



SOUTH DAKOTA LEGAL NEEDS ASSESSMENT REPORT

2022



ACKNOWLEDGMENTS

FUNDER

The statewide legal needs assessment was made possible through a grant from South Dakota’s Commission on Equal Access to Our Courts.

ACCESS TO JUSTICE, DAKOTA PLAINS LEGAL SERVICES, and EAST RIVER LEGAL SERVICES (PARTNERS)

Dakota Plains Legal Services and East River Legal Services are obligated by their primary funder, Legal Service Corporation, to periodically complete a legal needs assessment in their respective jurisdictions. The two organizations partnered with Access to Justice to commission a statewide legal needs assessment. The legal aid organizations provided assistance to the South Dakota Legal Needs Assessment by introducing the contractor to community partners, tribal courts, and state agencies. Many team members also provided information about the communities, the strengths and areas of opportunities of their respective agencies, and the legal needs in their community. Most importantly, they reviewed the findings of the needs assessment and developed recommendations for the agencies to individually and jointly complete.

LEGAL NEEDS ASSESSMENT ADVISORY COUNCIL

The South Dakota Statewide Legal Needs Assessment Advisory Committee provided feedback on the needs assessment design and instrument design and suggested recommendations based on the findings. Members of the Committee included:

Sara Kindvall	East River Legal Services Board Member; South Dakota Network Against Family Violence and Sexual Assault
Marlys Langdeau-Medicine	Dakota Plains Legal Services Board Member; Lower Brule Sioux Tribal Court
Denise Langley	South Dakota Bar Association; Access to Justice, Executive Director
Tom Mortland	Dakota Plains Legal Services, Executive Director
Sister Patrick Murphy	East River Legal Services Board Member; Avera Health
Kathy Rutten	South Dakota Network Against Family Violence and Sexual Assault
Greg Sattizahn	Unified Judicial System
Jeff Shultz	East River Legal Services Board Member; Woods, Fuller, Shultz, and Smith Law Firm
Roslyn Stevenson	Lutheran Social Services
Marilyn Trefz	South Dakota State Bar Board of Bar Commissioners/USD Knudson School of Law/WORKS
Lea Wroblewski	East River Legal Services; Executive Director

LEGAL NEEDS ASSESSMENT CONSULTANT

The needs assessment process and design were facilitated by Sage Project Consultants, LLC of Vermillion, SD. Established in 2010, Sage Project Consultants provides grant management, evaluations, strategic planning facilitation, and tactical plan development to a diverse clientele, including for-profit, nonprofit, and government organizations. For additional information please visit sageprojectconsultants.com.

COMMUNITY PARTNERS

The evaluator traveled to 21 communities to interview and administer surveys to community partners and their clients. The Partners, CEAC, and the Advisory Council extend gratitude to the following community organizations and clients who provided invaluable feedback and suggestions.

ABERDEEN	Brown County Veteran’s Service Officer Brown County State’s Attorney and Victim’s Advocate Private Attorneys; Members of State Bar of South Dakota Safe Harbor Domestic Violence Shelter South Dakota Division of Social Services Child Protection Services Unified Judicial System 5 th Circuit Court/Brown County Court
BROOKINGS	Brookings Domestic Violence Shelter Brookings County Welfare and Veteran’s Services Private Attorneys; Members of State Bar of South Dakota South Dakota Division of Social Services Child Protection Services Unified Judicial System 3 rd Circuit Court/Brookings County Court
CHEYENNE RIVER SIOUX TRIBE	Cheyenne River Domestic Violence Shelter Cheyenne River Sioux Tribe; Indian Child Welfare Act (ICWA) Cheyenne River Sioux Tribe; Tribal Court Medicine Wheel Nursing Home Sacred Heart Domestic Violence Shelter South Dakota Division of Social Services; Child Protection Services
CROW CREEK SIOUX TRIBE	Crow Creek Sioux Tribe; Indian Child Welfare Act (ICWA) Crow Creek Sioux Tribe; Tribal Court Wiconi Wawokiya (Domestic Violence Shelter)
FLANDREAU SANTEE SIOUX TRIBE	Flandreau Santee Sioux Tribe; Indian Child Welfare Act (ICWA) Flandreau Santee Sioux Tribe; Tribal Court Moody County Veteran’s Service County Wholeness Center Domestic Violence Shelter
HURON	Beadle County States Attorney; Victim’s Advocate Beadle County Human Services Jan Manolis Family Safe Center
LOWER BRULE SIOUX TRIBE	Lower Brule Sioux Tribe; Administration Lower Brule Sioux Tribe; Tribal Court
MARTIN	Bennett County State’s Attorney Unified Judicial System 6 th Circuit Court/Bennett County Court
MITCHELL	Unified Judicial System 1 st Circuit Court/Davison County Court Davison County Veteran Service Office

