

GOVERNOR'S WORKING GROUP ON JUSTICE POLICY REFORM

Meeting. The Governor's Working Group on Justice Policy Reform met Thursday, September 24, 2015, in the Governor Robert Ray Conference Room of the State Capitol. The topic discussed was mental health and drug courts, along with jury pool selection.

Purpose and Members. The purpose of the working group is to research and make policy recommendations related to reforms in Iowa criminal justice practices. Members are:

- State Public Defender
- Commissioner of Public Safety
- NAACP Representative
- State Court Administrator
- County Attorney Representative
- Iowa Attorney General's Office
- Department of Corrections
- Iowa Parole Board

The working group is to present a written report to the Governor, stakeholders, and the public by November 6, 2015, so that the General Assembly can consider the recommendations during the 2016 Legislative Session.

Speakers for Mental Health Courts and Drug Courts. Lettie Prell, Department of Corrections, provided an overview of Iowa drug courts and mental health courts that have been found to reduce recidivism. Applying national analysis data, drug courts show a 25.0% reduction in recidivism, and for every dollar spent, the return on investment is \$9.61 over a 10-year period per participant. They are good investments when run with fidelity and true alternatives to imprisonment, but if a participant is otherwise prison bound they are not effective. The Waterloo drug court had to cease operations, and then found funding to reopen. Ottumwa was also close to closing, but reduced staff by half to continue operation. Ottumwa no longer provides the drug treatment component of drug court, but that is now provided by private providers. The Council Bluffs drug court is also looking at possibly shutting down. The main reason for this is that drug courts are expensive to operate. It costs \$7,402 per participant per year average statewide, and this includes the judge and treatment costs. The Criminal Juvenile Justice Planning (CJJP) Division of the Department of Human Rights evaluated drug courts and found that some segments of the offender population had lower graduation rates, including African American offenders and women. From 2000-2015 there were 1,153 total drug court graduates. Of those, only 6.0% were African American. There was a question as to why there is such a discrepancy in participation, and Prell answered that each district is different, and that further research will be conducted. To maintain statewide fidelity of the program, the CJJP provided some recommendations, including using a judge model rather than a panel model. Drug courts are not for all offenders equally. It was noted that there are other diversionary programs in Waterloo and Des Moines that are more effective, including African American initiatives that have decreased recidivism to the point where there is not a difference between African Americans and whites. Those programs provide intensive supervision, a lower case load, cultural awareness training, and the larger community is involved with mentoring or family involvement. Local judicial decisions are valued regarding placement in these alternative programs as communities, crime rates, and philosophies are different. Also, there has to be trust that the alternative will be a meaningful punishment.

Joe Goedken, attorney from Ottumwa, does defense work for the Ottumwa drug court and mental health court. The mental health court is three years old. Both serve as a prison diversion program. The court model in Ottumwa was healthy, but is not anymore due to a cut in funding. The local provider, Southern Iowa Economic Development Association (SIEDA) Community Action, donates its services for free if the individual does not have insurance. This court has a very different atmosphere and is not adversarial.

The focus is on addiction and long-term sobriety, and work as a team is done across the sides. Each district has its own budget and funding can be different. The Ottumwa court is based on a national model and shadowed Polk County. All the people in the diversionary program are felons, and they go through a lot to graduate in 18 months after which they have probation. There are weekly urinalysis tests and less regular hair testing. Thirty-two hours of school/work a week and 70 hours of community service are required, and the individual has to have a sober place to live. They are required to attend drug court sessions weekly in Phase 1, every other week in Phase 2, every third week during Phase 3, etc. They have to attend individual substance abuse counseling as well as support groups. There are curfew restrictions. The 12-step process of Alcoholics Anonymous and Narcotics Anonymous is heavily relied on. Drug court participants are required to pay off court debt. There is more success with older clients that possess the maturity level needed and desire to change.

Kirk Daily, Ottumwa judge, practiced criminal law before becoming a judge. He stated that if the Ottumwa drug court doesn't obtain additional funding it will probably be discontinued. In the mental health court, 98.0% of the participants also have drug issues. It is much easier for a judge to send someone to prison. Drug court asks participants to change their lives, and there is a gain in confidence during the process. This program works with addicts and not casual users. Participants require support once the program is completed. Currently, the Ottumwa drug court is serving a maximum of 15. Judge Daily also sees the teamwork and the effectiveness of the parole officer relationship.

