessment instrument is not validated. However, administrators in the Burleigh/Morton program with long-term experience applying the assessment suggest that it provides some guidance to improve decision-making. Since the November meeting, statewide implementation has been achieved and data collection is underway.

¹² North Dakota Commission on Alternatives to Incarceration, Minutes (February 10-11, 2014), available at <http://www.legis.nd.gov/assembly/63-2013/committees/interim/commission-alternatives-incarceration>.

¹³ Stark County, for example, found an equal protection problem for this procedure, and does not forfeit bond for non-payment.

¹⁴ See NORTH DAKOTA COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS: FINAL REPORT AND RECOMMENDATIONS 9 (2012).

Committee discussions focused largely on validation as a necessary step in the implementation process. A number of independent organizations provide validation services and can be hired by states for particular projects. Court administrators proposed making a request for state funding to facilitate validation during the next biennium. Members indicated that juvenile groups could pursue a grant funded validation effort as a first option prior to attempting to secure state funding.

CIVIL JUSTICE

The Commission Final Report focused on civil issues, including minority use of legal services, the provision of limited-scope legal services, and correlations between minority status and poverty in North Dakota. The Minority Justice Committee selected two civil recommendations for initial implementation. These recommendations included adopting the Project PASSPORT protection order model format and supporting expansion of resources and education related to limited-scope services and self-representation.

- **PASSPORT PROTECTION ORDER**

For ease of enforcement between state and tribal courts, courts should adopt the National Center for State Courts form of domestic violence protection order (PASSPORT).

Project PASSPORT provides a standardized content and format for protection order cover sheets between jurisdictions. The intent of the project is to strengthen full faith and credit and increase the safety of domestic violence victims, regardless of the jurisdiction that issued the order and the location of enforcement. Standardization improves recognition and enforcement of orders between tribal and state jurisdictions, and between different state jurisdictions. The model cover sheet template places key protection order data up front, on a single page, and in a uniform and recognizable manner to facilitate easy recognition and enforcement.

Project PASSPORT began with the creation and adoption of the model template among several states in 2000.¹⁵ Use of the model subsequently expanded to a majority of states.¹⁶ According to Minority Justice Committee discussions, several North Dakota Tribes have adopted the PASSPORT model, including Standing Rock and Turtle Mountain reservations. North Dakota State Court Administration discussed PASSPORT adoption during the project's initial stages. At that time, computer systems faced a number of technical obstacles to full implementation. However, the PASSPORT model content influenced the content of the state protection order and cover sheet that were ultimately developed.

The Commission Final Report recommended full implementation of PASSPORT with the goal of increasing law enforcement protection for domestic violence victims across state and tribal jurisdictions. The Minority Justice Committee noted that both Montana and South Dakota courts, as well as neighboring tribal jurisdictions, have all adopted PASSPORT. Some jurisdictions have implemented the project as recently as 2008. When contacted,

¹⁵ See NATIONAL CENTER FOR STATE COURTS, EXTENDING PROJECT PASSPORT (2013), available at <http://www.vawaandcourts.org/~media/Microsites/Files/VAWA/Passport%20Items/Passport%20Project%20Description%202014.ashx>; KENTUCKY DOMESTIC VIOLENCE ASSOCIATION (KDVA), PROJECT PASSPORT: REGIONAL IMPLEMENTATION OF THE FULL FAITH AND CREDIT FOR PROVISION OF THE VIOLENCE AGAINST WOMEN ACT (1999), available at http://www.vawaandcourts.org/~media/Microsites/Files/Passprt/Original%20Passport%20to%20Safety_Blue%20Book.ashx; see also TRIBAL LAW AND POLICY INSTITUTE, PROMISING STRATEGIES: TRIBAL-STATE COURT RELATIONS 1-5 (2013).

¹⁶ See <http://www.vawaandcourts.org/Cross-Jurisdictional-Efforts/Extending-Project-Passport.aspx>.

