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Beyond Diversity: The Role of Cultural Competence in an Effective Michigan Public Defense System

Cultural Competence and Public Defense
Michigan Workgroup

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
INTRODUCTION	4
WHAT IS CULTURAL COMPETENCE?.....	6
WHY CULTURAL COMPETENCE?.....	6
MICHIGAN.....	7
METHODOLOGY	8
MAJOR FINDINGS	10
1. MICHIGAN’S DEFENDER OFFICES	10
<i>The need for training in Michigan</i>	13
2. HIRING/RECRUITMENT	14
3. TRAINING.....	16
4. LANGUAGE ACCESS.....	18
5. PUBLIC DEFENSE COMMISSIONS	19
6. UNAVAILABLE DATA.....	21
CONCLUSION	21
RECOMMENDATIONS	22
TABLES	23
CULTURAL COMPETENCE/RELATED RESOURCES	26

EXECUTIVE SUMMARY

Public defense systems in the U.S. are facing budget cuts that lead to inadequate resources, soaring caseloads, and limited, if any, training opportunities. This seriously compromises the ability of our dedicated public defense attorneys to deliver effective defense services.

Overwhelming numbers of clients served by public defenders have special needs and cultural vantage points that differ from their attorneys. This has a profound impact on the credibility of our public defense systems. For example, African Americans are incarcerated at nearly six times the rate of whites.¹ A U.S. Department of Justice study found that public defense attorneys represented 77 percent of African Americans and 73 percent of Latinos in state prisons.² Yet this report finds that the majority of those providing public defense services in the states are still Caucasian.

Racial disparities such as these combine with the failures of public defense systems to ensure adequate representation to “exacerbate community perceptions about the integrity and fairness of the criminal justice system.”³

In 2008, the National Legal Aid and Defender Association released a report entitled *A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*, which found that Michigan’s public defense system fails to implement or enforce national standards, the American Bar Association’s Ten Principles of a Public Defense System,⁴ and is 44th in the country in per capita trial-level public defense spending. Michigan is one of a handful of states with no state funding for trial-level or juvenile delinquency public defense services.

In 2010, the Michigan Campaign for Justice began recruiting key stakeholders to take part in a cultural competence and public defense Michigan workgroup. The workgroup was tasked with investigating how attorneys of color have fared in states that have implemented reforms similar to those proposed in Michigan and how all attorneys are trained to work with diverse client communities. The workgroup was comprised of judges, attorneys, and reform advocates who participated in eight conference calls between May and December 2010. Workgroup members assisted with cultural competence trainings for defense attorneys and community leaders that took place in October 2010.

Among other things, the workgroup found that:

1 Mauer and King, “Uneven Justice: State Rates of Incarceration By Race and Ethnicity.” The Sentencing Project (July 2007). Page 3.

2 U.S. Department of Justice, Bureau of Justice Statistics, *Defense Counsel in Criminal Cases* (Nov. 2000). Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/dccc.pdf>.

3 American Bar Association Criminal Justice Section, *Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System* model curriculum and instructional manual (2010).

4 The Ten Principles were adopted by the American Bar Association in 2002. The principles are: (1) independence; (2) state funding/mixed system; (3) eligibility/early appointment; (4) confidentiality; (5) availability; (6) competency; (7) consistency; (8) resources; (9) training; and (10) quality/supervision.

- The Kent County Office of Defender, Washtenaw Public Defender, and Legal Aid & Defender Association's State Defender Office (LADA) in Wayne County have a higher percentage of staff attorneys of color compared to the percentage of people of color in the entire State Bar of Michigan membership.
- The defense bar in Michigan has generally not been offered systematic cultural competence training yet public defense attorneys recognize that the cultural competence framework is useful.
- Most public defense systems studied by the workgroup have a smaller percentage of public defenders or public defense attorneys of color than the percentage of people of color in the state or relevant county population.
- The majority of jurisdictions studied do not have recruitment programs that target people of color.
- The majority of public defense systems studied that were funded 100 percent by the state did include at least some cultural competence training for defense attorneys.
- Eight of the fifteen jurisdictions studied have interpreters as staff in their public defender offices.
- Representation of people of color and women on state public defense commissions does not generally reflect the population of the states.

The report concludes with a set of recommendations for implementation as legislative changes regarding Michigan's public defense system are considered.

INTRODUCTION

Michigan's public defense system has been repeatedly singled out as one of the worst in the country. It is severely and chronically underfunded and fails to implement or enforce national standards for public defense systems, the American Bar Association's Ten Principles of a Public Defense System. Michigan is one of only seven states with no state funding for public defense at the trial level or juvenile delinquency, and is 44th in the country for per capita funding of public defense.

However, legislative reform efforts that seek to rectify the significant systemic problems are underway in Michigan. In 2009, Representatives Bob Constan (D) and Justin Amash (R) introduced House Bill 5676, the Michigan Public Defense Act. The State Bar of Michigan, Michigan's judicial organizations, and other groups are working to pass legislation that would create a time limited public defense commission, which would further study public defense in Michigan and provide recommendations to the legislature. Those organizations and individuals involved in the public defense reform effort are continuing the advocacy work into the 2011-12 legislative session.

Many Michigan attorneys have raised questions and concerns regarding how reforms could affect attorneys of color. For example, some ask how a state system that upholds the independence principle⁵ would affect rates of case appointments for attorneys of color in

⁵ "The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only

Southeast Michigan. To help answer these questions, the Michigan Campaign for Justice recruited key stakeholders to participate in a cultural competence and public defense Michigan workgroup. The workgroup held eight telephonic meetings between May and December 2010.

The workgroup included the Hon. Wade McCree, judge in the Third Circuit Court; Deierdre Weir, president and c.e.o. of Legal Aid & Defender Association, Inc.; Gregory Conyers, director of diversity for the State Bar of Michigan; Jeffrey Edison, National Conference of Black Lawyers – Michigan Chapter; Brandy Robinson, president of the Wolverine Bar Association; Tracey Brame, assistant dean of Cooley Law School – Grand Rapids; Regina Triplett, vice president of the Wayne County Criminal Defense Bar Association; Angelyn Frazer, state legislative affairs director of the National Association of Criminal Defense Lawyers (NACDL); Avis Buchanan, director of the Public Defender Service in Washington, D.C.; Geneva Vanderhorst, private bar defense attorney in Washington D.C. and board member for NACDL; Stephanie Chang, deputy director for the Michigan Campaign for Justice; and Theresa Thomas, policy intern for the Michigan Campaign for Justice. The Hispanic Bar Association of Michigan and Straker Bar Association were also invited to designate representatives but they were unable to do so. Ms. Chang was the main author of this report and facilitated the workgroup process.

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The workgroup was tasked with investigating how attorneys of color have fared in states that have implemented reforms similar to those proposed in Michigan and what has been the result for their clients, particularly clients of color. Local representatives chose the research topics from questions and concerns about reform expressed by bar members in Michigan. Specifically, the workgroup initially planned to explore questions such as, but not limited to:

- a) How are cultural competency training and training requirements handled in other state public defense systems? What other relevant resources are available to help defense attorneys ensure quality representation of diverse client populations?
- b) How has independence from the judiciary affected public defense attorneys of color (e.g. rate or type of appointments after reform)?
- c) How have public defense attorneys of color fared in public defense systems that are fully or partially funded and administered by states?

in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, an independent board composed of attorneys and non-attorneys should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. Where there is a defender office, the selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.”