Teresa Bomhoff, National Alliance of Mental Illness (NAMI), states that NAMI supports mental health courts. They are a recent development and require collaboration and consideration of those in mental health fields. Participants are less likely to reoffend. The Council of State Governments and the National Center for State Courts have developed information on mental health courts, which are considered a core plus service. Most development of mental health services in Iowa has occurred in crisis intervention training, and training of dispatch and law enforcement. It is a goal to have 90 crisis intervention beds by 2016. Because of the two Mental Health Institute closings in Clarinda and Mount Pleasant, there is even more of an acute bed care crisis. The population of Iowa is approximately three million people. Studies have shown that one in four people have a mental illness, and 4.1% of these have an acute mental illness, yet there are only 725 acute care beds available in Iowa. There is also a shortage in the workforce to handle the most mentally ill, and caseloads are high. However, the current political climate does not embrace the idea of the additional staff needed. Bomhoff suggested the recommendations should include expansion of the workforce through training and a school loan forgiveness program, multiple levels of care outside of the correctional area, addressing the long-term funding problem by increasing state Medicaid funds, appropriating the amount needed from the General Fund to offset the frozen mental health levy, and work on prevention and early intervention programs to create a focus of rehabilitation and not punishment. Minnesota was suggested as a best practices model state. Nebraska also has an excellent program to attract students into mental health professions.

Speakers for Jury Pool Selection. Chuck Kenville, Fort Dodge Public Defender, stated that in August of 2014 he had an African American individual charged with murder and the case was moved out of Fort Dodge. He was surprised that there were no African Americans available for the jury panel. In October of 2014 the same thing occurred with another case. He stated that there is clear underrepresentation of minorities for jury pools and that there is no real working knowledge at the local level of how the jury pool lists are compiled. He said there is a need to have the lists available by locality, and that newer automated processes exclude minorities. Research shows that having a minority in the jury pool equalizes convictions between African Americans and whites and impacts plea bargains taken by African Americans because of a fear of all white juries. He does not think that the identification of race for an individual on the jury summons should be optional. .

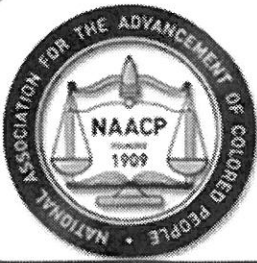
Russ Lovell, Drake law professor and NAACP consultant, stated that Drake is the only law school in America to bring an actual jury trial to the classes and students from jury selection to the end. This year the case involved an African American defendant while everyone else was white. Students were uncomfortable with that situation. He said that it does no good to generate a fairer cross section of a jury pool if individuals can be struck using preemptory challenge "willy-nilly," and that implicit bias is inherent in preemptory challenges that could be eliminated. There is a problem but we do not know how systemic it is. The Judicial Branch and the Department of Transportation need to be pushed to determine how the jury pool lists are generated. Counties are not themselves monitoring the system and the listing of jury

pool potentials. It is probably not intentional, but it is negligent. A list of 22 recommendations for reforms of jury pools was distributed (see **Attachment A**).

David Boyd, State Court Administrator, agreed steps should be taken to make sure everyone knows how the current system of jury pool selection works.

Next Meeting. The next meeting will be Wednesday, September 30. The topic covered will be juvenile records and prison/jail phone rates.

STAFF CONTACT: Alice Fulk Wisner (515-281-6764) alice.wisner@legis.iowa.gov



IOWA-NEBRASKA NAACP STATE AREA CONFERENCE OF BRANCHES

National Association for the Advancement of Colored People

1620 Pleasant Street, Suite 210, Des Moines, IA 50314

515.288.7171 | IowaNebraskaNAACP.org

Betty C. Andrews, President

MOVING POWERFULLY FORWARD! →

Iowa-Nebraska NAACP State Area Conference of Branches Jury Pool Reform Recommendations Governor's Criminal Justice Working Group

The NAACP recommends:

