

COMPILED RECOMMENDATIONS FOR ALL CHAPTERS

GENERAL RECOMMENDATIONS

1. The Commission study and other relevant materials from the study should be placed online and made accessible to the public.
2. The Supreme Court should establish an implementation committee or another appropriate group to ensure implementation of Commission recommendations.
3. The courts should publicize existing methods of reporting perceived bias, such as the Informal Complaint Panel, internal complaints, and methods for providing feedback on judges.
4. The Commission on Judicial Branch Education should provide diversity and cultural training, including training on the history of minority groups in North Dakota, for all judges and court employees, both at the time of their hiring and at regular periods. Comparable training should also be made available for law enforcement and correctional officers.
5. The implementation committee should partner with 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 community 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.
6. The implementation committee should develop court-and bar-sponsored programs to make courts more accessible to citizens from all cultures and should concentrate on using technology to improve public understanding and participation in the court system.
7. The Implementation Committee should study ways to advance the protection and recognition of human rights, including the establishment of an independent human rights commission in North Dakota.
8. The Implementation Committee should monitor demographic changes in North Dakota to with the goal of ensuring the continued effectiveness of efforts introduced to eliminate racial and ethnic bias.

JURIES: FINDINGS

1. The lack of racial and ethnic information on master lists makes jury composition challenges difficult.
2. Jury source-list expansion poses fewer problems than it has in the past with improvements in technology.
3. Limited data on minority representation in jury source lists has been generated from the Commission's Jury Master List Survey. Further study is necessary to accurately assess representation.
4. North Dakota juror qualifications appear sufficiently broad to prevent discrimination and the grounds for disqualification appear to be adequate.
5. Counties with the largest concentrations of minority populations in the state are not the same as those with the highest percentages of undeliverable summonses.
6. Non-response rates to jury summons measured from 2008 to 2010 appear to show several counties consistently higher than the state average. Counties showing high rates for all years examined overlapped with Indian reservations. This correlation calls for further study.
7. Minorities in North Dakota occupy a disproportionate percentage of individuals at or near the poverty level. Factors associated with poverty may make it difficult to appear for jury service.
8. While North Dakota juror compensation and travel reimbursement is above average for states, it is below the minimum wage and below the North Dakota average wage.
9. Limited survey information suggests that jurors who have completed service have a positive perception of the experience.
10. Based on the data collected, more minorities than Whites believe that juries are not representative of the community.
11. A substantial proportion, though not a majority, of attorneys perceive that juries in some areas of the state do not adequately represent minorities.

JURIES: RECOMMENDATIONS

1. 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.

2. Courts should pursue a dialogue with the Indian tribes for access to sources of information which may be useful to supplement jury lists.
3. Jury lists should be refreshed at least once per year to reduce undeliverable mailings.
4. Courts should ensure uniform treatment and adequate follow-up for undeliverable addresses in jury summonses throughout the state.
5. Courts should pursue uniform treatment of non-response throughout the state. Further study should concentrate on counties with consistent, high rates of non-response.
6. Courts should increase compensation for jury service.
7. Reimbursement should be paid to jurors for dependent care expenses incurred because of jury service.
8. A pilot project should be conducted to pay jurors by debit card immediately upon completion of jury service.
9. Public education programs should be promoted to increase awareness about the purpose, operation, and importance of juries.
10. Jury challenges based on Batson v. Kentucky, 476 U.S. 79 (1986), should be a topic for continuing research and education.

INTERPRETERS: FINDINGS

1. North Dakota faces many problems typical of interpreter services in other states such as scarcity of qualified interpreters and unpredictable workloads for specialists in particular languages.
2. North Dakota courts need interpreters in a considerable number of languages and dialects.
3. Problems arise when judges, court personnel, or interpreters fail to understand the need for effective interpretation, standards of adequate interpretation, role boundaries in the courtroom, or adequate accommodation for interpreters to work.

4. Interpreters are needed at all stages of a person's contact with the legal system.
5. North Dakota does not have a certification process for interpreters.

