

Racial & Ethnic Fairness in the Courts Delaware Report

Through its Delaware Access to Justice Commission (ATJ Commission), the Delaware courts have sought to address issues of racial disparity head on. The ATJ Commission is unique in that one of its subcommittees, the Fairness in the Criminal Justice System Subcommittee (Fairness Subcommittee), is focused on criminal, rather than civil, issues. It is also entirely devoted to studying the causes of disparity in our criminal justice system. The Supreme Court order establishing the Fairness Subcommittee tasked it with the following¹:

- I. Study the causes for the disparity between the percentage of Delawareans who are black and the percentage of Delaware's prison population who are black.
- II. Report on these causes with as much specificity as possible.
- III. Identify measures to ensure that any existing disparity does not result from racial discrimination.
- IV. Analyze the criminal code, sentencing guidelines, and other relevant criminal justice policies and procedures to determine whether modifications are required to address policies and practices that may generate inequities in the treatment of defendants.
- V. Identify recommendations for the policy changes to be pursued by key criminal justice policymakers, and the appropriate policymaking body to further study and pursue implementation of each of the recommendations.

The Fairness Committee began its study of the causes of racial disparities in our criminal justice system with a series of public hearings in the fall of 2015. The first two hearings had experts from the University of Pennsylvania, the University of Delaware, and the Equal Justice Initiative present reports examining the causes of racial disparities.² The remaining three hearings provided opportunities for members of the public to share their reactions to the expert reports, and make recommendations as to how they think disparities in the criminal justice system can be improved.

Following through on recommendations from those public hearings, the Fairness Committee commissioned an independent study, "Evaluating the Role of Race in Criminal Justice Adjudications in Delaware" by John M. MacDonald, Ph.D. and Ellen A. Donnelly, Ph.D. from the University of Pennsylvania Department of Criminology³. This study was released in September 2016 and involved a year-long statistical review of all adults arrested and charged with a criminal offense in Delaware between 2012 and 2014 to determine the extent to which race played a role in whether an arrestee is sentenced to incarceration and the length of an incarceration sentence. The study does not identify exact causes for any observed disparities,

¹ The Amended Order establishing the Access to Justice Commission can be found here: <http://courts.delaware.gov/supreme/docs/ATJ-Order-2014Dec15.pdf>.

² These expert reports can be found here: <http://courts.delaware.gov/supreme/access.aspx>

³ Evaluating the Role of Race in Criminal Justice Adjudications in Delaware can be found here: http://courts.delaware.gov/supreme/docs/DE_DisparityReport.pdf.

but factors such as the offense charged at arrest, pretrial detention, and contextual factors such as criminal history appear to be important contributors to differences in incarceration sentences. The study suggests that justice system interactions after arrest plays little role in explaining the difference in incarceration rates. The study also points to areas for further exploration on issues such as pretrial detention and focuses for possible reform including sentencing policies and the weight to which current charges, violation of pre-existing court orders, and criminal history are factored into sentencing decisions. The Fairness Committee is currently considering areas of further study to build upon this initial report.

After receiving the recommendations from the public hearings, the Fairness Committee also determined that pursuing statewide implicit bias training for criminal justice agency employees at the entry, mid, and senior levels would be a strong step towards reducing racial disparities. Implicit bias refers to the brain's automatic instant association of stereotypes or attitudes toward particular groups without conscious awareness which may contribute to racial disparities in the criminal justice system. On October 26, 2016, over 500 participants from the judiciary, the Department of Justice, the Office of Defense Services, the Department of Correction, the Division of Youth Rehabilitative Services, and different law enforcement officials came together for a presentation on the science of implicit bias and two related phenomena, racial anxiety and stereotype threat. The presentation was given by Professor Rachel Godsil of Seton Hall University School of Law, an author and nationally recognized expert on implicit bias, and it was well-received by those in attendance.

Effectively addressing racial disparities in the criminal justice system will be a complex and time consuming process, but the Delaware Courts are proud of its first steps and are committed to continuing the work of examining and improving racial disparities in our courts.