Included in this report are the findings from the workgroup’s research project, along with recommendations.

WHAT IS CULTURAL COMPETENCE?

Workgroup members immediately realized that many in the legal community and beyond were unfamiliar with or did not understand the term “cultural competence”. The workgroup determined that to move forward it was necessary to develop our own understanding and agree on a working definition. The workgroup decided to use the ABA’s Criminal Justice Section definition that defines cultural competence as follows:

“Cultural competence occurs when individuals use awareness, knowledge, and understanding in order to value cultural diversity, and promote fairness, justice, and community confidence. In an organizational or systemic context, cultural competence can be understood as ‘managing diversity in ways that create a climate in which the potential advantages of diversity for organizational or group performance are maximized, while the potential disadvantages are minimized.’”

WHY CULTURAL COMPETENCE?

As noted in the American Bar Association Criminal Justice Section’s “Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System” model curriculum and instructional manual’s introduction, “Judicial, prosecutorial, and defense agencies across the country face significant challenges as they strive to effectively serve their increasing diverse communities. One of the keys to successfully navigating these challenges is cultural competence—the ability to interact effectively with people of different cultures.”

What does cultural competence have to do with public defense reform? Michigan has become an increasingly diverse state. Furthermore, public defense attorneys in Michigan represent an increasingly diverse group of individuals. Cultural competence is relevant to many questions regarding effective public defense representation, including: How do clients’ cultural backgrounds affect what they are willing to tell their defense attorneys, how they communicate, or what kind of defenses can be raised in court? How are certain practices or actions that are criminal offenses in our state and country handled or perceived in immigrants’ home countries? How do different communities or neighborhoods perceive the criminal justice system and public defense attorneys? How do defense attorneys build a trusting relationship with their clients or witnesses who may have information critical to effective defense representation?

... understanding cultural competence and the role it plays in our criminal justice system will make a difference in ensuring effective quality defense representation for all individuals when reform is achieved.

The ABA criminal justice section points out in the introduction to the model curriculum that:

“The juxtaposition of an overwhelmingly Caucasian criminal justice infrastructure with the low socio-economic profile and varied cultural backgrounds of those brought before the criminal justice system –whether as victims, witnesses, defendants, or otherwise – has combined with other factors to generate increasing skepticism from many communities about the integrity and reliability of the criminal justice system. Racial disparities in ...incarceration rates, high profile exonerations, and the disproportionate impact of poverty on communities of color with high crime rates combine to fuel community distrust of the criminal justice system and its actors. ... Significantly under-funded public defense programs in many jurisdictions limit the time, tools, and training available to defenders to provide adequate representation of clients, further exacerbating community perceptions about the integrity and fairness of the criminal justice system.”

As the legislative reform effort in Michigan moves ahead, understanding cultural competence and the role it plays in our criminal justice system will make a difference in ensuring effective quality defense representation for all people of diverse backgrounds when reform is achieved.

MICHIGAN

As one of the most segregated states in our nation, Michigan has been a hotbed of race and diversity issues. In 2006, Michigan voters debated and approved an anti-affirmative action constitutional amendment. In response, groups concerned about diversity issues have organized conversations about past discrimination and lasting affects on Michigan’s communities, including issues related to the administration of and access to justice. Diversity and cultural competence issues have been a central concern of the legal community, as well.

In 1989, the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts and the Michigan Supreme Court Task Force on Gender Issues in the Courts released reports including findings and recommendations regarding the implications of bias on the justice system. The reports “provided a roadmap for change addressing not only how lawyers treat one another, but also, more importantly, how to improve the quality of justice afforded to victims and litigants” (page 1).

A later 1998 report of the State Bar of Michigan Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession served to assess through a series of questionnaires and focus groups what progress, if any, had been made toward the goals identified in 1989.

The workgroup reviewed the 1998 State Bar of Michigan report and identified a few recommendations relevant to the discussion about public defense reform:

1. **Education/training:** Joint Recommendation IX-10 described education for attorneys including “the nature and impact of gender and race/ethnic discrimination and bias on the profession.” Gender Recommendation V-18 and V-19 described education for attorneys about domestic violence and “battered woman’s syndrome.” The 1998 report noted that over an eight-year period, only three defense attorney trainings had addressed the defense

of battered women and that there is very limited training on any topic for defense attorneys. Race/Ethnic Recommendation V-3 said that attorneys should be educated about race and ethnicity issues. The 1998 report indicated that this recommendation was only partially implemented throughout the bar. Michigan's public defense system has no statewide training requirements. Many counties provide no training or limited training for those taking court appointments or the public defense contract.

2. ***Equity in appointments/data collection:*** Gender Recommendation VII-6 and Race/Ethnic Recommendation V-9 noted that records of appointments should be maintained and monitored by type of position, gender of appointee, race/ethnicity of appointee, and fee generated. The 1998 report found the implementation of this recommendation was not very high and that records were primarily kept for accounting purposes. Some courts said there was no need to monitor this and others cited a small number of attorneys to take the appointments or inadequate technology to maintain these records. Race/Ethnic Recommendation V-10 suggested that bar associations educate the local bench about the availability of minority attorneys for appointment. Some bar associations have implemented this recommendation. Race/Ethnic Recommendation V-11 said that courts should “develop and sponsor outreach programs to encourage minority attorneys to accept appointments in districts where there are no local minority practitioners.” The 1998 report found that “it is clear that this kind of recommendation has little priority among respondents and the necessary resources for such programs are unlikely to be available, however laudable the goals.”

The passage of Proposal 2 in 2006 eliminated the ability of state government to use “preferential treatment” in race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting. This raises important questions about whether and how a state public defense agency would be able to ensure a diverse staff and roster of attorneys. How can an equitable distribution of appointments and fair consideration of contract bids be ensured? What can we learn from practices in other states?

Michigan does not require mandatory continuing legal education (CLE) requirements of its bar members. As noted in the methodology section, a number of states were chosen for data collection and interviews because they also do not have CLE requirements.

METHODOLOGY

The goal of the cultural competence workgroup's research was to gather information and analyze findings about diversity and cultural competence issues within the public defense systems across the country. The comparative analysis in this report includes data collection of six major topic areas from public defense systems in sixteen states across the country. The states chosen represent Midwest states for comparative purposes; states without continuing legal education (CLE) requirements; and most importantly, states with state funding and state commissions and structures for delivery of the public defense function. Most of the state public defense systems studied were 100 percent state funded; others had a mix of county and state funding.

The states and jurisdictions studied were: Illinois/Cook County; Ohio; Minnesota; Wisconsin; Maryland; Massachusetts; Washington, D.C.; West Virginia; Louisiana; Kentucky; North Carolina; Arizona/Maricopa County; Montana; Colorado; Nebraska; South Dakota/Minnehaha County; and Hawaii.