Montana and South Dakota officials reported that the program has been effective and has increased state cooperation with tribal courts. Committee members recognized that North Dakota's oil boom and growing population have increased movement between Indian Reservations, state jurisdictions, and neighboring states.

The Committee drafted a modified model cover sheet and initiated discussions with technical experts from the Office of the North Dakota Attorney General, which oversees state protection orders. Topics included: issues surrounding adoption, modification of the model cover sheet to reflect state requirements and practices, and compatibility with computer programs including the court's case management system and law enforcement systems.¹⁷ Discussions suggested that existing cover sheets may not be consistently passed on to law enforcement officials along with protection orders. Additional law enforcement training would be necessary to ensure the inclusion of cover sheets with the orders.

Minority Justice Committee members, experts from the Office of the Attorney General (AG Office), and court staff presented PASSPORT information at the 28 March 2014 State and Tribal Relations Committee. The presentation included a modified PASSPORT draft. Attendees included law enforcement officials, several Tribal Chairs, and officials from tribal courts. By this time, a significant portion of the implementation was completed, including re-drafting of a state cover sheet into a format similar to the PASSPORT model. This new cover sheet had been incorporated into the relevant state systems. State law enforcement and Tribal Chairs responded positively to the proposed PASSPORT implementation. The State and Tribal Relations Committee agreed that the next step will be for those tribes that do not use PASSPORT to consider adoption and implementation. Tribal Chairs indicated that they would propose and discuss adoption with tribal officials.

In addition to the adoption of a uniform cover sheet, a second goal of Project PASSPORT involves computer automation for protection order data. The PASSPORT Project advocates modifying electronic processes to allow data to flow through case management systems and justice system agencies, and eventually reach databases accessible to foreign jurisdictions.¹⁸ However, there may be considerable technical problems involved in coordinating existing systems from different jurisdictions and developing systems in jurisdictions with few resources. The Minority Justice Committee approached technological issues separately from the issue of cover sheet standardization because of the different levels of difficulty for implementing each.

Committee discussions have focused on developing a method of including tribal protection orders in the state computer system. Inclusion would further assist state and tribal law enforcement officers in identifying and enforcing protection orders from foreign jurisdictions. State technology experts indicated that inclusion of tribal orders within the state system appears to be technically feasible. The Committee acknowledged that this effort would depend substantially on Tribal Courts establishing methods to provide the orders for inclusion.

Discussions confirmed that there is no integration of protection orders from tribal courts into the state system, but also suggested several potential methods for inclusion. These methods include: entering tribal orders into Odyssey using an existing method for registering foreign protection orders with the state courts; direct entry of tribal orders into the FBI National Crime Information Center (NCIC) database, which would allow state access through the NCIC website; or the development of a web portal to allow direct entry of information into state

¹⁷ Discussion of modifications to the cover sheet included: expiration issues and removal of space for the social security number.

¹⁸ See NATIONAL CENTER FOR STATE COURTS, EXTENDING PROJECT PASSPORT 2 (2013), *available at* <http://www.vawaandcourts.org/~media/Microsites/Files/VAWA/Passport%20Items/Passport%20Project%20Description%202014.ashx>.

systems by tribal authorities. In addition, each of these methods would require tribes to maintain a consistent point of contact to verify whether received orders are current and accurate, and to provide any missing required data. Federal databases maintain rigorous data requirements and reject records with incomplete data.

Currently, North Dakota protection order data passes through court system computers to state Bureau of Criminal Investigation databases, where it is available statewide. However, this data is not automatically passed on to federal systems, which would allow foreign jurisdictions access. Instead, protection order data must be entered directly into the federal system by local law enforcement. Discussions with federal authorities revealed that that very few North Dakota protection orders are entered in this manner. The North Dakota AG Office and the State Information Technology Department have recently developed a method to automatically send North Dakota state protection orders to the federal system, which will be implemented by January, 2015. Once implementation is complete, tribal protection orders that are entered into the state system through any of the suggested methods will be automatically sent to federal databases along with state orders.

