



# **Commission on Equity & Access in the Court System**

**FINAL REPORT**

December 2022

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# Executive Summary

The Indiana Supreme Court (the Court) created the Commission on Equity and Access in the Court System (the Commission) to enhance public trust and confidence in Indiana's courts. Specifically, the Commission was directed to:

1. Provide an independent and comprehensive review of Indiana's state court systems, policies, and practices.
2. Identify areas of strength and areas where additional resources and efforts are needed in order to achieve greater and more equal access to justice.
3. Establish workgroups as needed to provide recommendations on ways to address these identified issues within the legal system.

The Commission was directed to provide a written report, with findings and recommendations, to the Court not later than December 31, 2022. This Report is the culmination of 12 months of work by the Commission members and its Work Groups, as directed by the Court, to provide recommendations for the Court's consideration to enhance public trust and confidence in Indiana's courts. This Report's recommendations draw heavily from work done by Indiana legal professionals across a myriad of agencies and entities and on similar committees for the Court, as well as the Indiana Office of Judicial Administration (OJA).

The work of the Commission was divided into eight Work Groups. Those eight Work Groups were: best practices, consequences of convictions, court case processes, data collection and interpretation, diversity in alternative dispute resolution, pathways to the bench and bar, small claims, and surveys and data. Although it is useful to divide the subject matter and recommendations into those eight categories, it is important to recognize that all aspects of equity and access are connected.

The Commission very carefully considered what the focus of the work would be and these specific work groups were identified and created. The thought was to leverage some of the work that had already been done and to identify the priority areas where not only the Court would benefit from the work of the Commission, but also the State Bar Association, the Coalition for Court Access, local bar associations, the Indiana Bar Foundation and other relevant stakeholders. It was the intention of the Commission that these specific work groups would give the Court and all the other stakeholders the best opportunity to plant the seeds for real, transformational and sustained reform and improvement in Indiana.

We wish to thank all of the Commission members and all of those individuals who participated in the Work Groups, and those who provided information and assistance to the Work Groups. This was a collaborative effort of well over 100 dedicated and caring individuals.

It should also be noted that the Commission wishes to clarify its concern that implementation of these recommendations would necessitate allocation of accountability and resources.

# Commission Recommendations

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## **Recommendations related to Best Practices:**

1. Provide ongoing support for legal kiosks and legal navigators.
2. Require annual training which covers civility, cultural humility and identity awareness for OJA, judicial officers and court staff.
3. Continue funding and support for language interpreter programs and self-help resources.
4. Improve data collection of race and ethnicity data.
5. Involve the community before final plan adoption and implementation.
6. Embed a mechanism for plan accountability.
7. Provide online legal party access to case information.
8. Provide Diversity, Equity and Inclusion training for juries.
9. Provide ongoing court satisfaction surveys.
10. Implement inclusion nudges in the court system.

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## **Recommendations related to Consequences of Convictions:**

11. Statutory fines and fees and costs:
  - i. Increase state funding to reduce reliance on probation user fees.
  - ii. Develop court/Court services/probation budgets on the county level that do not rely on probation user fees to sustain operations.
12. Community Corrections:
  - i. Increase predictable state funding for Community Corrections.
  - ii. Increase standardized programs that are offered/available in all counties.
  - iii. Develop and implement standard transfer policies between counties.

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## **Recommendations related to Court Case Processes:**

13. Enhance data collection in Odyssey.
14. Support the following recommendations of The Civil Litigation Task Force made to the Court:
  - i. Case management
  - ii. Discovery
  - iii. Service of Process
  - iv. Self-represented litigants
  - v. Alternative dispute resolution
  - vi. Technology
15. Support of the following Technology Task Force recommendations made to the Court:
  - i. Video remote appearance and interpreting
  - ii. Online submission of proposed exhibits
  - iii. Online dispute resolutions
  - iv. Small claims court pilot for scheduling and check-in
  - v. Pretrial diversion offers before initial hearing
  - vi. Check-in by text message
16. Support of Family Law Task Force recommendations made to the Court:
  - i. Triage
  - ii. Case management standards
  - iii. Online dispute resolution for family law cases
  - iv. Increase trauma-informed training and joint training for family and juvenile judges
  - v. Update and expand resources for self-represented litigants
  - vi. Family problem-solving court
  - vii. Self-represented litigants
  - viii. Order banks
  - ix. Text message hearing reminders for non-attorneys
  - x. Create a financial declaration form through a guided interview application
  - xi. Develop user satisfaction surveys

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## **Recommendations related to Data Collection and Interpretation:**

17. Hire professional assistance for equity and access improvements.
18. Discuss work with other researchers concerning projects already contracted with the Indiana Office of Court Services (IOCS).

19. Collect race and ethnicity data on civil cases.
  20. Ensure that data is being collected consistently in each court through staff training, which includes establishing a standardized use of defined terms.
- 

## **Recommendations related to Diversity in Alternative Dispute Resolution ADR:**

21. Continue providing presentations at Law Schools in Indiana.
  22. Consider promotion of increased diversity in dispute resolution- ABA Resolution 105
  23. Maintain support of diversity in ADR work group.
- 

## **Recommendations related to Pathways to the Bench and Bar:**

24. Enhancement to ICLEO Lifecycle.
    - i. Review of Funding and Administrative Support of Current ICLEO Initiative
    - ii. K-12 Programming and Exposure into the Legal Field
    - iii. College Programming and Law School-Readiness
    - iv. Internship Partnerships with Courts and Law Firms
    - v. Law School Partnerships
    - vi. Post Law School Indiana Bar Support
  25. Create a judicial readiness certification program
- 

## **Recommendations related to Small Claims:**

26. Data collection should be consistent across counties
27. Court forms should be standardized
28. Reduce Default Judgments
29. Support of Eviction Task Force recommendations:
  - i. Pre-eviction Diversion Program
  - ii. Court processes

- iii. Best Practices
  - iv. State-wide standard timelines throughout eviction cases
  - v. Eviction amnesty procedures
- 

## **Continuation of this work**

We wish to acknowledge the work that is already being done across the state in this area. We are also mindful that the work of this Commission is the first effort of the Court to conduct a friendly audit focusing on equity and access issues. We hope it is the first of many steps that the Court will take, with the assistance of bar associations and other entities to change Indiana for the better and to make it a role model for other state doing this work.