The data was gathered through the electronic dissemination of a short information request survey and a number of phone interviews. The dissemination and completion of the survey took place in June/July 2010 and the phone interviews took place over the summer and fall of 2010. The questions in the survey were designed to get at the root of the issue: the need for quality and culturally competent defense representation. Aspects of public defense representation included: language access (in and out of court interpreters), cultural competence training (whether mandatory or not, description of training), percentage of staff and attorneys of color on staff and recruitment efforts, and representation of people of color on state public defender boards or commissions. The workgroup also attempted to collect client demographic data from the various states.

The survey questions were as follows:

1. How are cultural competency training and training requirements handled in your state? What other relevant resources are available to ensure quality representation? How is cultural competency defined in your state public defense system? *If there is a training program, what is the curriculum and what topics are covered? Is the training required? Who runs the program? Who participates? How often is the training available?*
2. How is language access handled in your state's public defense system? *In what languages are interpreters provided in the court? If a public defender or public defense attorney needed an interpreter to assist in an attorney-client interaction outside the courtroom, how would they request an interpreter?*
3. Can you describe the diversity at the commission/board level of your state public defense system? *How many total commissioners are there and how many are people of color? How many are women? How are commissioners appointed and what groups or individuals make recommendations for appointment?*
4. How has independence from the judiciary affected public defense attorneys of color (e.g. number, rate, and type of appointments) and attorneys from other diverse backgrounds? *What recruitment practices are used to recruit attorneys of color? How many attorneys of color are on staff at the state public defender office? What is the percentage of attorneys of color/staff of color vs. the total number of attorneys/staff? Can you provide the number of attorneys of color taking public defense appointments? What is the percentage compared to the total number of attorneys taking appointments? How does this compare to the state population?*
5. How have public defense attorneys of color and those from other diverse backgrounds fared in public defense systems that are funded and administered by the state? *E.g. any*

information about state vs. county administration of public defense and impact on attorneys of color.

6. Can you provide demographic (racial/gender) data about the clients (defendants) served in your system or office?

The second principle of the American Bar Association Ten Principles is: “Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.” For this reason, the workgroup was very interested in the comparison of various aspects of defense representation between systems that are funded more than 50 percent by the counties versus those systems that are entirely funded and administered by the state.

The survey respondents were individuals actively engaged in their state’s public defense system. We spoke with chief state public defenders, deputy state public defenders, staff of state bar association minority justice committees, directors of county public defender offices, and others. We were able to have a direct dialogue and ask follow-up questions with other individuals directly involved with public defense in their state.

In addition to collecting data from other states, we also collected information from five counties within the state of Michigan that have public defender offices, Michigan’s State Appellate Defender Office, and the Michigan Appellate Assigned Counsel System, in order to provide a local background for the topics being explored in other states.

Following the collection of data, the workgroup compiled all the information into a single matrix for analysis by the entire workgroup. This matrix allowed workgroup members to easily compare responses in each topic area across states, across different system funding mechanisms, and across regions. The information and analysis is presented in this report.

MAJOR FINDINGS

1. MICHIGAN’S DEFENDER OFFICES

The workgroup collected information about diversity issues from the five Michigan counties that have public defender offices as well as the Michigan Appellate Assigned Counsel System and the State Appellate Defender Office. Kent County and Wayne County have nonprofit public defender agencies that contract with the county to provide public defender services (the Kent County Office of Defender and, in Wayne, the Legal Aid & Defender Association’s State Defender Office (LADA)). Bay, Chippewa, and Washtenaw counties have public defender offices that are administered by their county commissions. Bay County has two county defender offices, the Office of Criminal Defense and the Department of the Public Defender.

As noted in the National Legal Aid and Defender Association’s 2008 “Race to the Bottom” report, Michigan’s defender offices face considerable challenges and no county meets all of the American Bar Association’s Ten Principles of a Public Defense Delivery System. Kent and Washtenaw County defender offices have investigators on staff but others do not. Many public

defense attorneys throughout the state face almost insurmountable challenges such as extensive workloads, non-existent confidential meeting space, lack of time allotted to meet with clients, as well as access to necessary resources such as private investigators or expert witnesses.

Only Washtenaw County's defender office provides cultural competence training. The Washtenaw County training covers topics such as "social intelligence, professional competence, integrity, common sense, implicit or explicit bias awareness," cultural competence and diversity. The training is mandatory and the chief defender and leadership team of management and operations supervisors develop the training. The Michigan Appellate Assigned Counsel System (MAACS) holds infrequent trainings for new roster members and has included cultural competence as a topic at least twice in the past ten years of trainings. The State Appellate Defender Office (SADO) does not currently have or require cultural competence training.

The public defender office in Chippewa County has only one attorney; the two offices in Bay County now have only two attorneys, and all are Caucasian males. The lack of minority defense attorneys coupled with the absence of any form of cultural competence training is striking when 45 percent of clients in these counties are either African American or Hispanic and 25 percent are female. It should be noted that Bay County's overall population is 94.2 percent Caucasian and Chippewa County's overall population is 75.9 percent Caucasian.⁶

MAACS has 117 attorneys on the roster who take appellate assigned cases and 9.1 percent of these are attorneys of color. The MAACS administrator, Tom Harp, noted that his office does not actively recruit new attorneys, as the interest from the defense bar in joining the roster is already very high. He also noted that the number of appeals has declined recently and there has not been an opportunity to increase the number of attorneys on the roster. He also noted that of the five individuals on staff at MAACS, 60 percent are women and 20 percent are people of color.

SADO has 37 employees, 73.0 percent are women and 18.9 percent are people of color (two Hispanics, three Black/African Americans, and two Asian Americans). Of the 22 attorneys in the office, 72.7 percent are women and 13.6 percent are people of color. SADO makes efforts to recruit a diverse staff by posting vacant attorney positions on national websites, at predominantly Black/African American colleges, at all Michigan state universities, and with affinity bar associations such as the Wolverine Bar Association, Arab American Bar Association, Hispanic Bar Association, Michigan Asian Pacific American Bar Association, etc.

It is important to understand the context for the hiring and recruitment of people of color by Michigan's defender offices. In 2010, 68.4 percent of the active members of the State Bar of Michigan were men. Only 5.8 percent of the active members residing in Michigan were of African American origin; 1.2 percent of Hispanic/Latino origin, 1.5 percent of Asian/Pacific Islander origin, 1.3 percent of Arab origin, and 0.4 percent of American Indian heritage.