- **LIMITED-SCOPE SERVICES**

Courts should support the provision of unbundled legal services to the public.

Limited-scope services are contractual arrangements that allow self-representing clients to hire attorneys to complete discrete tasks without retaining them for an entire case. For example, a self-represented citizen might seek a limited-scope arrangement in which an attorney performs research, drafts a complaint, or makes an appearance for the client, without providing additional services. This arrangement allows self-represented litigants to take advantage of at least some affordable attorney services and creates flexibility for attorneys, who may offer a variety of services at designated prices.

The Commission analyzed limited-scope services as a method that could increase minority access to courts. The Race and Bias Commission found that North Dakota minorities disproportionately rely on no-cost or low-cost services.¹⁹ Evidence indicated that disproportionate reliance can be attributed largely to minority overrepresentation at or near poverty level. Research conducted at the national level indicates that unbundling is an important element in providing legal services to self-represented litigants.²⁰ Best practices recommend creating a method of referral to attorneys offering low cost limited-scope services.²¹

Both the Race and Bias Commission and the Minority Justice Committee acknowledged that courts and the State Bar of North Dakota (SBAND) have reviewed rules to facilitate unbundling, but there are few resources available for education and support. In addition, SBAND confirmed a lack of information on current levels of interest or use in North Dakota. Committee members suggested that North Dakota attorneys tend to respond positively to the idea of unbundling, but are uneasy about offering services. To confirm this, the Committee developed and implemented two surveys of perceptions, familiarity, and experience of limited-scope services among attorneys and judges. The first survey was distributed to SBAND members. The survey collected data on familiarity and provision of unbundled services among practicing attorneys. The second survey collected information from

¹⁹ See NORTH DAKOTA COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS: FINAL REPORT AND RECOMMENDATIONS 115-117 (2012) (Relying primarily on data collected by Legal Services of North Dakota).

²⁰ See NATIONAL CENTER FOR STATE COURTS, THE DISCRETE TASK ASSISTANCE PROGRAM: A LOW COST ATTORNEY ASSISTANCE SOLUTION FOR ACCESS TO JUSTICE PROBLEMS (2006); AMERICAN BAR ASSOCIATION, HANDBOOK ON LIMITED-SCOPE LEGAL ASSISTANCE 8-12 (2003).

²¹ See NATIONAL CENTER FOR STATE COURTS, THE DISCRETE TASK ASSISTANCE PROGRAM: A LOW COST ATTORNEY ASSISTANCE SOLUTION FOR ACCESS TO JUSTICE PROBLEMS (2006).

state judges on use of limited-scope services in courtrooms and potential education programs. Information from these surveys indicated that, though large majorities of respondents felt they had basic knowledge of limited-scope services and many had considered offering them, there were concerns about potential disciplinary issues, and whether courts would respect a limited-scope agreement or compel continued representation.²² Respondents overwhelmingly agreed that state resources supporting limited-scope services should be expanded.

The Committee reviewed materials and example resources designed to assist attorneys providing limited-scope services. Materials included model forms and best practices from a variety of sources. Resources included checklists and guidelines created by Stephanie Kimbro, a Florida attorney who helped found the first law firm to offer limited-scope services, exclusively.²³ These and similar resources could be modified to meet needs specific to North Dakota, and could be made available for use in educational programs. Lawyers may not be aware that they can generate income offering unbundled services to aid pro-se litigants, even to those unable to afford full representation. In addition, low-income citizens may be unaware of availability of limited-scope services and may therefore automatically rule out hiring an attorney based on cost.

The Committee researched rules used by other states to find language that could help to clarify concerns surrounding limited-scope services. The Committee agreed that language from the state of Nebraska should be added to the North Dakota rules, and modifications were drafted. The Committee approved drafts and forwarded them to the Joint Procedure Committee for consideration.