In our work we discovered that many states are looking at issues relating to diversity, equity, and access but few have undertaken any significant changes. We hope these recommendations help Indiana make those changes and provide a framework for the continuation of this work. We know the real work is just beginning and we are honored to have been able to serve the Court and the State of Indiana.

A number of Commission and Work Group members have expressed a willingness to continue this work and assist the Court in the implementation of any of these recommendations, as well as any subsequent work where the Court desires the input and assistance of judges, lawyers, and lay members. A list of members of the Commission who have expressed their willingness to continue to serve the Court should their assistance be needed is available upon request.

The Commission believes that it is imperative that this work continue and that any recommendations favorably acted upon by the Court be housed within and accounted for within either the Indiana Office of Diversity, Equity and Inclusion, the Commission on Race & Gender Fairness, the Coalition for Court Access, the Indiana Office of Court Technology, or any other specific entity as determined by the Court. The Commission wishes to express its desire that the Court consider prioritizing the recommendations and that careful consideration be given to ensuring that there is some entity that has overall responsibility for implementation, accountability and reportability.

We are pleased to report that the work of the Diversity in ADR Work Group, which existed prior to the establishment of this Commission, intends to continue its great work and that some of the ideas and suggestions discussed in the Pathways to the Bench and Bar Work Group have been implemented and are being expanded.

The Commission knows this is not a “one and done” for the Court, but instead, it has been an opportunity to provide some specific recommendations to the Court and to commence the work that lies ahead.

We are all honored to have served the Court.



# Commission Members

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# Key Resources

## Overview

A 21-member Commission on Equity and Access in the Court System held its first meeting on October 13, 2021. Established by [Supreme Court order](#), the Commission membership represented all three branches of government and included educators, judges, prosecutors, public defenders, and other professionals. This report represents the work of many individuals and many entities, which contributed to the recommendations.

## Work of the Commission, by Work Group

The Commission recommends the following findings and recommendations to the Court for implementation and sustainability through the Indiana Office of Judicial Administration. Each of the Work Groups proposed a list of recommendations on which the Commission voted during the November 2022 Commission meeting. Each of the recommendations within this report was adopted by the Commission during the meeting.

# Best Practices Work Group Members

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# Work of the Best Practices Work Group

The Best Practices Work Group has been charged by the Commission to (1) identify best practices which ensure equity and access to the court system, and (2) recommend short-term and long-term programs/approaches for the Court to consider. In short, the charge of the Best Practices Work Group was to scan the environment and make recommendations based on best practices being implemented by others in the legal landscape. In its research, it became very clear to the Work Group there are no “leaders” in this space. Indiana is on pace with others around the country. This was confirmed in conversations with legal leaders from other states, within Indiana and with the National Center for State Courts, which is monitoring activity nationwide.

To summarize the legal landscape, most are addressing inequity by reaffirming existing practices or considering new practices. Unfortunately, it is too early to determine if any new practices can be considered a best practice. Therefore, these recommendations are a combination of practices from outside Indiana that the Commission believes have the best potential, and the reaffirmation of the most relevant programs already in place by the Indiana Supreme Court.

The following are recommendations of the Commission emanating from the Best Practices Work Group:

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## **Provide ongoing support for legal kiosks and legal navigators**

In 2021, the Indiana Bar Foundation was awarded a \$13.1M grant from the Indiana Housing and Community Development Authority to address housing problems through the civil legal system. The grant, which spans two years, stipulates the money must be spent on housing issues.

However, many of the initiatives being implemented from the grant have the potential to go far beyond housing issues. One of those initiatives is the creation of a statewide legal navigator network and installation of self-help kiosks in all 92 Indiana counties.

The Commission recommends that the Court continue its support once the 2-year grant ends, perhaps as a function of the Court’s Coalition for Court Access, so that Hoosiers can receive legal support outside the scope of housing. Specifically, the Commission recommend the Court support the initiatives laid out in detail in a November 2021 Request for Proposal describing ways the Indiana Bar Foundation could assist with the housing crisis. These same concepts could be applied to legal assistance generally.

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## **Require annual training which covers civility, cultural humility and identity awareness for OJA, judicial officers and court staff**

It is not lost on the Commission that this recommendation may present challenges to the Court. Nonetheless, the Commission's role was to identify best practices, not simply identify practices the Court can easily implement. Civility training content focuses on treating all individuals with respect and human dignity.

Cultural Humility is the practice of challenging biases and prejudices in the workplace including one's own as we all carry unconscious bias regardless of how we identify. Identity Awareness is proactively working to understand who an individual is and how they may show up in certain scenarios based on the various groups they belong to.

In the research conducted, every state found to be working on equity and inclusion provided Diversity, Equity and Inclusion (DEI) training of some sort. Granted, it is not mandatory in all of those states. However, in conversations with leaders from around the country, the lack of a mandate usually is not based on doubts about its effectiveness. Rather, the most common reason it is not mandated is because of the potential push-back.

The Commission recommends the Court take a bold stance, and require DEI training for OJA, judicial officers and court staff. If mandatory training isn't an option, it is recommended at the very least the Court structure its training programs to ensure DEI is the only option offered at any given time.

Other options: equity could be incentivized through grant money opportunities, certifications, and by the court providing easily accessible opportunities for use of a statewide toolbox for DEI training (Toolbox). Requiring DEI training is a best practice which many other states have already prioritized by incorporating into their strategic planning. The Court may recognize the barriers faced in mandating DEI training, and therefore should provide a toolbox of options to become more inclusive and equitable.

By focusing internally first, the Supreme Court may achieve new standards for all court personnel. Once the Court is in order internally, an external focus on judicial officers and court staff should become the priority.

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## **Continue funding for language interpreter programs and self-help resources**

Second only to DEI training, language interpreter programs and self-help programs are the most common ways states are tackling issues of equity and access.