I. Jury Pool Reforms

1. The State Judicial Branch engage in a comprehensive state-wide study from which it can be determined whether Iowa's Judicial Districts' Jury Pools reflect a fair cross section of the community, and provide a written report to the public with supporting data, broken down by racial group. If such data has not been maintained, the Iowa Judicial Branch should immediately begin monitoring the racial composition of the Master Jury Pools in those Judicial Districts wherein lie Iowa's largest cities and in those smaller cities, such as Perry, which have seen a sizable influx of Latino workers in recent years.
2. The State Judicial Branch (SJB) should provide a written report describing in its entirety the current collaboration between the SJB, the Department of Transportation (DOT), the outside vendor that constructs the Master Jury Pool list for the State, and District Courts and Jury Commissions across the state, including what, if any, oversight is done to ensure jury pools reflect a fair cross-section of the community in each Judicial District.
3. The Department of Transportation should provide a written description of the entire process through which the DOT provides the State Judicial Branch and each District Court with the names, addresses, and other data used to construct the Master Jury Pool list, including description of each source list utilized.
4. Iowa Code 607A should be the subject of a comprehensive recodification to make clear the responsibilities of both the State Judicial Branch and each Judicial District, with renewed emphasis on the responsibility of each to take affirmative steps to ensure jury pools truly reflect a fair cross-section of the community. This will require ongoing monitoring at both the State and District levels. Codification of the status quo is NOT the answer.
5. The Iowa Code requires a Jury Manager be appointed for each County, who has the responsibility of ensuring the goals of the Iowa Code regarding Jury representation are met. No one knew who was the Jury Manager in Webster County. There was a standing order entered back in 1997 that a Court Clerk was the Jury Manager, but the person who held that position in 2015 was unaware she had this responsibility.
6. State Court Administration apparently took over this responsibility in 1997, but it is unclear to what degree State Court Administration monitors the construction of the Jury Pool as it has contracted with an outside vendor ACS, now Xerox, to update the jury lists annually, using "the Iowa Department of Motor Vehicle Registration file and the Secretary of State's Voter Registration file." When State Court Administration staff was asked if any other lists were used to develop the Master Jury List, he replied no County has ever asked that this be done.

7. Judge Weiland concluded the existing practice in Webster County did not comply with Iowa Code's requirements that envision certification of the Jury Pool lists by a County Jury Manager. There are no County Master Jury Pool lists—only a State of Iowa Master Jury Pool List. Those on the State list are coded by County, so when a County asks for its List each month a random list of jurors residing can be generated. But there is no way for a local Jury Manager to review a Master List for her County and monitor whether there might be underrepresentation.
8. Iowa Code 607A.22 currently requires use of voting registration and drivers license lists, and allows use of other comprehensive lists such as public utility customers. Given that no Judicial District has requested that additional source lists be added, the Code should be amended to require use of additional lists so as to create a more inclusive and representative Master List. See Hannaford-Agor, *Drake Law Review* at pp. 779-788.¹ If the list of State DOT Identification Card holders has not been included as a source list to create the Master Jury Pool List, it should be codified in Iowa Code 607A.22 as a requirement; in the interim, the State Judicial Branch should instruct that it be added immediately as a source list from which to develop the Master Jury Pool List. Other lists that should be considered are state income or property tax lists, persons receiving unemployment compensation or public welfare benefits, and customers on public utility lists (which is specifically authorized by the current law but not acted upon). Given advances in digital technology, utilization of additional lists to obtain a more inclusive and representative Jury Pool should not pose a significant administrative burden.
9. If State ID Card holders have been included as a source list for the Master Jury Pool, when did inclusion of State ID Card holders begin and how many ID card holders have been on the list in each of the past five years, broken down by race, ethnicity, and/or color of each individual.
10. What, if any, efforts have been made by the DOT or any other State department or agency to encourage those who do not own cars to obtain State ID cards. Is there any reason such affirmative efforts should not be undertaken by the DOT or other state agency immediately?
11. The accuracy of addresses for those on the Master List is critical. Iowa Code 607A.20 currently requires that the Master Jury Pool List be updated "at least every two years." The ABA Principles for Juries and Jury Trials recommend that the list be updated at least annually, and Hannaford-Agor reports that at least 29 states do so. Annual updating of the Master List is even more imperative now that Iowa driver's licenses need be renewed only every eight years. Hannaford-Agor advises the U.S. Postal Service National Change of Address database is available to do so, and "the savings in printing and postage costs greatly exceed the cost of the NCOA update." Hannaford-Agor at 783.
12. What is the current practice of Iowa District Courts when persons do not respond to jury summons? Iowa Code 607A.36 provides that a District Court may issue a show cause order and may punish a person who does not appear for contempt. Hannaford-Agor's research cites state and local court studies which indicate that "enforcement of jury summonses can be highly effective in ensuring a representative jury pool." *Id.* at 784. Follow up efforts utilizing a second juror summons appear to be more effective than Order to Show Cause proceedings as the latter "are considerably more time- and labor-intensive" and are less likely to be utilized. *Id.* n. 135. If Iowa Courts have not utilized the second summons procedure, they should consider this less draconian enforcement tool as it has proved effective with much lower administrative costs. If legislation is required to utilize the second juror summons procedure, the Iowa Code should be amended to do so.