Members proposed development of a model limited-scope agreement to provide attorneys with some assurance that courts will respect limited-scope arrangements and to help address any fear of professional discipline. Resources and education programs could further reduce apprehension about providing limited-scope services. Committee discussions have focused on working with SBAND to develop a CLE, online seminar, or educational events featuring appropriate speakers. SBAND indicated that it should be able to provide future informational access to justice or pro-bono programs.

- **SELF-REPRESENTATION**

Courts should explore the development of a legal services ombudsman position to provide information and guidance to members of the public regarding the court system.

Courts should expand materials to facilitate self-representation and adequate notice of existing materials.

The Minority Justice Committee began considering Commission recommendations on limited-scope services and self-help just prior to the creation of the new North Dakota Legal Self-Help Center. The Self-Help Center essentially fulfills another Commission recommendation calling for the creation of an ombudsman position to provide guidance and information on the legal system for members of the public. The Minority Justice

²² Based on the sample and population sizes, a 6.9% margin of error was calculated at a 90% confidence interval. This margin varies slightly for each question, depending on the number of respondents. However, conclusions related in this report are drawn from questions in which responses were extremely one-sided, well outside of margins of error.

²³ For a description of the firm, as well as considerable resources to aid in the provision of unbundled services, see STEPHANIE KIMBRO, LIMITED-SCOPE LEGAL SERVICES: UNBUNDLING AND THE SELF-HELP CLIENT (2013).

Committee has met with the program coordinator to discuss self-help issues, minority needs, and areas in which the Committee can provide assistance. The Committee shared information collected during its study of self-representation and minority issues. This information included best practices for creating and structuring various self-representation programs, including unbundling, judicial education, courtroom-process programs, and libraries. These best practices are based on the experiences of states that have undertaken such programs. Resources also included the checklists, guidelines, and model forms for limited-scope services.²⁴

The Legal Self-Help Center has been working to expand materials to facilitate self-representation. The Center has begun development of a web page with basic advice such as tips, an outline of court processes, and other information for the public. The Center's main priority, however, has been the development of forms, including name change requests and powers of attorney, as well as samples of wills, settlement agreements, and parenting plans.

Developing a method for the Legal Self-Help Center to connect self-represented litigants to attorneys offering appropriate limited-scope services could increase the scope and effectiveness of the program. Such a method could also increase state effectiveness in providing legal access to minorities disproportionately represented at or near the poverty level. Several commercial websites designed to connect self-represented litigants with attorneys are currently being operated in California, and could provide models for North Dakota efforts.²⁵

COURT PERSONNEL AND LEGAL PROFESSION

The Commission study focused in part on minority representation and opportunities within the legal profession and the state courts. This focus followed general research findings that state courts and bar associations that adequately reflect community populations create a sense of ownership and trust, as well as confidence in their ability to understand minority issues. This effect, in turn, creates a greater willingness to participate in the system by bringing cases, serving as jurors, and in other capacities.²⁶

- **RURAL MENTORSHIP RESEARCH**

Courts and SBAND should work closely with the UND School of Law to consider ways to create incentives to help retain minority graduates in the state.

The Race and Bias Commission found that the University of North Dakota School of Law generally reflects the state demographic population, but many minority students come from other states. Many of these students leave North Dakota to after graduation. The Minority Justice Committee has begun examining how rural mentorship programs could be part of an effort to encourage minority graduates to remain in North Dakota. Committee Members began work in this area during the February, 2014 meeting.

The Committee's initial work has been to investigate example programs providing opportunities to attract attorneys to rural areas, especially opportunities that would help to meet Tribal needs. Several states have undertaken similar efforts to increase the availability rural attorneys and legal resources. Some states, including California, have focused on particular issues facing Native Americans living in rural areas.²⁷ However, there

²⁴ See STEPHANIE KIMBRO, LIMITED-SCOPE LEGAL SERVICES: UNBUNDLING AND THE SELF-HELP CLIENT (2013).

²⁵ See e.g. <https://www.pro-se-litigation.com/>.

²⁶ See NORTH DAKOTA COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS: FINAL REPORT AND RECOMMENDATIONS 140-148 (2012).