INTERPRETERS: RECOMMENDATIONS

1. Judges, attorneys, and law enforcement should be educated on the importance, necessity, and functional requirements of interpreters at all stages of a person's contact with the justice system. Administrative Unit 2 efforts provide a model of education programs that can be developed throughout the state.
2. The courts should develop a court-approved voir dire, such as the one developed by the National Center for State Courts, to determine the qualifications of an uncertified interpreter.
3. Court Administrators should compile a list of interpreter resources and the languages they provide, and make this list accessible throughout the state, including it on the North Dakota Supreme Court website.
4. Courts should hire qualified multilingual court personnel.
5. Courts should provide a periodic statewide training program for interpreters, covering court processes and the role of interpreters. Administrative Unit 2 can provide a model training program.
6. The Courts should explore translating judicial forms and documents commonly used in court proceedings into frequently spoken foreign languages.
7. Courts should publish and encourage discussion of existing policies regarding payment for interpreter services outside of court.
8. Courts should investigate and improve outreach and communication with New American communities.
9. The State Bar Association of North Dakota and courts should engage in outreach programs with leaders of local immigrant and culturally diverse communities to educate their members on the role and processes of the court system.
10. Courts should use an interpreter certified by the National Center for State Courts Consortium for State Court Interpreter Certification, whenever available.

11. Courts should explore the development of an interpreter certification program utilizing models provided by the National Center for State Courts Consortium for State Court Interpreter Certification.

CRIMINAL: FINDINGS

1. Available statistics on arrest show that minorities, especially African Americans and Native Americans, are arrested at a rate higher than their percentages in the state population.
2. Testimony reveals a perception that police stops occur more often in certain areas of North Dakota if vehicle occupants are visibly minorities.
3. Testimony reveals a perception that Indian tribes often lack sufficient resources to deal with juvenile delinquency occurring on Indian reservations and that lack of consequences leads to patterns of behavior that can increase contact with state courts when individuals leave Indian reservations.
4. Differing bond schedules may contribute to actual or perceived bias throughout the state. Treatment of Native Americans living on Indian reservations as out-of-state residents contributes to actual or perceived bias.
5. A perception exists among attorneys, court employees, others working with the courts, and Native Americans that minorities are more likely than Whites to plead guilty for cultural reasons or to avoid lengthy court processes.
6. Minorities perceive that minority defendants receive longer sentences than Whites for the same crimes.
7. Minorities are under-represented in adult drug courts.
8. Minorities are over-represented in the state prison population.
9. The proportion of minorities in the system appears higher at the incarceration stage than at arrests for Index Crimes, especially for Native Americans.
10. Testimony suggests that minorities face difficulties with housing, transportation, child support, and finding adequate employment after release from incarceration.
11. Analysis of parole and probation revocations does not reveal significant racial disparities except for a greater proportion of revocations for Native Americans occurring because of absconding violations.

12. Minority participation in North Dakota Department of Corrections and Rehabilitation education and transitional service programs designed to reduce recidivism appears to be proportional to minority populations in the state prison system.
13. The Commission was unable to gather information about minority incarcerations in the county system.

CRIMINAL: RECOMMENDATIONS

1. More detailed and long-term studies on race and the criminal justice system should be undertaken at all levels, especially in the areas of arrests, recidivism, and sentencing disparities.
2. The court should encourage the state to develop a retrieval mechanism for race and other data collected at the county and regional jail level.
3. Courts and law enforcement should establish and expand cultural liaisons to minority communities to provide education on the courts, police, and legal issues.
4. 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.
5. Courts should gather data on dispositions for all criminal defendants and juveniles. Such information should be maintained by racial and ethnic category.
6. 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.
7. Courts should provide training to judges in the use of researched-based tools to incorporate in sentencing practices.
8. Drug Courts should be expanded throughout the state, and minority participation should be increased. Experience and methods learned from existing drug court programs should be shared throughout the state.
9. Driving under suspension penalties should be reviewed because these penalties compound difficulties in obtaining or maintaining employment.
10. All law enforcement officers, including police and highway patrol, should receive cultural diversity training at regular intervals.