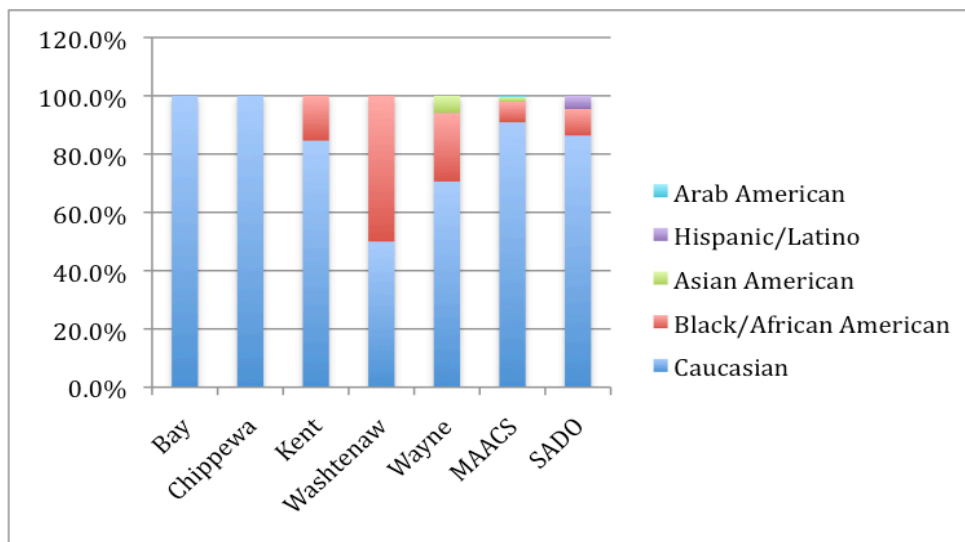
Compared to the Michigan bar as a whole, the Kent County Office of Defender, Washtenaw Public Defender, and LADA in Wayne County have better representation of attorneys of color.

⁶ U.S. Census Bureau, 2005-2009 American Community Survey

The Kent County Office of Defender, Washtenaw Public Defender, and LADA in Wayne County have better representation of attorneys of color within their offices compared to the percentage of people of color in the entire State Bar of Michigan membership.

The Chippewa County Public Defender Office estimated that about 60 percent of its clients are people of color and The Bay County Public Defender Office estimated that 25 percent of its clients are women, 45 percent are people of color. The Washtenaw County Public Defender noted that the county government does not explicitly include race as part of the statistical information it keeps on their clients but that about 80 percent are male, and 50 percent are Black/African American. Kent and Wayne Counties indicated that client demographic data is not available. The Kent County Defender observed that the number of women defendants is increasing. MAACS does not keep demographic data for the clients served. From 2009-2010, 93 percent of SADO’s 1,269 clients were men. Racial data is not collected. When comparing the percentage of people of color in the client populations to the percentage of people of color employed by public defender offices in each county, it is clear there are potential communication gaps that could be addressed by cultural competence training.

Graph 1. Michigan public defender offices – Attorney demographics. See Table 1 for more detail.



None of Michigan’s public defender offices have interpreters on staff. In all five counties, the court pays directly for in and out of court interpreters. The Chippewa County Public Defender noted that interpreters are mainly needed for French Canadians. In Washtenaw County, the University of Michigan provides some interpreter assistance upon request by the court administrator. Spanish, Arabic, Croatian, Serbian, Albanian, and Vietnamese interpreters have been utilized in Wayne County’s defender office.

MAACS reported that it often has been difficult for appellate assigned counsel to get interpreters for their cases. MAACS minimum standards suggest that these attorneys have an out of court visit with their clients. If a court grants a motion for an interpreter, the court will pay the additional cost for the interpreter. For written communications, bilingual inmates who have

learned legal writing sometimes assist the individual by reading a letter from that client's appellate lawyer aloud in their language.

SADO has one Spanish-speaking attorney on staff who often represents Spanish-speaking clients. Otherwise, SADO hires interpreters for every non-English speaking client. SADO has had considerable success at receiving reimbursement from counties for these expenses. SADO has recently used Arabic, Spanish and sign language interpreters to communicate with clients. And, SADO has obtained appellate relief for clients who failed to have adequate access to interpreters at the trial court level.

Michigan's State Court Administrative Office is a member of the Consortium for Language Access in the Courts of the National Center for State Courts. In 2000, Michigan instituted a state program for the testing and certification of non-English-language interpreters. Michigan has a code of professional conduct for interpreters, a recommended oath to be taken in court, and an interpreter qualification screening checklist. Although court interpreters appear to be readily available for in court purposes, it may be that defense attorneys in Michigan face problems accessing interpreters for out of court client meetings, given their lack of access to other critical resources like investigators and expert witnesses.

The need for training in Michigan

On October 29, 2010, two "Cultural Competence & Effective Public Defense Representation" sessions were held in Michigan. One was held in the morning at Cooley Law School in Grand Rapids and the other was held in the afternoon at the Coleman A. Young Municipal Center in Detroit. Twenty-two (22) individuals attended the Grand Rapids session, including the Kent County and Washtenaw County public defenders. Fifty-two (52) individuals attended the Detroit session, including a number of private bar defense attorneys and public defenders from LADA.

The events were co-sponsored by the Campaign for Justice, State Bar of Michigan, Criminal Defense Attorneys of Michigan, State Appellate Defender Office, Wayne County Criminal Defense Bar Association, Washtenaw County Office of Public Defender, Wolverine Bar Association, Michigan Asian Pacific American Bar Association, National Conference of Black Lawyers - Detroit Chapter, Cooley Law School - Grand Rapids, Black Employees Association of Washtenaw County Government, and National Lawyers Guild - Michigan/Detroit Chapter.

Catherine Beane, principal of Beane Consulting and one of the authors of the American Bar Association's Criminal Justice Section's "Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System" model curriculum and instructional manual, served as the trainer.

With the help of the American Bar Association (ABA), the Campaign for Justice was able to secure the support of the United States Department of Justice Bureau of Justice Assistance (BJA). BJA funded the training services, hotel and travel for Ms. Beane. The events were free of charge, thanks to BJA support.

91.7 percent of all respondents agreed or strongly agreed that “the cultural competence framework was helpful in examining issues of race, culture, and community perceptions about the criminal justice system.”

The training sessions focused on “implicit bias” using Unit 3 of the model curriculum. Participants received an overview of cultural competence and a presentation on the science and implications of implicit bias. They then participated in two discussions – one about why implicit bias should matter to defense attorneys, and the second following a case scenario illustrating the various points in the criminal justice system where attorneys, judges, prosecutors and others exercise discretion.

The majority of the participants who completed a post-event evaluation rated the event either “good” or “excellent.” Many said that the information covered was useful and relevant to their roles in the criminal justice system and that the session improved their knowledge/understanding in this area.

Interestingly, 48.4 percent of the anonymous pre-event survey respondents indicated they were either not at all familiar or not very familiar with the term “implicit bias,” with 34.4 percent of the respondents indicating they were either not at all familiar or not very familiar with the term “cultural competency.”⁷ In the post-event evaluations, 91.7 percent of all respondents agreed or strongly agreed that “the cultural competence framework was helpful in examining issues of race, culture, and community perceptions about the criminal justice system.”⁸

This feedback demonstrates the need for continuing legal education around cultural competence issues. Trainings such as those modeled by the ABA may increase knowledge in the defense bar about this topic.

2. HIRING/RECRUITMENT

The workgroup was able to collect racial demographic data on public defenders and public defense attorneys⁹ for eleven jurisdictions: Cook County, Illinois; Ohio; Minnesota (approximate); Wisconsin; Louisiana; Washington, DC; West Virginia; Kentucky; Montana; Nebraska; Maricopa County, Arizona; and Minnehaha County, South Dakota.