The Indiana Supreme Court implemented these practices some time ago. We recommend the Court continue to invest in these programs, expanding language options when possible and working to ensure the public is aware of the services (through the legal kiosks and legal navigator network, for example).

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## **Improve collection of race and ethnicity data**

Relevant and reliable data are necessary to apply focused solutions. To that end, it is imperative the Court be strategic and systematic in the data it collects for all cases, specifically as it relates to race and ethnicity. Only then will it be able to measure the impact, and identify areas for improvement, beyond the anecdotal.

Because the Commission created a separate working group to focus on data, this recommendation is simply an affirmation of its critical role as a best practice.

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## **Involve the community before final plan adoption and implementation**

As a best practice, any efforts of reform should include perspectives from those impacted directly. In this case, that would be communities of color. A recommendation from the National Center for State Courts, which the Commission supports, is to involve the public before adopting or implementing a plan to address equity and access in the legal system.

However, it is important to define “communities” for the purposes of this recommendation.

While it can be nice to hear from individuals in the community (such as town hall programs) it can also lead to so many different opinions that it becomes difficult to discern those that might be the most helpful. Therefore, the Commission recommends that the Court define “community” a bit differently.

Examples provided by Edwin Bell, Director of Racial Justice, Equity and Inclusion for the National Center for State Courts, include local community foundations that work most closely with underrepresented communities.

Some examples might include leaders from Black Expo, the Indianapolis Colts or Indiana Pacers foundations, Indianapolis Urban League, etc. An advisory group of leaders from these groups will help ensure the Court is on the right track. In addition, they might serve as partners in plan execution.

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## **Embed a mechanism for plan accountability**

Several diversity initiatives were launched in the 1970s, 80s and 90s, yet it is hard to find many meaningful impacts that came from those initiatives. Many committees were created. Many meetings were had. Little evolution occurred.

Therefore, the Commission recommends as a best practice that regardless of the final plan adopted by the Court, there be a mechanism to ensure the plan is enacted, followed and completed.

This can be accomplished any number of ways:

- Goals be implemented in court job descriptions and staff evaluations.
- Create an oversight committee of Court staff and community partners.
- Regular check-in meetings among multiple staff members, all holding each other accountable.

More strategic plans than not fall by the wayside because accountability is lost along the way. One of the most important things the Court can do in creating sustainable programming is by maintaining an accountability mechanism. Whether the Court builds this system or supports an existing one, research demonstrates the power of oversight and accountability in achieving successful and effective programming.

The following recommendations are likely to be easier to implement in the short term, and the Commission recommends they be addressed as the longer-term recommendations are under review.

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## **Provide online legal party access to case information**

Transparency is a key component to trust. Under the current system, attorneys can access certain information, but parties cannot. This leads to feelings of helplessness.

The Commission is aware that Court staff is working to provide party access through the Innovation Task Force, but includes this recommendation based on the belief that this is one simple way to provide transparency (and trust) into the process.

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## **Provide DEI training for prospective jurors**

DEI training for juries was among the most popular practices among states working to address inequity in the legal system. Many states require online training prior to serving, and others work to create a jury pool beyond voter roles. The Court is commended for moving beyond voter roles in 2006. The recommended next step is to offer DEI training programs, and that those programs be made available to trial courts around the state.

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## **Provide ongoing court satisfaction surveys**

Although this recommendation may seem elementary, the Commission felt it was important to highlight the importance of gathering real-time data. This information can help the Court change direction or address emerging issues in a timely manner. Furthermore, the Commission recommends that at least some of the questions in the survey be designed to learn how much court participants trust the system.

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## **Implement inclusion nudges**

Based on the recommendation of the Best Practices Work Group, the Commission also proposes that the Court implement throughout the court system what are known as “inclusion nudges”. These are simple acts and practices that can have a profound impact on those in the legal system. A few examples include:

- Courthouse art that is reflective of a diverse community.
- Ensure court staff and judicial officers take the time to learn and pronounce names correctly.
- Encourage judicial officers to match their client’s wardrobe. One judge in Ohio shared that during his drug court, he never wears a robe, is usually in jeans, and sits at the same level as those in his court.

The point of “inclusion nudges” is to make court participants feel comfortable with the process. Parties may not like the outcome, but if treated as individuals, they may trust the system a bit more.



# Consequences of Convictions Work Group

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# Work of the Consequences of Convictions Work Group

The Commission on Equity and Access in the Court System charged the Consequences of Conviction Work Group with looking at the consequences of criminal convictions on the ability of the offender to be a self-sufficient and contributing member of society. Focus is requested upon fines and fees. What is necessary and what might be too much? How could fines and fees be assessed more fairly?

In recent years, states have begun to examine the social impact of burdensome collateral consequences. Studies show that collateral consequences have contributed to a cycle of poverty by limiting job opportunities and access to social programs. Indiana has worked for years to remove or diminish the effect of collateral consequences. First, Indiana has an expungement process that can alleviate the harmful effects of collateral consequences. Governor Holcomb issued an executive order directing state agencies not to include any question regarding prior criminal convictions on state employment application forms. The following recommendations are meant to guide the Indiana Supreme Court's focus on examining this area which is critical to helping Hoosiers move forward and follows the work of the General Assembly and the Executive branch.

The following are recommendations adopted by the Commission which emanated from the Consequences of Convictions Work Group:

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## **Reduce Reliance on Probation User Fees for County Budgets**

### **Increase State Funding to reduce reliance on probation user fees.**

Probation programs and policies vary from county to county. For instance, statutory fees that can be assessed vary as some counties assess the statutory maximum while others select amounts less than the maximum.

To secure client compliance with payment and other aspects of supervision, clients enter into a written agreement. If a client violates the terms of supervision by not paying fees, probation programs have tools to assist. Some probation programs work with clients on budgeting, job skills, and connecting clients with job services. These tools and home visits can determine whether the fees ordered are out of the client's reach. If so, some probation programs will bring this to the court's attention to adjust fees

accordingly. A probation program's willingness to support an indigent client varies from program to program and supervising staff to supervising staff.