²⁷ THE CALIFORNIA COMMISSION ON ACCESS TO JUSTICE, IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA 30 (2010).

appear to be few rural mentorship programs designed specifically to provide opportunities for minority attorneys in rural areas.

In North Dakota, SBAND has begun an examination of rural mentorship programs, generally informed by the successful Rural Practice Program in South Dakota.²⁸ The current goal of the Minority Justice Committee is to help identify and develop models for rural practice programs focusing on minority issues, identify areas of state and Tribal needs, and ensure that minority students and attorneys will be adequately represented among participants.

- **EDUCATION PROGRAM: NATIVE AMERICAN LAW STUDENTS ASSOCIATION**

Courts should develop outreach programs to minorities to generate interest in pursuing careers in the legal system.

The implementation committee should partner with the State Bar Association of North Dakota, the University of North Dakota School of law, law enforcement, tribal, state, and county governments, and community groups to develop outreach initiatives to broaden access to and improve public understanding of legal issues and the legal system, especially for Native Americans and other minorities in the state.

Race and Bias Commission research found a general lack of public knowledge of the court system. Testimony from minorities suggested a similar lack of knowledge within Reservation and other minority communities. Thanks to member efforts, the Minority Justice Committee has an opportunity to work with the University of North Dakota Native American Law Students Association (NALSA) to develop public education programs. Discussion between Committee members and NALSA representatives revealed enthusiasm for cooperative efforts. Commission listening sessions highlighted a need for knowledge of the jury process. Research indicated that residents on Indian Reservations may not be aware that they are required to serve on both state and tribal juries. In addition, courts do not appear to have effectively emphasized the importance of responding to jury summons in order to ensure that state juries accurately represent local communities. Education programs would emphasize the need for the unique perspectives of minority jurors and the possibility of increased fairness from more diverse juries, especially in cases with minority defendants. The Committee found a number of legal education resources designed for educational levels from high school to college that could be provided to members of the public or used as models for original North Dakota programs.²⁹

Additional suggestions included presenting to criminal justice courses and encouraging interested minority students to pursue legal careers. Members observed that a wide range of tribal members have become involved with tribal colleges, including many elders and young people. Outreach through colleges would not only aid in the provision of educational programs, but also help establish and strengthen ties and working relationships throughout Reservation communities.

²⁸ See <http://sdrurallawyer.com>.

²⁹ See e.g. <http://www.streetlaw.org/en/home> (Providing free educational programs on topics including jury service, representation, criminal law, civil law, among other areas).

The Commission recognized the importance of outreach as early as the high school level. The Minority Justice Committee agreed that creating a pipeline similar to the In-Med program, which has contributed to the success of the University of North Dakota medical school, would benefit the state legal profession. NALSA representatives said work experience in courts contributed to the decision to enter law school. NALSA participation could facilitate creation of methods of connecting students or recent graduates with state or tribal internships and jobs.

The Committee's goal is to help create a package of resources to provide a basis for review and development of a North Dakota effort. In addition, the Committee is examining examples of professional mentorships for high school students. Such mentorships would facilitate periodic, informal meetings between interested students and legal professionals to provide students insight into the profession. General background work has progressed in all of these areas, but additional work will be required to determine the structure and funding for new programs.

CONCLUSION

Minority Justice Committee work has depended heavily on member participation to initiate steps toward implementation. Implementation has required members to communicate and coordinate between the Committee, courts, and other interested organizations. Meetings have functioned as a forum allowing members to provide analysis and updates on their relevant areas of expertise, which have guided decisions on steps toward implementation time frames, structures, and requirements. The Committee has provided additional support through research on best practices and development of necessary materials.

While implementation of long-term recommendations will continue, additional recommendations will be included on forthcoming Committee agendas. The Committee goal is to continue concentrating on a selection of recommendations from the access to courts, criminal and juvenile, civil, legal profession and court personnel study areas. This broad approach will take advantage of the varied expertise offered by Committee members.