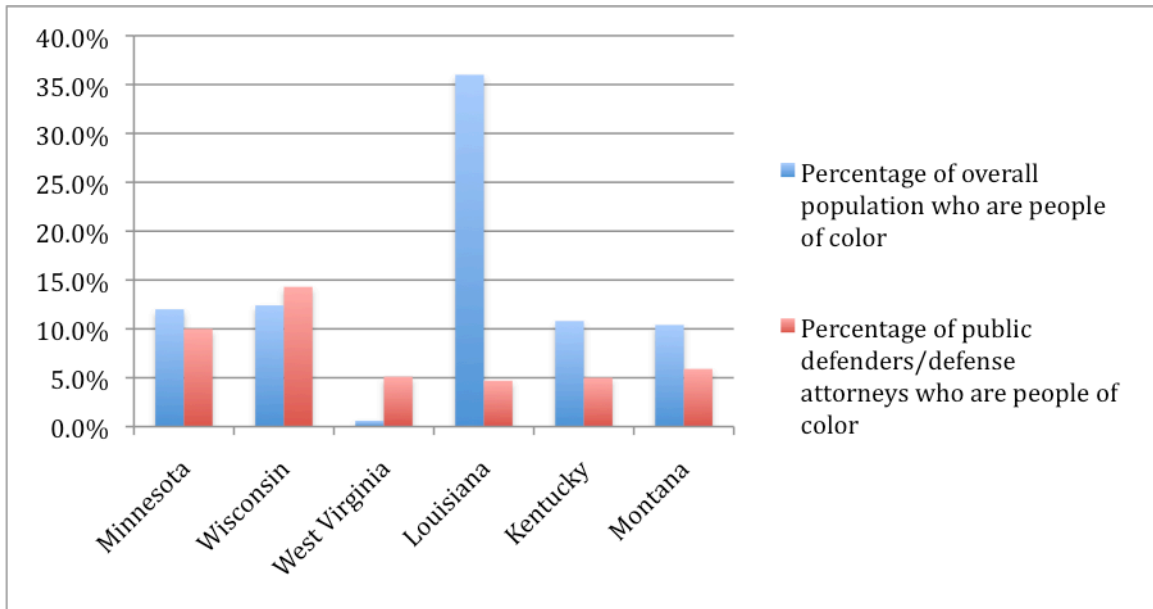
Most public defense systems surveyed employ a lower percentage of attorneys of color compared to the percent of people of color in their state or county populations. The only three jurisdictions with a higher percentage of people of color employed as public defenders compared to their state and county populations are Wisconsin, West Virginia, and Minnehaha County, South Dakota. Wisconsin and West Virginia systems are funded entirely by the state.

⁷ Pre-event surveys were collected anonymously online using a Google form and also at the beginning of the event. 31 individuals responded to the “implicit bias” question and 32 responded to the “cultural competency” question.

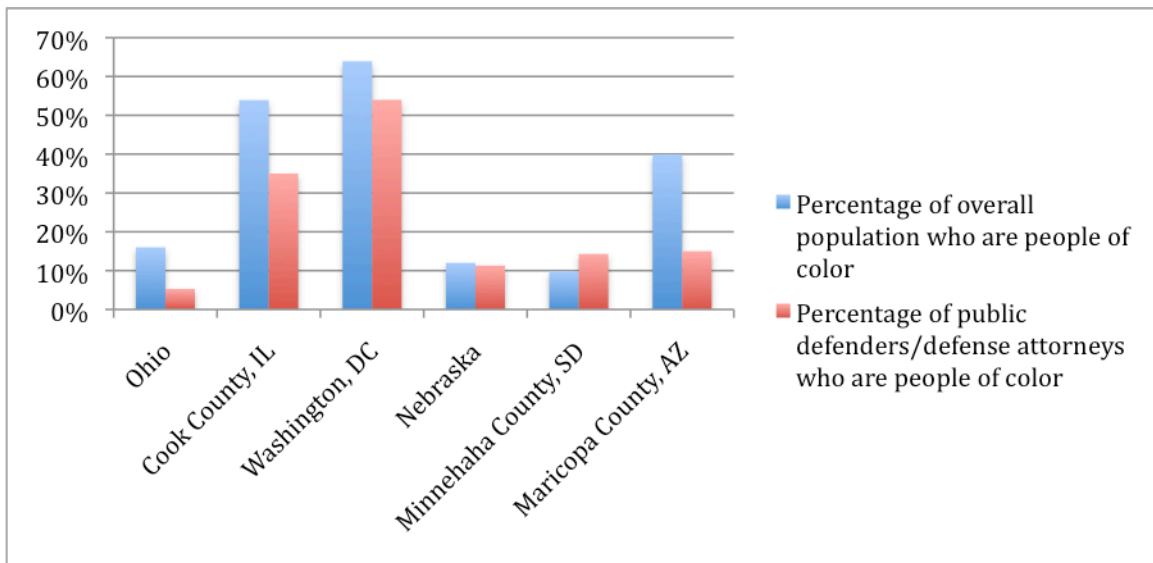
⁸ 36 individuals responded to this particular question on the post-event evaluations, which were returned at the end of the events.

⁹ By “public defense attorneys,” we mean attorneys in private practice who are not employed by state, county or other public defender offices or nonprofit organizations providing public defense services and who are appointed by courts or offices to represent eligible individuals.

Graph 2. Hiring in public defense systems with state funding or more than 50 percent state funding. See Table 2 for more detail.



Graph 3. Hiring in public defense systems with more than 50 percent county funding. See Table 3 for more detail.



The Minnesota Public Defender was able to give an estimation of public defenders of color, not exact figures. He noted that the percentage of public defenders that are people of color (around 10 percent) is more representative of the population compared to the overall bar representation of people of color (around 3 percent). He also reported that twenty years or so ago, women attorneys made up 20 percent of the public defenders in Minnesota but now comprise 44 percent.

Louisiana’s State Public Defender Board provided information about the 42 district public defenders. Before the 2007 passage of reform legislation, there were two women district defenders and two district defenders of color. That number remained the same after the reforms passed.

The majority of the jurisdictions studied do not have recruitment programs that target people of color. In Minnesota, budget restrictions stopped the minority recruitment program; the office has had a hiring freeze since 2008. The Ohio Public Defender office conducts a moderate attempt to seek applicants of color by attending job fairs, and talking with Black/African American law

student associations at major state universities. Representatives from the Committee for Public Counsel Services in Massachusetts also attend career fairs, conduct visits to law schools, and give early offers to top law students of color. The Kentucky Department of Public Advocacy does not have a specific recruitment strategy for attorneys of color but does conduct interviews at the Equal Justice Works Career Fair, which draws a diverse pool of law students.

The majority of the jurisdictions studied do not have recruitment programs that target people of color.