¹ Paula Hannaford-Agor, *Systematic Negligence in Jury Operations: Why the Definition of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded*, 59 *Drake L. Rev.* 761 (2011) [hereinafter "Hannaford-Agor"]. Ms. Hannaford-Agor is the Director of the Center for Juries Studies at the National Center for State Courts. Section III of her Drake article, entitled "Practical Remedies for Nonsystematic Exclusion," was influential in Recommendations 8, 11 – 14.

13. Effective enforcement requires judicial involvement. The Iowa Supreme Court made clear 18 years ago that the responsibility for determining whether a request by a prospective juror to be excused from jury service, for hardship or otherwise, lies with the Trial Judge and not with Court staff. *State v. Chidester*, 570 NW.2d 78 (Iowa 1997): “In conclusion, our affirmance should not be understood as an endorsement of the practice we have described. We think the challenged procedure is subject to just criticism because of its wholesale transfer of what should be a judicial responsibility to a court employee.” *Chidester* was a decision from Webster County, and yet testimony in the *State v. Washington* case confirmed the practice has continued there. The Iowa Supreme Court should make this judicial responsibility clear through a new Rule of Court Procedure.
14. Decreasing the burden of juror service, particularly the financial hardship, can improve the representativeness of the jury pool. Courts can take steps to minimize the excusal rates by reducing the length of service. Iowa Code 607A.29 provides that in any two-year period, a person shall not be required to serve in excess of three months, unless necessary to complete service in a particular case. The Fifth Judicial District has experimented with “1-week, 1-case” juror commitment for approximately twenty years. Based on anecdotal information available to the NAACP it is our impression that the “1-week, 1-case” procedure has proved very successful in Polk County. If so, consideration should be given to implementation state-wide. Clearly, the current limitation of potential juror service to three months cannot help but result in higher excusal rates for financial hardship among those of modest income, a group disproportionately comprised of persons of color.
15. Iowa Rules of Court expressly provide that a prospective juror who has a “conviction of a felony” will be struck “for cause.” I.R.C.P. 1.915(6)(a); 2.18(5). Given the dramatic overrepresentation of African Americans and Latino Americans in Iowa’s prisons, these felony disqualification provisions necessarily pose a substantial obstacle to achieving a fair cross section on Iowa juries. It is time for Iowa to join the 21st century and end felon disenfranchisement for those who have served their sentences. Iowa is one of only a handful of mostly Southern states that continue this regressive practice. The quickest way to address this injustice is for Governor Branstad to enter an Executive Order, restoring the policy of his two predecessors, Governors Vilsack and Culver, that ex-felons who have served their sentences have their civil rights, including their right to vote, automatically restored.
16. The Iowa Supreme Court should follow suit and amend its Rules of Court Procedure to eliminate a felony conviction as the basis for a “cause” challenge. This is an important step in these individuals’ reintegration into the community. Continued exclusion of ex-felons from restoration of their civil rights has a disproportionate racial impact on African American men and women in Iowa and undoubtedly explains a portion of the underrepresentation of Blacks on Iowa’s juries.
17. The Iowa Supreme Court should exercise its inherent authority over judicial procedure to engage in rule-making necessary to clarify the relationship and responsibilities of the State Judicial Branch, the District Court, and District Court administration for development of the Master Jury Pool and monitoring compliance with the fair cross section requirement. There is confusion and uncertainty as to these relationships and responsibilities and rule-making would result in much needed clarification and would identify if there is a need for corrective legislation.
18. There is also confusion and uncertainty as to the proper method for Courts to measure underrepresentation in the fair cross section analysis and here also rule-making would result in clarification. The Iowa Supreme Court’s 1992 holding of *State v. Jones* that only the absolute disparity method can be used to determine underrepresentation has been superseded by the U.S. Supreme Court’s recognition in *Berghuis v. Smith* (2010) that three methods—absolute disparity, comparative disparity, and standard deviation—have been used and the *Berghuis* Court’s express refusal to embrace the absolute disparity method alone. *Berghuis* cast further doubt on the appropriateness of use of the absolute disparity method in Iowa as it instructed that the absolute and comparative disparity methods can produce “misleading results” in judicial districts where

