

THE IMPACT OF RACE/ETHNIC BIAS ON THE CRIMINAL JUSTICE PROCESS

Race/Ethnic Recommendation VII-1: The Michigan Supreme Court should AMEND MCR 6.110 to add the following language "Nothing in these rules shall be construed to sanction the determination of Pretrial release on the basis of race, religion, gender, age, economic status, or other impermissible criteria."

Summary of condition prompting 1989 recommendation:

Bail criteria, such as employment, have a disparate impact on minority defendants, whose unemployment percentages are disproportionately high. Additionally, personal recognizance bonds were less likely to be made available for racial and ethnic minorities. Bonds generally were set higher for minorities, without legitimate reason. The Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts Report 51-53. (December, 1989) [hereinafter 1989 Task Force Race/Ethnic Report].

Research Methodology in 1997:

Legal research

Status of the implementation of the recommendation in 1997:

MCR 6.106(F)(3) was amended (effective 6-1-92) to state that "Nothing in subrules (C) through (F) may be construed to sanction pretrial detention nor to sanction the determination of pretrial release on the basis of race, religion, gender, economic status, or other impermissible criteria."

While the court rules have been amended to include language-prohibiting discrimination in bail determinations, there are no mechanisms in place to ensure that such discrimination does not occur. The situation is akin to that which prompted the "sentencing guidelines" movement nearly two decades ago, when data collection revealed that minorities received harsher, and disparate, sentences throughout Michigan.

Recommended Action:

This recommendation has been fully implemented. In addition, the State Bar of Michigan Task Force recommends:

- The State Court Administrative Office should conduct a study through resources such as pre-trial services and magistrates to determine whether bail decisions are based on inappropriate factors such as race, ethnicity or gender, including whether significant regional differences exist. Should disparity be revealed, it should require courts to regularly collect and report on the race, ethnicity, and gender of persons granted or denied bail.

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Race/Ethnic Recommendation VII-2: The Michigan Supreme Court should AMEND MCR 6.110 to eliminate any factors which can be shown to have minimal predictive effect on the likelihood the defendant will appear at subsequent proceedings and which allow and invite considerations of race and ethnicity.

Summary of condition prompting 1989 recommendation:

Bail criteria, such as employment, had a disparate impact on minority defendants, whose unemployment percentages were disproportionately high. Additionally, personal recognizance bonds were less likely to be made available for racial and ethnic minorities. 1989 Task Force Race/Ethnic Report 51-53.

Research Methodology in 1997:

Legal research

Status of the implementation of the recommendation in 1997:

The amendment of MCR 6.106 (effective 6-1-92) changed pretrial release law to allow a defendant's general dangerousness to be considered along with the traditional consideration of failure or likelihood of appearance and danger to a specific person (normally the complainant). It also applied a condition to employment and financial status, requiring that consideration of those factors must relate to the ability to post bail. Remaining bail factors appear related to likelihood of appearance.

Recommended Action:

This recommendation has been fully implemented. No further action is required. In addition, the State Bar of Michigan Task Force recommends:

- The State Court Administrative Office should conduct a study through resources such as pre-trial services and magistrates to determine whether bail decisions are based on inappropriate factors such as race, ethnicity or gender, including whether significant regional differences exist. Should disparity be revealed, it should require courts to regularly collect and report on the race, ethnicity, and gender of persons granted or denied bail.

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Race/Ethnic Recommendation VII-3: The Michigan Supreme Court should conduct a study similar to that done in the felony sentencing project of actual bail practices to investigate the question of disparity in bail practices by race, ethnicity, gender, economic class and region and to establish a process to develop recommendations in the event that disparity is statistically shown.

Summary of condition prompting 1989 recommendation:

Bail criteria, such as employment, had a disparate impact on minority defendants, whose unemployment percentages were disproportionately high. Additionally, personal recognizance bonds were less likely to be made available for racial and ethnic minorities. Bonds generally were set higher for minorities, without legitimate reason. 1989 Task Force Race/Ethnic Report 51-53.

Research Methodology in 1997:

Interview with State Court Administrative Office staff

Status of the implementation of the recommendation in 1997:

It does not appear that any study or tracking of bail decisions, to investigate disparity by race, ethnicity, gender, economic class or region, is currently done by the State Court Administrative Office.

Recommended Action:

This recommendation has not been implemented. The 1989 Task Force recommendation should be implemented as written. In addition, the State Bar of Michigan Task Force recommends:

- The State Court Administrative Office should conduct a study through resources such as pre-trial services and magistrates to determine whether bail decisions are based on inappropriate factors such as race, ethnicity or gender, including whether significant regional differences exist. Should disparity be revealed, it should require courts to regularly collect and report on the race, ethnicity, and gender of persons granted or denied bail.

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Race/Ethnic Recommendation VII-4: Judges, attorneys, and court personnel should be trained to understand and control their attitudes about individual appearance and language as it relates to both defendants and victims.