The Commission recommends increased State funding of court operations in order to reduce the reliance of individual counties on user fees.

## Develop county budgets free from reliance on probation user fees to sustain operations.

After presentations given by experts, the Work Group agreed to recommend the concept of centralized funding for our court system and agreed that "Indigent parties bear a disproportionate share of costs to support the judicial system. . ." A few suggestions relate specifically to probation and community corrections, but the overall recommendation is to move to a judicial system that depends less on indigent people. Some observations from the presentations include:

- ordering multiple fines and fees can have a cumulative effect, making it difficult for the individual to pay them;
- unpaid fines, fees, and costs can impede successful reentry as a barrier to expungement and from resulting restricted housing options and access to credit; and
- little to no correlation exists between the basis for assessing the fine, fee, or costs and where the funds go.

County probation budgets may include county general funds, public safety income tax funds, adult probation user fees, alcohol and drug services user fees, and grants. The percentage of each funding category that makes up a county's budget varies greatly. Indigency determinations have an impact on program budgets, causing some programs financial hardship. Probation officers often find themselves in the role of a debt collector and would prefer not to have this responsibility.

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## Enhance Community Corrections

- **Increase Predictable State Funding for Community Corrections.**
- **Increase standardized programs to be offered/available in all counties.**
- **Develop and Implement Standard transfer policies between counties.**

The Commission acknowledges that it has only begun to scratch the surface on examining the consequences of conviction. It encourages the Court to examine its current committee structure to keep reviewing the consequences of a conviction. Should the Court choose to continue this work, the Commission urges the inclusion and input of those who have lived the experience of collateral consequences of conviction and have come out on the other side.

# Court Case Processes Work Group Members

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# Work of the Court Case Processes Work Group

The Court Case Processes Work Group evaluated court case processes, across the spectrum of civil and criminal cases. The Commission adopted the Work Group's proposal that certain fundamental aims must exist to fully-support equity and access in court case processes:

- **Courts aim to help the individuals involved in each case.** The goal of the court is to make sound decisions and treat all people with respect and dignity.
- **The same respect shown to the judge is shown to everyone, by everyone.** Everyone feels heard and respected. The litigants are addressed by their names. The judge is relatable and empathizes with the individuals involved in the case.
- **Going to court feels safe and accessible.** The court environment is open and welcoming to all languages, races, genders, ages, physical abilities, and religions. Litigants can easily learn where they need to go and how to get there, regardless of what language they speak. Litigants may access a court hearing remotely from trusted community centers or through virtual court services online when circumstances allow or are appropriate, and the logistics of getting to court does not impact any litigant disproportionately.
- **Litigants all have someone on their side.** Regardless of ability to pay, every litigant has access to adequate and capable counsel, whether it is a public defender or a private attorney, someone that they feel is truly on their side, helping them present their case effectively.
- **Clear and in-language communication ensures that individuals understand the process and expectations.** No litigant must present their case in a language in which they are neither fluent nor comfortable. In-language court sessions are widely available, so language is no barrier to justice.
- **Race, religion, ethnicity, or wealth does not determine the outcome or the process of the case.** All who engage with the court receive the same level of service and respect, regardless of the color of their skin, ethnic background, religion, or wealth.
- **Mental health is recognized and supported.** Litigants challenged by mental health or substance abuse disorders are treated with care instead of being treated as exhibiting a moral failing. Courts use methods to identify when mental health issues are involved in charges and provide an alternative court setting when needed to prevent or mitigate trauma to individuals involved in the case.

The Commission urges a comprehensive examination of those processes from the perspective of the litigant, uncovering any differential treatment in case processing at the point of such things as notice, scheduling, appearances in court, case processing timelines, virtual hearings, the "cattle call" culture, etc.

The Commission is paying careful attention to what will improve the experience, transparency, credibility, and confidence in the systems.

The Commission recognizes enhancing court case processes to achieve better equity and access requires a conscious, persistent, and systemic effort to understand and confront differential or disparate treatment within the system perpetuated through existing policies and practices.

The following are recommendations of the Commission, emanating from the Court Case Processes Work Group:

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## Enhance data collection in Odyssey

- Collect contact information and basic demographic data
- Standardize Odyssey data entry points
- Enhance quality of data entry, and data counties collect by training standardization and regular audits
- Regular equity and access assessments using Odyssey data
- Fund additional high quality data research – use findings to make additional case process recommendations
- Amend recommendations based on findings of ongoing research in criminal and civil court case processes
- Supervise the work of enhancing equity and access in court case processes

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## Support of Civil Litigation Task Force Recommendations

The Commission supports the following recommendations of the Civil Litigation Task Force made to the Court:

- Case management** – tailor the civil process based on complexity and case type using mandatory pathway assignment
- Discovery** – develop new forms to simplify discovery processes and update Indiana’s Trial Rules as modeled in other states to reduce cost and waste during the discovery phase of a case
- Service of Process** – to help ensure due process, expand methods of service to include publication in online media in addition to printed newspapers as well as alternatives like email, text, and social media direct messages

- d. **Self-represented litigants** – establish a self-help center in every Indiana county, support efforts to improve the indianalegalhelp.org website, and expand the ability for lawyers to help litigants through a limited scope of representation (e.g., reviewing forms the litigant filled out)
  - e. **Alternative dispute resolution** – to inform parties in civil cases about options for resolving their disputes, send parties information about their options for mediation and similar services
  - f. **Technology** – adopt the National Open Court Data Standards to improve data analytics and governance
- 

## Support of Technology Task Force Recommendations

The Commission supports the following recommendations of the Court’s Technology Task Force report made to the Court:

- a. **Video remote appearance and interpreting** – continue implementing equipment and services
  - b. **Online submission of proposed exhibits** – implement online portal to assemble digital files
  - c. **Online dispute resolution** – a web-based platform to help litigants complete a proposed agreement for small claims cases
  - d. **Small claims court pilot for scheduling and check-in** – implement program to optimize session schedule and streamline party check-in
  - e. **Pretrial diversion offers before initial hearing** – for defendants with specific, low-level misdemeanors
  - f. **Online dashboard and process improvement for e-notices and e-service** – deliver court notices and orders for attorneys more easily
  - g. **Check-in by text message** – allow self-represented litigants a method to confirm arrival
- 