11. All law enforcement officers should receive training on tribal, state, and federal jurisdiction at regular intervals.
12. Efforts should be made for collaboration between the state and the Indian tribes on honoring court orders and warrants.

JUVENILE: FINDINGS

1. Juvenile justice processes in North Dakota have benefited from continued studies and data collection on Native American and other minority youth in accordance with federal requirements.
2. Public testimony supports previous findings that tribes often have insufficient resources for law enforcement, including facilities to hold offending juveniles, and lack means to deal with delinquency, all of which contribute to later offending.
3. North Dakota minority youth, especially Native Americans and African Americans, tend to be over-represented in arrests and detention when compared to White youth.
4. Hispanic/ Latino(a) youth in North Dakota tend to be over-represented in secured detention, but tend not to show similarly high relative rates of arrest compared to Native Americans and African Americans.
5. Minority youth were less likely to have their cases diverted from the formal court process and more likely to have their cases formally petitioned in the years examined.
6. Demographic data suggests that Burleigh, Cass, Grand Forks, and Ward counties are appropriate targets for concentrating state resources to address problems with race-based disparities in the juvenile system.
7. Data from juvenile drug courts shows that the number of Native American drug court participants is proportional to the number of Native American juveniles arrested.
8. Though limited relevant data exists for youth drug courts, general drug court data indicates that high-risk individuals benefit more from intensive drug court programs. The youngest high-risk individuals benefit the most from such programs.

9. North Dakota has piloted additional efforts to address racial disproportion in the juvenile system, including the Youth Cultural Achievement Program and a detention screening tool.

JUVENILE: RECOMMENDATIONS

1. An assessment should be conducted to investigate causes of the high minority juvenile arrest rates.
2. 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.
3. The Court should explore establishing a juvenile minority liaison program in counties demonstrating a need, similar to the program in Burleigh County.
4. The State Court Administrator's Office should develop a list of services available for minority youth and their families. This list should be made available in the offices of clerks of district court.
5. Courts should develop and fund culturally sensitive programs for minority youth, which emphasize the skills needed to give minority youth the best chance at rehabilitation and prevent reentry to the juvenile justice system.
6. Youth drug courts should offer intensive services to high-risk youth in order to generate the greatest overall benefit. Such services should be culturally sensitive.
7. Efforts should be made by the state to work out reciprocal juvenile probation agreements with the Indian tribes so that Native American juveniles who leave, or return to, an Indian reservation can receive supervision.
8. The state should continue efforts to identify and reduce the barriers to full and equal access to juvenile diversion.
9. All state and local agencies should make significant efforts in the recruitment, training, retention, and promotion of qualified minority personnel within the juvenile justice system. These efforts should be directed toward providing personnel in proportion to the client community, and not be based solely upon demographic representation of communities of color in the population at large.

10. Judges, attorneys, social workers, guardians ad litem, and court personnel should receive education and training to increase their sensitivity to cultural and racial issues.
11. The State should continue to provide annual training on the provisions of Indian Child Welfare Act.
12. The Court should support agencies' efforts to increase recruitment and licensure of minority foster care parents.
13. The courts should support efforts to identify experts as required by the Indian Child Welfare Act for purposes of testifying under the Act.

CIVIL: FINDINGS

1. Civil proceedings have tended to become increasingly expensive over time. This limits or impairs access for individuals, especially those at or near the poverty level. Minorities in North Dakota represent a disproportionate number of individuals at this level.
2. Mistrust of legal systems appears high among some minority groups, such as Native Americans.
3. Some groups within the state, particularly New Americans, may not fully understand court processes and legal rights.
4. Minorities constitute disproportionately large percentages of those using Legal Services of North Dakota (LSND) compared to the minority populations in the state.
5. Despite the efforts of the State Bar Association of North Dakota (SBAND) Volunteer Lawyer Services and LSND, there remains a large unmet need for civil legal services in North Dakota.
6. Members of minority groups residing in counties without a LSND office may be unaware, or unable to take advantage, of services provided, as fewer applications come from those counties.
7. SBAND has analyzed rules relevant to unbundling legal services and made recommendations directed toward facilitating such services.
8. The number of individuals choosing to self-represent has increased in recent years.