The public defender offices of West Virginia, Hawaii, and Washington DC do not provide programs targeted to recruit attorneys of color. The issue is not as glaring with Washington DC and Hawaii, given their diverse populations. However, states and counties with more than ten percent of their populations comprised of people of color, like West Virginia; Wisconsin; Maricopa County, Arizona; Montana; and Nebraska should have recruitment policies and strategies to attract candidates of color. Communities with immigrant populations should also work to recruit attorneys of color, especially those with immigrant backgrounds. Emphasizing the recruitment of attorneys of color from the client communities could improve the quality of representation. Improved communication between attorneys and clients may lead to better representation, as will increased community confidence in the public defense system.

According to the National Legal Aid and Defender Association, there are eleven statewide public defense agencies that are directed by women.¹⁰ In addition, there are women directors for the Kansas Board of Indigent Defense Services (partial system), Idaho State Appellate Public Defender, Michigan State Appellate Defender Office, and Public Defender Service of the District of Columbia.

3. TRAINING

The states surveyed provided a wide range of levels of cultural competence training. Some public defense systems required training; others did not. The topics covered in the trainings also varied widely.

¹⁰ Alaska Office of Public Advocacy, Colorado Alternate Defense Counsel, Connecticut State Public Defender, Louisiana State Public Defender, Montana State Public Defender, North Dakota Indigent Defense Commission, Missouri State Public Defender (acting director), New Jersey State Public Defender, Oregon Office of Public Defense Services, Wisconsin State Public Defender (acting director), and Wyoming State Public Defender.

The workgroup found that the majority of public defense systems studied with 100 percent state funding did include at least *some* cultural competence training.

The workgroup found that most of the state-funded public defense systems it surveyed provide some cultural competence training.¹¹ Only Hawaii and West Virginia did not. Hawaii is a very diverse multicultural state – its population is over 70 percent people of color.¹² The public defender remarked that attorneys in Hawaii generally learn about different cultures and languages while attending school and growing up in Hawaii.

In contrast, West Virginia was the least diverse state, with a population that is 99.4 percent Caucasian.¹³ West Virginia’s public defense system provides no cultural competence training.

Some public defense systems have recognized the importance of cultural competence training. Although they may not require comprehensive training, they do provide occasional training on diversity topics. For example, Louisiana’s public defender system receives more than 50 percent of its funding from the state. The Louisiana Public Defender Board has provided training covering cultural competence-related topics such as the *Padilla v. Kentucky* decision and working with clients who have disabilities.

The public defense systems in Cook County, Illinois; Washington, DC; and Maricopa County, Arizona all provide some cultural competence training. Nebraska currently does not provide cultural competence training for its public defense attorneys. However, in 2011, the state mandated CLE training for all attorneys, including a diversity component within the ethics curriculum.

Two systems we surveyed provide no cultural competence training: Ohio, with a population that is 16 percent people of color, and Minnehaha County, South Dakota, with a population that is 12.9 percent people of color.¹⁴

The topics covered in the cultural competence training provided vary widely. Minnesota’s public defender offices include training on how to work with interpreters, the role of race in jury selection, culturally appropriate sentencing, and racial profiling litigation. Wisconsin’s State Public Defender training includes sessions on “Bridges Out of Poverty” and “People in Crisis,” along with “Respectful Workplace” to address issues of diversity within the office itself.

The Public Defender Service in Washington, D.C. does not provide formal separate training on cultural competence; instead, cultural competence issues are addressed throughout a eight-week training program required for all newly hired attorneys. Race and diversity are discussed within the context of jury selection, witness treatment, presentation of a case, cultural definitions of criminal conduct within immigrant populations, and gang culture.

11 Minnesota, Wisconsin, Maryland, Massachusetts, North Carolina (some), Kentucky (some), Colorado, and Montana are all states with 100 percent state public defense funding that include cultural competence training.

12 U.S. Census Bureau, 2005-2009 American Community Survey.

13 U.S. Census Bureau, 2005-2009 American Community Survey.

14 U.S. Census Bureau, 2005-2009 American Community Survey.

In Kentucky, cultural competence is incorporated informally into training on attorney-client relationships and interviewing clients. Defenders providing death penalty representation receive specific cultural competence training. The annual conference of defender staff often includes sessions on culture and Latinos in the criminal justice system.

4. LANGUAGE ACCESS

In November 2010, the Georgia Supreme Court ruled in *Ling v. Georgia* that defendants with limited English proficiency (LEP) have a constitutional right to court interpreters in criminal trials, saying:

“We hold that one who cannot communicate effectively in English may be effectively incompetent to proceed in a criminal matter and rendered effectively absent at trial if no interpreter is provided.”

The court raised the question whether the trial counsel in Annie Ling’s case adequately conveyed information to her about a last minute plea agreement.

This workgroup explored the provision of interpreter services in the state public defense systems surveyed and was surprised by the number of defender offices with staff interpreters. Eight of the 15 jurisdictions employ interpreters: Cook County, Illinois (Spanish); Ohio; Minnesota; Maryland; Massachusetts; Washington, D.C.; Colorado; and Montana.

Eight of the fifteen jurisdictions have interpreters as staff in their public defender offices.

The Ohio public defender employs one Spanish-speaking attorney in addition to its Spanish interpreters. There is also a demand for Somali interpreters. The Wisconsin state public defender employs Spanish-speaking individuals who are not interpreters but will do so when needed. In Wisconsin’s public defender system, written materials for clients are available in Spanish and are being developed in Hmong. The Public Defender Service in Washington, D.C. employs attorneys, investigators, and social workers who are proficient in Spanish, French, Russian, Arabic, and American

Sign Language. In Louisiana, some district public defender offices employ Spanish or French speaking individuals and at least one office has a contractual relationship with a Vietnamese interpreter.

In about half of the states surveyed,¹⁵ out-of-court interpreter services are paid for by the public defender system. In Minnesota, the court will pay for interpreters if the public defense system’s budget for these services is exhausted. In Wisconsin, counties will occasionally ask the state public defender agency to pay for these services.

¹⁵ Minnesota (unless the agency runs out of funding for this function), Wisconsin (sometimes), Maryland, Massachusetts, Montana, Louisiana, North Carolina.

The Kentucky Department of Public Advocacy noted that the court administration office provides interpreters and that defense attorneys can file motions for additional funds for interpretation services, however, there are problems with the availability and training of interpreters. In Minnesota, public defenders ask the chief regional defenders to authorize a certain number of hours for interpreters. The Minnesota Supreme Court has instituted standards for court interpreters, who are certified by the state.

In Ohio, local units pay for all interpretation services in and out of court. If there is a long-term need for interpreter services in a case, the court will contract with a school or other provider.

There are many different ways states provide and fund interpreter services for public defenders' clients. Ensuring adequate access to interpreter services should be a priority in the reforms sought for Michigan's public defense system.

5. PUBLIC DEFENSE COMMISSIONS

The majority of the public defense systems surveyed are governed by public defense commissions. For example, Illinois has a State Appellate Defender Commission and Colorado has an Alternate Defense Counsel Commission. Commission membership ranges from five (Colorado and Hawaii) to 15 (Massachusetts). We collected race and gender demographic data for the public defense commissions we surveyed.