## Support of Family Law Task Force Recommendations

The Commission supports the recommendations of Court’s Family Law Task Force for the purpose of moving toward increased equity and fairness in court processes:

- a. **Triage** – early screening and assessment to resolve cases more quickly
- b. **Case management standards** – create timeframes for pretrial conferences, discovery, case resolution, and other case activities and hearings

- c. **Online dispute resolution for family law cases** – a web-based platform to help litigants complete a proposed agreement for domestic relations cases
- d. **Trauma-informed training and joint training for family and juvenile judges** – increase awareness, knowledge, and skills of judicial officers and court staff in working with children and families impacted by trauma
- e. **Resources for self-represented litigants** – update and expand resources including those on the [Indiana Legal Help website](#)
- f. **Family problem-solving court** – explore approach similar to that used in problem-solving courts
- g. **Self-represented litigants** – collaborate with [Coalition for Court Access](#) on guided interview forms and instructional videos
- h. **Order banks** – create benchbook committee for family law forms
- i. **Text message hearing reminders for non-attorneys** – communication to minimize failure to appear at scheduled hearings
- j. **Create a financial declaration form through a guided interview application** – a web-based calculator to guide through input of assets and debts
- k. **Develop user satisfaction surveys** – gather data to ensure success of projects

A sustainable approach to addressing equity and access in court case processes requires quantitative and qualitative data analysis and close partnership with communities that are most affected by inequities. Both are critical for identifying and understanding the drivers of inequities and developing meaningful and effective solutions that directly address them. Achieving measurable progress toward greater shared opportunity for every member of the community is vital to achieving a more just legal system.



# Data Collection Interpretation Work Group

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# Work of the Data Collection Interpretation Work Group

The work group held robust discussions regarding what types of data are currently being collected by the courts and stakeholders and the gaps that currently exist in the collection of the data. The workgroup reached a point where it decided that professional assistance is needed to facilitate discussions on how to strategically plan for the collection of data to evaluate equity and access.

There is a lot of data currently being collected on criminal cases; however, in order to measure equity and access in the Indiana courts as a whole, it is important to include the collection of data on civil cases as well. To evaluate equity and access in the court system as a whole, this work group strongly encourages the collection of data on as many underrepresented groups as is feasible for the court to manage.

The following are recommendations from the Data Collection Interpretation Work Group:

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## **Hire professional assistance for equity and access improvements**

Hire professional assistance to provide guidance to the workgroup regarding how to harness program evaluation and research methods to support continuous quality improvement in the courts related to equity and access to justice. Specifically, the work group requested assistance in: (1) strategically planning what data is needed to be able to evaluate equity and access; (2) determining how to adequately collect that data; and (3) using the data to analyze, interpret, and measure equity and access in the courts Indiana.

Dr. Brittany Rudd and the workgroup are aware that Dr. Evan Lowder is currently working with the Justice Reinvestment Advisory Committee (JRAC) on a project that consists of identifying and documenting available criminal-legal data sources at a local and statewide level to recognize decision points to establish racial equity measures. Dr. Rudd and the workgroup discussed the desire to not duplicate efforts currently underway with Dr. Lowder and JRAC related to data concerning criminal cases, so it seems logical for our workgroup to focus on data related to civil cases.

---

## **Streamline existing efforts and collaborate with approaching projects**

In order to avoid the duplication of efforts and to prevent researching in silos, it is prudent to encourage researchers to discuss their work with other researchers concerning projects already contracted with the Indiana Office of Court Services (IOCS), if applicable. Communication and collaboration between the researchers on various research projects currently underway through the IOCS that include the study of equity and access in the courts is an important step to help streamline efforts.

The IOCS has approximately five (5) research projects currently in progress:

- a.** Family Court Project Grant (Floyd County), Dr. Rudd;
- b.** University of Cincinnati – Indiana Risk Assessment System / Indiana Youth Assessment System (IRAS/IYAS) validations studies;
- c.** George Mason Indiana Risk Assessment System – Pretrial Assessment Tool (IRAS-PAT) / pretrial research;
- d.** George Mason Justice Reinvestment Advisory Council (JRAC) race/equity workgroup study; and
- e.** McKinney Law School, Professor Quintanilla study of pro se litigants experience in remote hearings.

Additionally, HEA 1359's Youth Justice Oversight Committee's charge is to develop a statewide data collection plan and research agenda. Dr. Matt Aalsma of Indiana University and Mary Kay Hudson of the Indiana Supreme Court staff co-chair the data work group. Outside contracts for services for this group have not been entered into yet; however, this is another work group whose work should be monitored for alignment with this Commission's recommendations.

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## **Collect race and ethnicity data on civil cases**

Consider collecting race and ethnicity data on civil cases. There is a lot of data currently being collected on criminal cases; however, in order to measure equity and access in the Indiana courts as a whole, it is important to include the collection of data on civil cases as well.

The National Center for State Courts, Court Statistics Project, published a helpful article last year entitled, "Collecting race and ethnicity data" The article makes a case as to why it is important for the courts to collect race and ethnicity data. The article notes that since the Civil Rights Movement, the main objective of collecting agency data on race and ethnicity has been to document inequality. It goes further to say that courts have a responsibility to provide justice that is both fair and perceived as accessible and fair for all.

More importantly, the article notes that even though the National Open Court Data Standards (NODS) uses racial and ethnic categories consistent with the U.S. Census, "individual courts should consider expanding the categories they collect to fit the needs of their community. Identifying issues of access and fairness, need for interpreters, and equitable representation in court programs may require a more nuanced approach, depending on the needs of the community."

As part of its work, this work group compiled a data collection inventory grid (see Data Interpretation Committee Report) to document what type of data points are currently being collected by the various court case management systems and what other stakeholders are collecting. The work group noticed that there are certain instances where race and ethnicity is not being collected. In addition to this, the work group also found that there is a complete lack of data being collected on underrepresented groups that include socioeconomic status, disability, gender identity, and sexual orientation. In order to evaluate equity and access in the court system as a whole, the Commission strongly encourages the collection of data on as many underrepresented groups as is feasible for the court to manage.