9. The Commission found no data on the extent of minority self-representation.

CIVIL: RECOMMENDATIONS

1. Courts should pursue collaborations with SBAND, the UND School of Law, and other partners to develop programs to educate New Americans on legal issues and the legal system.
2. Courts, SBAND, and LSND should promote public awareness of materials on various legal subjects already compiled and maintained.
3. SBAND should continue to promote the expansion of pro bono resources to facilitate minority access to courts.
4. The state should increase its funding for LSND to allow greater services to minorities and extended geographic reach.
5. Courts should support the provision of unbundled legal services to the public.
6. SBAND should create training to educate attorneys and the public about unbundled services and to encourage attorneys to share experiences and information on problems and best practices for offering unbundled services.
7. Courts should attempt to gather data on minority status in civil actions.
8. Courts should provide expanded materials to facilitate self-representation and adequate notice of existing materials.
9. 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).
10. Courts should recruit Native American mediators as recommended in the North Dakota Supreme Court's 2012 evaluation of the Family Mediation Pilot Program.
11. Courts should explore development of a legal services ombudsman position to provide information and guidance to members of the public regarding the court system.

12. The Supreme Court should encourage the local courts and local bar associations to develop outreach programs designed to enhance access to the courts by minority and non-English-speaking persons.

ATTORNEYS AND COURT EMPLOYEES: FINDINGS

1. The number of minority attorneys practicing in North Dakota appears to be significantly less than the proportion of minorities living within the state.
2. Minorities are significantly under-represented as employees at all measured levels of the court system in North Dakota.
3. Since the court employment application process has become computerized, collected data has shown the number of minority applications exceeds the proportion of minorities in the state, but applications from Native Americans are below the proportion of Native Americans in the state.
4. The University of North Dakota School of Law (UND School of Law) graduates minorities in proportions close to the state population, but not all of those graduates practice in the state.
5. Both attorneys and court employees appear to perceive that diversity in their communities is greater than diversity in their places of employment.
6. Attorney and court employee survey respondents returned generally positive perceptions of most areas of the court system. Few minority responses were received from the surveys.

ATTORNEYS AND COURT EMPLOYEES: RECOMMENDATIONS

1. Courts should develop outreach programs to minorities to generate interest in pursuing careers in the legal system.
2. Courts should establish partnerships with minority groups, such as tribal colleges, to find means of encouraging and developing career tracks for minority employees.
3. Courts should develop outreach programs for non-English speaking people to find means of educating them about the judicial system, and encouraging and developing career tracks in court system.

4. State and local bar associations should engage in outreach programs with leaders of Native American, local immigrant, and culturally diverse communities to help educate their members on the processes of the court system.
5. SBAND, along with other state and local bar associations and the UND School of Law, should establish a task force to study and implement outreach programs to encourage minority high school students to pursue legal careers.
6. Because the pool of potential minority law school students from within the state is relatively small, the UND School of Law should continue and increase efforts to attract minority applicants.
7. 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.
8. The Board of Law Examiners should determine the number of minority attorneys practicing in the state.
9. SBAND should provide Continuing Legal Education (CLE) regarding racial and ethnic bias for attorneys. This CLE should count towards the ethics requirement.
10. Courts should regularly provide racial and ethnic bias and cultural diversity training to all court employees.
11. State and local bar associations should collaborate with community groups to encourage more minority attorneys to seek appointment or election to judicial positions.
12. Tribal court judges should be included as faculty in diversity training programs and should continue to be encouraged to attend judicial education programs.
13. State and local bar associations and the Supreme Court should work closely with the UND School of Law to promote adequate clerking opportunities for minority law students.
14. The Implementation Committee should examine the feasibility for inclusion of a Federal Indian Law question on the Uniform Bar Exam.