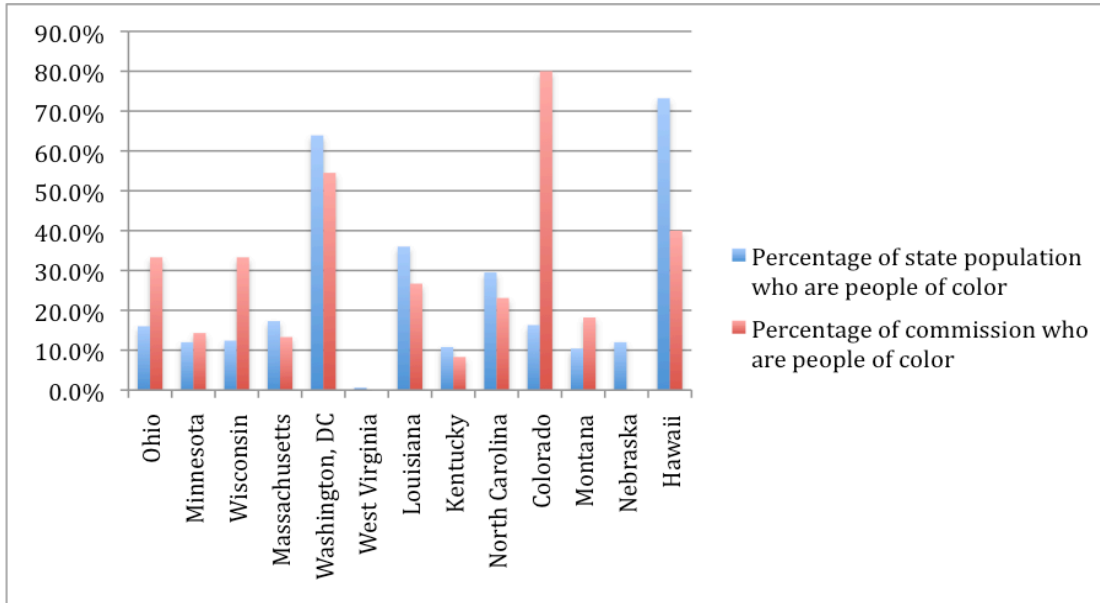
Public defense commissions in Ohio, Minnesota, Wisconsin, Colorado, and Montana have a greater percentage of members of color compared to the percentage of people of color in their states' populations.¹⁶

Public defense commissions in Massachusetts; Washington, D.C.; West Virginia; Louisiana; Kentucky; North Carolina; Nebraska; and Hawaii have a smaller percentage of members of color compared to the percentage of people of color in their states' populations.¹⁷

¹⁶ According to estimates from the U.S. Census Bureau, 2005-2009 American Community Survey.

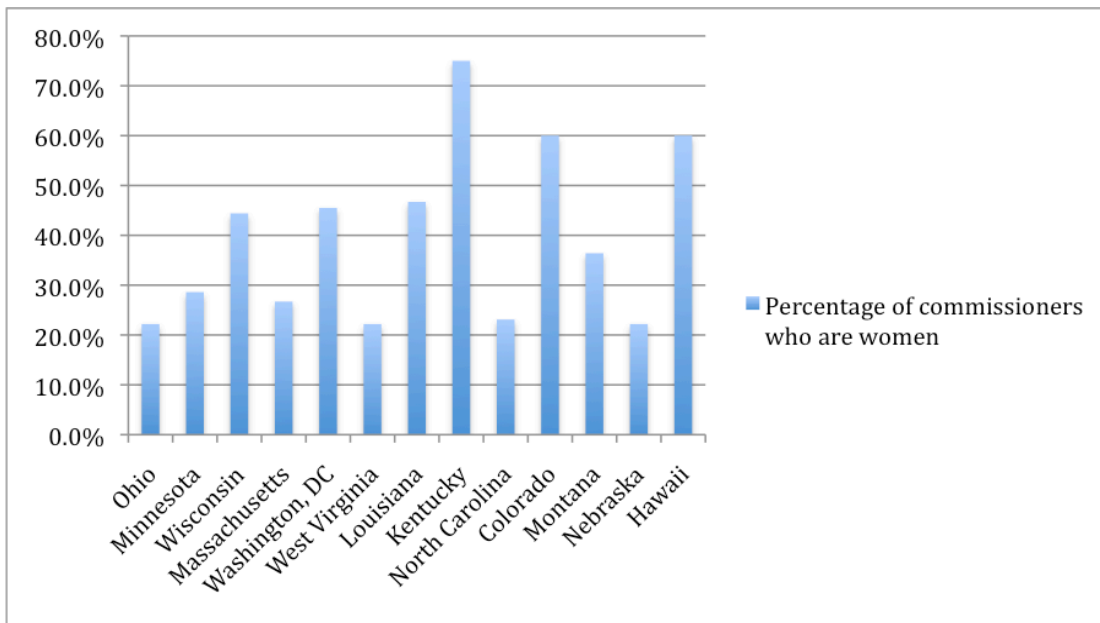
¹⁷ According to estimates from the U.S. Census Bureau, 2005-2009 American Community Survey.

Graph 4. Representation of people of color on public defense commissions.



In Ohio, Minnesota, Wisconsin, Massachusetts, West Virginia, North Carolina, Montana, and Nebraska women comprise less than 45 percent of the public defense commission members. In Washington, D.C.; Louisiana; Kentucky; Colorado; and Hawaii women make up more than 45 percent of the public defense commission members.

Graph 5. Representation of women on public defense commissions.



The “missing data” does, however, raise questions about the priority level placed on analysis of how race, ethnicity, and other social identities play a role in our public defense systems across the country.

6. UNAVAILABLE DATA

There are some types of data relevant to our investigation that was generally unavailable.

No state was able to provide racial demographic information for its public defense system clients. Minnesota was the only state that could even provide estimates.

It was difficult to obtain demographic data on attorneys and staff employed by public defender offices. Some states were unable to provide racial demographic data for public defense system staff. Others did not have this information readily available, although did eventually provide the data to the workgroup.

None of the states provided demographic data for private defense attorneys taking court appointments.

It could be possible that, in some states with very diverse or very homogenous populations, collecting racial demographic data simply is not a priority. This lack of data does indicate the lack of priority placed on both the recruitment and retention of culturally diverse public defense staff and the analysis of client demographics to promote more effective defense representation.

CONCLUSION

It is clear that much work can be done to promote culturally competent defense representation. The findings illustrate the need for:

- Recruitment and retention of attorneys of color;
- Cultural competence training for all individuals providing public defense services;
- Adequate access to trained interpreters;
- Greater representation of people of color and women on public defense commissions; and
- Improved data collection.

In particular, the widespread lack of understanding about the value of cultural competence for individuals providing public defense services indicates the critical need for training programs such as the American Bar Association’s Building Community Trust Initiative.

The data needed to answer some questions was not available and further research is needed.

As improvements to Michigan’s public defense system are considered, cultural competence must be a part of the conversation in order to ensure that individuals are provided effective representation and to build community confidence in our justice system.

RECOMMENDATIONS

Recommendation 1: The ABA Criminal Justice Section “Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System” model curriculum and instructional manual is an important resource for Michigan’s current and future public defense offices or systems. Individuals providing public defense services should be required to participate in training programs based on this curriculum.