A copy of the National Center for State Courts article and data collection inventory grid may be accessed in the Data Collection and Interpretation Work Group Report.

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## **Ensure consistent data collection throughout Indiana judiciary**

Accurate measurement of equity and access in the courts requires consistent and accurate data collection. An issue was raised that court clerks are not necessarily using a standardized method to input data. For example, a clerk may use the wrong code when entering information because they might be in a rush to get to the next case, or a clerk may enter a person's race or ethnicity from a subjective (not self-reporting) standpoint and the clerk may enter incorrect information when doing so. It was suggested that the use of specific event codes and types in Odyssey would lead to greater access to specific data. For example, a motion to dismiss might be entered as a specific event or a more generic event, and that coding will affect the availability of complete data. Therefore, the consistent entry of data by a clerk is crucial for the accurate collection and analysis of data.

Although this work group lacked the time to conduct focus groups prior to the final report deadline, it believes that either conducting a focus group or survey to further evaluate how data is being collected by court staff is important in evaluating equity and access within the court system.

# Diversity in ADR Work Group Committee Members

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# Work of the Diversity in Alternative Dispute Resolution Work Group Committee

The Diversity in ADR Work Group Committee has worked diligently since its formation and subsequent inclusion into the Indiana Supreme Court Commission on Equity and Access in the Court System. In an effort to increase diversity in participation and engagement in the Alternative Dispute Resolution area in Indiana, the Work Group has produced and hosted two conferences aimed at diverse attorneys in Indiana; compiled a list of certified mediators to serve as mentors; compiled and distributed surveys to be analyzed for further action; set up a system to discuss Diversity in ADR to Law Schools; worked toward increasing the number of diverse attorneys in local, state, and national ADR organizations with emphasis on positions of leadership; and continues to promote the ideals of ABA Resolution 105.

This group is committed to continuing its efforts to increase diversity in ADR in Indiana, and will continue to function following the dissolution of the Commission as a whole. The Work Group will supplement this report with the findings and analysis by Dr. Rudd as it becomes available.

The following are recommendations adopted by the Commission emanating from the work of the Diversity in ADR Work Group:

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## **Continue providing presentation at Indiana Law Schools**

The Work Group contacted representatives at all 3 law schools in Indiana including Maurer School of Law in Bloomington, McKinney School of Law in Indianapolis, and Notre Dame School of Law in South Bend. It is the Commission's belief that an early introduction to law students and lawyers about Alternative Dispute Resolution and its opportunities, as well as the current lack of diversity in Alternative Dispute Resolution, will help to increase diversity in the area as well as increase awareness of the selection of diverse neutrals. The Work Group will continue with this task and will assign one member to present at selected classes at the 3 law schools each year on Diversity in ADR. This will be an ongoing initiative of the Work Group.

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## **Consider promotion of increased diversity in dispute resolution – ABA Resolution 105**

Resolution 105 urges all users of domestic and international legal and neutral services to select and use diverse neutrals. The ABA urges providers to expand their rosters of dispute resolution services with minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities (collectively “diverse neutrals”).

Encouraging and facilitating discussions within law firms, insurance companies, legal associations and organizations, outside counsel and in-house counsel, and other institutions about the use of diverse neutrals will continue as a priority for the Committee. As illustrated in Resolution 105, the focus needs to be on the “roster issues” and the “selection issue.” The Work Group will continue its work to increase the diverse representation on the panels of providers as well as strive to improve and increase the selection of diverse neutrals, who are not selected as often as their non-diverse colleagues. The Committee Work Group will strive to collect a database of service providers that they can reach out to promote the ideals of ABA Resolution 105. Again, this will be an ongoing priority of the Work Group.

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## **Maintain support of Diversity in ADR Work Group Committee**

The Diversity in ADR Work Group Committee recognized the lack of diverse attorneys in local, state, and national ADR organizations. We have pledged to reach out and assist diverse practitioners involved in the Alternative Dispute Resolution area to encourage and support their application for membership in various ADR organizations. These organizations include the American Bar Association - Alternative Dispute Resolution Section; The Indiana Association of Mediators; various National Arbitration organizations including IAMS and AAA; The National Academy of Distinguished Neutrals; Committees or Sections of state and local bar associations; and any other organizations that are available for membership for practitioners of alternative dispute resolution. This will continue to be an ongoing process for the Diversity in ADR Committee.

# Pathways to the Bench and Bar Work Group Members

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**Karrah Herring, J.D.** – State of Indiana's Office of the Chief Equity, Inclusion & Opportunity Officer



# Work of the Pathways to the Bench and Bar Work Group

The Pathways to the Bench and Bar Work Group was charged with the following: assess the current demographic data of Indiana’s bench and bar; identify and assess current initiatives focused on pathways programs for Indiana’s bench and bar; and provide recommendations on new or enhanced initiatives to grow diversity within the Indiana bench and bar.

The following are recommendations from the Pathways to the Bench and Bar Work Group:

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## **Enhancement to ICLEO Lifecycle**

Many barriers impede the advancement and retention of diverse lawyers in the legal profession. Some of the factors that contribute to the lack of diversity include in-group favoritism, stereotyping, unconscious biases, and diversity fatigue. Other factors that contribute to the lack of diversity in the legal field are the socio-economic circumstances that often hinder people of color, including limited access to quality education and other resources, and the high cost of pursuing a legal degree. The Indiana Bar must be intentional about creating pathways to the bar.