Summary of condition prompting 1989 recommendation:

The appearance and language of an individual impacts upon the court's perception and treatment of that individual.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Michigan Judicial Institute Questionnaire

Status of the implementation of the recommendation in 1997:

Questionnaire responses indicated a fairly low level of implementation of this recommendation. In Regions 3 and 4, implementation was at the twenty-five percent (25%) level, with a high of fifty-nine percent (59%) in Region 1. The most commonly cited barrier was lack of a perceived need for such training followed by limitations of time and money, lack of materials, more important issues, to a response "we don't know how."

The Michigan Judicial Institute has developed training programs related to such matters which are available.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- These issues should be included in local employee performance evaluations and in any standards or guidelines developed by the Supreme Court or the State Court Administrative Office for the conduct of judges.

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Race/Ethnic Recommendation VII-5: Courts and mental health agencies should create a pool of qualified forensic specialists who are aware and sensitive to socio-cultural factors in minority defendants.

Summary of condition prompting 1989 recommendation:

The 1989 Task Force found that psychiatric examination of minority defendants was not uniformly conducted by individuals aware of and sensitive to the socio-cultural background of the minority defendant.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Interviews with attorneys and other users of the court system

Status of the implementation of the recommendation in 1997:

Questionnaire respondents indicated an extremely low level of implementation of this recommendation, with only four percent (4%) in Region 4 indicating adoption to a high of forty-three percent (43%) in Region 3. Typically respondents indicated that there was no need for such a pool, that there were no problems or issues and that limited resources were also a barrier. Limited anecdotal responses indicate that the lack of sensitivity on the part of forensic specialists, particularly to racial issues, is still a problem.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- Renew this recommendation.
- The State Court Administrative Office should create a resource list of qualified forensic specialists for courts.
- The State Bar of Michigan should create a resource list of qualified forensic specialists for use by attorneys.

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Race/Ethnic Recommendation VII-6: The Sentencing Guidelines project should continue to monitor the sentencing practices of Michigan judges. Effort should be made to insure the meaningful input of minority representatives in the administration and policy setting of this project.

Current analysis of sentencing should include factors relating to the impact of and interrelationship of:

- a. misdemeanor convictions and sentences
- b. race, ethnic background and gender of the judge
- c. race, ethnic background and gender of the victim
- d. race, ethnic background and gender of the defendant
- e. guideline departures

All judges should receive an analysis of their own sentencing practices on an annual basis.

Summary of condition prompting 1989 recommendation:

Although adoption and use of sentencing guidelines presumably reduced sentence disparity by race and ethnicity, by focusing on "objective" factors, experienced practitioners still reported on differences seemingly based on improper considerations. Both court users and attorneys reported the perception that sentences are lower for white defendants.

Research Methodology in 1997:

Questionnaire sent to Sentencing Commission

Interview of State Court Administrative Office staff

Status of the implementation of the recommendation in 1997:

Oversight of criminal sentencing guidelines is currently in a state of transition, with authority shifting from the Michigan Supreme Court to the Michigan State Legislature. A legislative Sentencing Commission is completing its multi-year mission of revising sentencing grids and establishing policy and procedures. The Commission will submit its plan for approval by the legislature; submission is expected in late 1997.

The legislative Sentencing Commission responded to the questionnaire, indicating that the sentencing criteria in the new scheme are race, ethnic and gender-neutral. It also pointed out the legislative mandate that "[the sentencing] court shall not use an individual's gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by appointed counsel, representation by retained counsel, appearance in propria persona, or religion to depart from the appropriate sentence range." MCL 769.34(3)(a).

There are, however, no plans as yet for tracking of sentences for race, ethnic or gender impact. The Commission responded that it has not yet determined the scope and nature of any reporting function, while recognizing that on-going research is statutorily required. The State Court

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Administrative Office reports that it does not track any of the information contained in the recommendation. Since the sentencing guidelines movement in Michigan is largely a product of findings of disparity (racial, ethnic and geographic), it remains necessary to track information and report regularly.

The Sentencing Commission has nineteen members. This membership consists of twelve majority males, three African-American males, one Hispanic male, two majority females and one African-American female.

Recommended Action:

This recommendation has not been implemented. The 1989 Task Force recommendation should be implemented as written. In addition, the State Bar of Michigan Task Force recommends that:

- The State Court Administrative Office collect and publish sentencing data as outlined in the recommendation.
- The legislative Sentencing Commission should track sentencing for race, ethnic and gender impact.

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Race/Ethnic Recommendation VII-7: Photographs of defendants in presentence reports should be prohibited in all court systems.

Summary of condition prompting 1989 recommendation:

Certain courts in the state had a practice of including police photographs in presentence reports. It was the perception of some attorneys and court users that race plays a negative role in sentencing. Since photographs reveal race, they should not have been included with information intended to be objective.

Research Methodology in 1997:

Interview of staff attorneys at State Appellate Defender Office, which takes criminal appeals and reviews records from all counties

Status of the implementation of the recommendation in 1997:

It does not appear that any county is currently attaching a photograph to presentence reports.

Recommended Action:

This recommendation has been fully implemented. No further action is required.