racial minorities comprise only a small percentage of those eligible for jury service, as is the case in every judicial district in Iowa.

19. This issue is critical and one that can arise in every case involving a minority defendant, which is not an insignificant percentage of the Iowa Courts' dockets. Waiting until a case reaches the Court through the traditional appellate case process could delay resolution for several years. Given the fundamental nature of the jury trial right, a delayed appellate decision might require reversal of numerous cases that in the interim applied a method of measurement ultimately determined to be erroneous. Rule-making is an appropriate procedural method to address this issue as it allows full input from the many stakeholders, more complete consideration than may result from an appeal of an individual case, and more rapid resolution.
20. The Iowa Supreme Court or the Iowa Legislature should give serious consideration to adoption of the standard deviation/binomial distribution as the preferred method of measuring underrepresentation. Of the three methods courts have used, the binomial is the only method that has statistical validity. It is a reliable measure for Iowa judicial districts because its calculation takes into account when a racial minority group may comprise only a small percentage of the juror eligible population. Technology advances have occurred that have simplified the binomial calculation such that today it can be made on the Excel Spreadsheet found on every lap top computer, without the necessity of expert witness testimony from a statistician. In the event the Court is unable to identify one preferred method of measuring underrepresentation, a rule can, at a minimum, confirm that the absolute disparity method is not the only method and that the comparative disparity and standard deviation methods may also be used.
21. The Legislature should consider whether it should reinstitute 12-person juries in all criminal cases, misdemeanors as well as felonies. The unintended result of this cost-saving device is a significant reduction in the likelihood that a minority will be seated when there are only 6 jurors as there are in misdemeanor cases. Iowa Court of Appeals Judge Rosemary Sackett made this point in *State v. Watkins*, 494 N.W.2d 438, 441-42 (Iowa Ct. App. 1992):

Additionally, in a state such as ours the small nonwhite population results in many cases where there is an absolute exclusion of nonwhites from jury panels, even if strict compliance with minority figures were followed. If a minority viewpoint is shared by 10 percent of the community, 28.2 percent of 12-member juries may be expected to have no minority representation, but 53.1 percent of 6-member juries would have none. 34 percent of 12-member panels could be expected to have two minority members, while only 11 percent of 6-member panels would have two. As the numbers diminish below six, even fewer *442 panels would have one member with the minority viewpoint and still fewer would have two. *Ballew*, 435 U.S. at 236, 98 S.Ct. at 1041, 55 L.Ed.2d at 244. The presence of minority viewpoint as juries decrease in size foretells problems for the representation of minority groups in the community. *Ballew*, 435 U.S. at 236, 98 S.Ct. at 1041, 55 L.Ed.2d at 244.

II. Minority Justice Standing Committee

22. The Iowa Supreme Court should create a Minority Justice standing committee modeled on Nebraska's. The Iowa Legislature should support the Committee with funding for a full-time professional staff. Eradicating systemic discrimination and reconstructing a justice system that is fair, nondiscriminatory, and equal is both hard work and ongoing work. The change that must occur will not happen without a systemic response that is committed and ongoing. Without such a commitment history demonstrates any gains achieved will be piecemeal and too frequently lost due to backsliding.