The Indiana Conference for Legal Education Opportunity (ICLEO) was established at the urging of former Chief Justice Randall T. Shepard by the Indiana General Assembly. In 1997, Governor Frank O’Bannon signed the law giving funding to ICLEO. The ICLEO program was established to assist Indiana minority, low-income, and the educationally disadvantaged in pursuing a law degree and a career in the Indiana legal community. The ICLEO Summer Institute is held annually to introduce new ICLEO Fellows to the program. ICLEO’s purpose then and now is to help college students in need pursue a law degree in Indiana. We believe enhancing the existing infrastructure of the ICLEO program will create a more intentional and clearly defined pathway to the Indiana Bar and will ultimately increase the number of historically underrepresented attorneys in our state. Our recommendations are as follows:

## **Funding and Administrative Support of Current ICLEO Initiative**

In accordance with IC 33-24-13, an assessment of the current funding should be completed to determine where additional funding is needed. Additionally, after conversations with the previous ICLEO Director, Ms. Kendra Key, we believe the director needs additional administrative support. Our recommendation is that the court look at expanding the ICLEO team to include an administrative assistant and program coordinator role.

## K-12 Programming and Exposure into the Legal Field

Court should consider implementation of Attorney Norris Cunningham’s Classrooms to Courtrooms program which has exposed high school students to the legal profession through an approved full-year curriculum that includes classroom instruction on legal systems and participation in the Indiana Mock Trial Competition. A partnership between this program, the Indiana Department of Education and ICLEO to expand and create more access to the program statewide, would build an intentional pipeline of Indiana students who could potentially become ICLEO participants, successful law students and future Indiana attorneys and judges.

## College Programming and Law School-Readiness

The ICLEO program should partner with the Indiana Commission for Higher Education to look at implementation of a college course specifically designed to expose students to the legal profession via law school-readiness course work (LSAT preparation, the application process, “think like a lawyer” curriculum, and speakers from the legal profession). While these types of courses exist in various forms, having a course created via the Commission for Higher Education in partnership with ICLEO would create consistencies with content, and help the state measure success metrics in a uniform way. Examining piloting a course like this with the Ivy Tech system, Martin University, the University of Indianapolis, the University of Southern Indiana, Vincennes University, Ball State University, Indiana University Bloomington and Purdue University would jumpstart getting this programming in front of diverse students. Additionally, utilizing diverse student union groups, campus multicultural organizations, the National Pan Hellenic Council (which includes the Divine 9 predominantly Black fraternities and sororities), as well as other diverse fraternities and sororities to promote the course, would potentially increase diverse participation in the course.

## Internship Program with Courts and Law Firms

With enhanced staff support, the ICLEO program should create an internship program for ICLEO students focused on assisting them with finding paid summer internship and clerkship opportunities during their 1L and 2L summers with law firms and courts in the state of Indiana. ICLEO staff could structure the program to receive commitments from specific law firms and courts willing to take on at least two summer interns. ICLEO students who are interested in these paid internship and clerkship opportunities would apply through ICLEO and be placed by ICLEO. Funding for this program could be supplemented by the additional ICLEO funding requested in section I above, private foundation dollars and in partnership with the law firms and courts.

## Law School Partnerships

ICLEO currently does a great job partnering with Indiana law schools. It is our hope that with additional funding and staffing support, ICLEO can be more intentional about checking in at the law schools with ICLEO participants regarding needed support (mentorship, tutoring, bar preparation, mental health, etc.), and then connecting ICLEO students with the appropriate support/solution. Additionally, we believe Indiana law schools could be a key resource for the ICLEO program as they look to stand up the ICLEO internship and clerkship program detailed in section IV above.

## Post Law School Indiana Bar Support

ICLEO should continue their current efforts with Indiana Bar exam preparation. Additionally, if an ICLEO student does not pass the Indiana Bar examination on the first attempt, there should be a process where ICLEO is notified, connects to the law school graduate and immediately links them with additional supports to help them either appeal (if they are within the appeal range), or further prepare for retaking the examination.

## Review ADA Reasonable Accommodation Request Process

To ensure individuals with varying physical and mental abilities have equitable access to sitting for the Indiana Bar Exam, we recommend there is a review of the ADA Reasonable Accommodation Request process for the Indiana Bar Exam. It was further recommended that the Supreme Court review the ADA accommodation policy for individuals with disabilities sitting for the Indiana Bar Exam.

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## **Create a Judicial Readiness Certification Program**

To increase the number of attorneys from historically underrepresented sectors of our society who are acknowledged to be “robe-ready” and available for service on the bench in Indiana, the Indiana Supreme Court should adopt an on-going program modeled on the framework of the existing ICLEO program for incoming and current law students. ICLEO has worked well in assisting minorities entering the legal profession. That proven model should now be copied and adapted for the purpose of assisting Indiana’s lawyers from diverse backgrounds in establishing careers in the judiciary. The program’s mission would be to provide training and development of mid-career attorneys (typically a minimum of 10 years of service) for service as trial court judges in Indiana.

The proposed Judicial Readiness Certification Program would be established by the Indiana Supreme Court and administered by a standing committee appointed by the Court. The committee would be supported by the Indiana Office of Court Services and its staff.

The Judicial Readiness Certification Program is envisioned to be an 18–24-month path whereby carefully selected accomplished historically underrepresented lawyers from diverse backgrounds would receive training in the areas of:

- **Judicial Selection**
- **Judicial Demeanor**
- **Judicial Ethics & Cultural Sensitivity**
- **Judicial Decision Making**
- **Judicial Writing**
- **Judicial Operations and Workforce Culture**

In addition, program participants would be encouraged to take on-line and in-person courses of their choice at the National Judicial College. The costs of such elective courses, including meals and travel expenses, would be covered by the program.

There would also be a mentoring component to the program. Each participant would be paired with a volunteer sitting judicial officer who would regularly interact with the participant. Participants would be provided in-court observation opportunities, as well as “behind the scenes” observations and interactions. The goal is that collaboration with Indiana law schools would allow program participants to judge moot court events and trial advocacy courses.

Finally, the participants would be afforded opportunities to serve as pro tempore judges in actual cases, under the direct supervision of their mentor judicial officers. The types of cases that would be amenable to such practical experiences would include pre-trial conferences, status hearings, uncontested divorce hearings, and small claims proceedings (including trials).