Recommendation 2: This report should be provided to all members and staff of Michigan’s public defense commissions, members of the legislative committee in which the bills are being heard, organizations representing attorneys providing public defense services and/or their clients, organizations nominating members of public defense commissions, and other civil rights or related organizations.

Recommendation 3: Michigan should collect gender, race and ethnicity demographic data on attorneys and staff providing public defense services and for the clients they serve.

Recommendation 4: Organizations represented by the members of the current workgroup, along with other civil rights and criminal justice groups, should monitor Michigan’s public defense system reforms for compliance with the above recommendations. Information about hiring, recruitment, and cultural competence training should be routinely requested, analyzed and reported.

Recommendation 5: Special attention must be paid to the recruiting, hiring rates, and retention of attorneys of color and people from diverse backgrounds within Michigan’s public defense system. Michigan’s public defense commissions should develop plans to ensure better representation of people of color and people from diverse backgrounds among those employed to provide public defense services. This is especially important in geographic areas that have a Caucasian majority population yet have a majority of people of color comprising the client population.

TABLES

Table 1. Michigan public defender offices

County/ office	Overall population (U.S. Census Bureau, 2005-2009 American Community Survey)	Attorneys/staff demographics	Client demographics (estimates only)
Bay	94.2 percent Caucasian 1.5 percent Black/African American 4.2 percent Hispanic/Latino 0.6 percent Asian American 0.3 percent Native American	100 percent Caucasian (3 attorneys in 2 offices; misdemeanor cases contracted to firm)	55 percent Caucasian 40 percent Black/African American 5 percent Hispanic/Latino
Chippewa	75.9 percent Caucasian 4.6 percent Black/African American 2.2 percent Hispanic/Latino 1 percent Asian American 13.8 percent Native American	100 percent Caucasian (2 attorneys, one female secretary)	40 percent Caucasian 15 percent Black/African American 45 percent Native American
Kent	81.8 percent Caucasian 8.9 percent Black/African American 9.3 percent Hispanic/Latino 2.1 percent Asian American 0.4 percent Native American	84.61 percent Caucasian 15.38 percent Black/African American (13 attorneys on staff. 33.3 percent of other staff are Black. Of all staff, 42.11 percent are women.)	Not available. Has observed increasing number of women defendants.
Washtenaw	75.7 percent Caucasian 12 percent Black/African American 3.3 percent Hispanic/Latino 8.1 percent Asian American 0.3 percent Native American	50 percent Caucasian 50 percent Black/African American (volunteer staff is about 85 percent Caucasian, 13 percent African American, 2 percent other, mostly Asian American).	50 percent Caucasian 50 percent Black/African American
Wayne	52.6 percent Caucasian 40.8 percent Black/African American 4.9 percent Hispanic/Latino 2.4 percent Asian American 0.3 percent Native American	70.59 percent Caucasian 23.53 percent Black/African American 5.88 percent Asian American (17 attorneys; 29.4 percent of attorneys are women; all four support staff are African American women)	Not available

Table 2. Hiring and recruitment for public defense systems with state funding or more than 50 percent state funding

State	Percentage of overall population that are people of color (U.S. Census Bureau, 2005-2009 American Community Survey)	Percentage of public defenders or public defense attorneys that are people of color	Has recruitment program for attorneys of color
Minnesota	12 percent	10 percent (approximate)	No
Wisconsin	12.4 percent	14.3 percent	Unknown
Maryland	40.3 percent	Did not provide information	Unknown
Massachusetts	17.3 percent	Did not provide information	Yes
West Virginia	0.6 percent	5.1 percent	No
Louisiana	36.0 percent	4.7 percent*	Somewhat
Kentucky	10.8 percent	5 percent	Yes
Montana	10.4 percent	5.9 percent	Unknown
Hawaii	73.2 percent	Did not provide information	No

*4.7 percent of the district public defenders in Louisiana are people of color. Information was not available for all attorneys working in district public defender offices across the state.

Table 3. Hiring and recruitment for public defense systems with more than 50 percent county funding

Jurisdiction	Percentage of overall population that are people of color (U.S. Census Bureau, 2005-2009 American Community Survey)	Percentage of public defenders or public defense attorneys that are people of color	Has recruitment program for attorneys of color
Ohio	16 percent	5.3 percent	Yes
Cook County, Illinois	53.9 percent	35.0 percent	Unknown
Washington DC	63.9 percent	54 percent	No

Nebraska	12 percent	11.3 percent	Unknown
Minnehaha County, South Dakota	9.8 percent	14.3 percent	Unknown
Maricopa County, Arizona	39.9 percent	15 percent	Unknown

Table 4. Representation of people of color and women on public defense commissions

State	Commission info	Percentage of state population that are people of color <small>(U.S. Census Bureau, 2005-2009 American Community Survey)</small>	Percentage of commission members that are people of color	Percentage of commissioners that are women
Ohio	State commission, partial authority, 9 members	16 percent	33.3 percent	22.2 percent
Minnesota	State commission, 7 members	12 percent	14.3 percent	28.6 percent
Wisconsin	State commission, 9 members	12.4 percent	33.3 percent	44.4 percent
Massachusetts	State commission, 15 members	17.3 percent	13.3 percent	26.7 percent
Washington, D.C.	Board of trustees, 11 members	63.9 percent	54.5 percent	45.5 percent
West Virginia	State commission, 9 members	0.6 percent	0 percent	22.2 percent
Louisiana	State commission, 15 members	36.0 percent	26.7 percent	46.7 percent
Kentucky	State commission, 12 members	10.8 percent	8.3 percent	75 percent
North Carolina	State commission, 13 members	29.5 percent	23.1 percent	23.1 percent
Colorado	Alternate Defense Counsel Commission, 5 members	16.3 percent	80 percent	60 percent
Montana	State commission, 11 members	10.4 percent	18.2 percent	36.4 percent
Nebraska	State commission, 9 members	12 percent	0 percent	22.2 percent
Hawaii	State commission, 5 members	73.2 percent	40 percent	60 percent

CULTURAL COMPETENCE/RELATED RESOURCES

American Bar Association's Criminal Justice Section, *Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System* model curriculum and instructional manual (2010).

http://www.americanbar.org/groups/criminal_justice/pages/buildingcommunity.html

**Note: This manual includes PowerPoint presentations, articles, and other resources.*

Nelson Miller, "Beyond Bias - Cultural Competence as a Lawyer Skill." *Michigan Bar Journal* (June 2008).

http://www.michigancampaignforjustice.org/docs/Miller_percent20article_percent20-percent20Cultural_percent20competence_percent20as_percent20a_percent20lawyer_percent20skill.pdf

Final Report of the State Bar of Michigan Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession (January 1998)

<http://www.michbar.org/programs/equalaccess.cfm#racegender>

National Multicultural Institute

<http://www.nmci.org>

Michigan Roundtable for Diversity and Inclusion

<http://miroundtable.org/>

University of Michigan Program on Intergroup Relations

<http://www.igr.umich.edu>