Participants graduating from the program would be certified by the Indiana Supreme Court as being “Robe-Ready.” Such certification would reflect that the graduate is qualified for service as an Indiana trial court judicial officer. Moreover, until being selected for a judicial position, the goal is that certified graduates would be afforded opportunities for temporary judicial assignments like those currently performed by senior judges. This would allow certified graduates to gain valuable experience and demonstrate their aptitude and qualification for judicial service by conducting hearings and deciding real-world cases.

Implementing the Judicial Readiness Certification Program would be a major undertaking for the participants and the Indiana judicial system. It would represent a major advancement in how this state addresses diversity and inclusion in our judiciary. The program would be a giant step in bringing about badly needed change for the people of the State of Indiana.

Meaningful change in judicial selection outcomes will not come easily. However, a program that accelerates and demonstrates the “robe-readiness” of qualified candidates has the potential to materially increase the number of historically underrepresented judicial officers beyond what might otherwise be imaginable. A successful program as outlined here would bring the dream of a diverse and inclusive

judiciary in Indiana much closer to reality. This proposal is both ambitious and bold. It is suggested that a pilot program with approximately 6-8 participants be implemented as soon as possible.

The Work Group also proposed that consideration be given to ensure that underrepresented populations are represented on every county judicial nominating commission and the Indiana Judicial Nominating Commission. Giving this consideration to the current judicial selection process in the 4 counties in which judicial candidates are screened by judicial nominating commissions and to the process for the selection of judicial candidates to fill vacancies on the Indiana Supreme Court, Court of Appeals and Tax Court is essential to ensure that the bench in Indiana reflects Indiana's rich and diverse population.

With diversity on the bench, people will see themselves, their experiences, and their backgrounds represented and a sense of trust and understanding between the public and judicial branch will be fostered.

The Pathways to the Bench and Bar Work Group believes the Court should communicate the importance of diversity throughout the legal system, fully fund diversity and inclusion initiatives, and shift the culture through sensitivity training. The Court should build a network of diversity for recruiting and hiring, so that people of color are part of the candidate pool for judicial vacancies and other senior roles. The Court also must have support from the public at large, and the private sector, to support diversity in the justice system and throughout the legal profession. The Court and legal community must continue to be intentional about building a diverse Indiana Bar. A stronger more diverse bar can help lead us to a stronger more inclusive and equitable Indiana.

# Small Claims Work Group Members

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# Work of the Small Claims Work Group

The small claims working group began its investigation by attempting to gather data relating to the operations of small claims courts across the state. It soon became clear that the differing procedures in each county, and even between courts in a given county, make it hard to generalize about litigants' experiences and challenges. Case data is collected in a somewhat ad-hoc manner and much of the information our committee hoped to collect was not available.

Demographic information is not collected on small claims cases. As a result, the working group is unable to conclude whether any particular small claims practice disproportionately impacts any particular demographic group. At the same time, significant research across the country demonstrates that both collection and eviction actions typically disproportionately affect minority and low-income communities. It is reasonable to assume, therefore, that anything that occurs in a small claims court will have a disproportionate impact on these typically disadvantaged populations. Because of this, the working group focused most of its attention on wider due process issues as opposed to attempting whether these practices are impacting any particular demographic group. We gathered what we considered to be "best practices" and highlighting those practices that raised concerns.

The following are recommendations from the Small Claims Work Group:

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## **Data collection should be consistent across counties**

Training and universal standards are needed to improve how data is collected. Additional data is needed to allow both courts and Indiana policy makers to fully understand what is happening in Indiana Courts. Data needs to be collected in a consistent manner if it is to provide useful information for policy makers. The Commission therefore recommends additional training and uniform standards be implemented to make the collection of court data consistent across courts.

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## **Court forms should be standardized, considering local rules**

Court forms should be standardized as much as possible, taking into consideration that courts have different local rules. Standard forms should be maintained in a way that ensures all defendants receive correct information about their rights and responsibilities.

Notice of claims and notices of hearings need to be consistent and standard language developed to ensure that all litigants receive the same, accurate information. "Hearings" that will not be supervised by

the judiciary (i.e., “hallway hearings” and settlement conferences) should be clearly indicated on the Notice of Claim so all parties are aware of the nature of the proceeding to which they have been summoned and their obligations at that proceeding.

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## **Reduce Default Judgments**

More research is necessary to determine whether there is a statistically significant correlation between race and default judgments. A correlation was found in a random sampling of counties between the number of default judgments and the percentage of minorities in a county. This suggests that minorities are either unable or reluctant to participate in the court proceedings. More research is necessary to determine whether better service of process rules, flexible hearings or more accurate notices would provide more access to the courts and prevent default judgments.

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## **Support of Eviction Task Force recommendations**

The Commission supports the recommendations of the Eviction Task Force made to the Court.

The Commission supports the recommendations of Eviction Task Force for the purpose of moving toward increased equity and fairness in court access:

- a. Enhance Pre-eviction Diversion Program**
- b. Implement Best Practices** – Housing court model, and NCSC Eviction Diversion Resources
- c. Improve Court Processes** – Require initial hearing only for eviction cases, reasonable continuance requests, and court navigators should be available state-wide
- d. Establish state-wide standards for eviction case timelines**
- e. Consider Eviction Amnesty procedures and other barriers to future housing**

Small Claims Rule 8 Language should be added to small claims rule 8(A) to remind parties that while informality and speed are important in small claims, due process is the most important. The Commission suggests adding the following language: “While speed and efficiency are desirable, fairness to all parties shall be the primary objective, and parties’ fundamental rights shall not be sacrificed in the interest of informality.”



# Surveys and Data Work Group Members

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## Work of the Surveys and Data Work Group

The Surveys and Data Work Group met regularly but they determined, with the concurrence of Norris Cunningham, Deborah Daniels and Justice David that they would not be submitting a separate Work Group Report or Recommendations. The reason for this is that they provided advice to the other work groups relating to surveys and data collection and their work was therefore incorporated into the work of the other Work Groups. In addition, it was determined by the Commission that there was not enough time during the Commission's specific limited tenure, to conduct any surveys or other data collection that would be accurate enough to assist in formulating the recommendations of the Commission.