	Mitchell Area Safe House and Family Visitation Private Attorneys; Members of State Bar of South Dakota
OGDALA SIOUX TRIBE	Anpetu Luta Otipi (Substance Abuse Program) Oglala Sioux Tribe Housing Authority Oglala Sioux Tribe Veteran's Office Oglala Sioux Tribe; Tribal Court
PIERRE	Missouri Shores Domestic Violence Shelter Private Attorneys; Members of State Bar of South Dakota South Dakota Division of Human Services; Long-Term Care Ombudsman Program Unified Judicial System Unified Judicial System 6 th Circuit Court/Hughes County Court
RAPID CITY	Children's Home Society Hope Center One Heart Lutheran Social Services Pennington County Human Services Private Attorneys; Members of State Bar of South Dakota South Dakota Division of Social Services; Child Protection Services Unified Judicial System 7 th Circuit Court/Pennington County Court Working Against Violence, Inc.
ROSEBUD SIOUX TRIBE	Rosebud Sioux Tribe; Tribal Court South Dakota Division of Social Services; Child Protection Services
SIOUX FALLS	Bishop Dudley Hospitality House Call to Freedom Minnehaha County Human Services Private Attorneys; Members of State Bar of South Dakota South Dakota Network Against Family Violence and Sexual Assault South Dakota Voices for Peace Union Gospel Mission
SISSETON WAHPETON OYATE SIOUX TRIBE/ ROBERTS COUNTY	Unified Judicial System 5 th Circuit Court/Roberts County Court Roberts County; Veterans Service Office Sisseton Wahpeton Sioux Tribe; Tribal Court Sisseton Wahpeton Sioux Tribe; Veteran's Office Sisseton Wahpeton Sioux Tribe; Youth Center
STANDING ROCK SIOUX TRIBE	Standing Rock Sioux Tribe; Indian Child Welfare Act (ICWA) Standing Rock Sioux Tribe; Tribal Aging and Advocacy Standing Rock Sioux Tribe Veteran's Office
STURGIS	Crisis Intervention Shelter Services Fort Meade Veterans Administration Hospital Unified Judicial System 4 th Circuit Court/Meade County Court
VERMILLION	Clay County State's Attorney's Office Clay County United Way

Clay County Veterans Service and Welfare Office
University of South Dakota; Law School
Vermillion Domestic Violence Shelter Services
Vermillion Housing Authority

WATERTOWN	Beacon Center (Domestic Violence Shelter) Codington County Interagency Council (Focus Group) Codington County Welfare Office Private Attorneys; Members of State Bar of South Dakota South Dakota Division of Social Services; Child Protection Services
WINNER	South Dakota Division of Social Services Child Protection Services Tripp State’s Attorney/Private Attorneys; Members of State Bar of South Dakota Unified Judicial System 6 th Circuit Court/Tripp County Court Winner Resource Center for Families
YANKTON SIOUX TRIBE	Unified Judicial System 5 th Circuit Court/Charles Mix County Court Yankton Sioux Tribe; Indian Child Welfare Act (ICWA) Yankton Sioux Tribe; Tribal Court

PHOTO CREDIT

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Copies of this report are available from:

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ACRONYMS

A2J	Access to Justice
A&N	Abuse and Neglect
CEAC	Commission on Equal Access to Our Courts
DPLS	Dakota Plains Legal Services
ERLS	East River Legal Services
NA	Native American
PAI	Private Attorney Involvement
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
UJS	Unified Judicial System

EXECUTIVE SUMMARY

The South Dakota Statewide Legal Needs Assessment was commissioned in 2022 to determine what legal issues vulnerable citizens in South Dakota are experiencing. In turn, the information from the needs assessment informed the priority cases of Access to Justice (A2J), Dakota Plains Legal Services (DPLS), and East River Legal Services (ERLS). Several stakeholders adjacent to legal aid services may leverage the findings and recommendations for their own organizations. For the purposes of this report, *legal aid* refers to the services provided by Access to Justice, Dakota Plains Legal Services, and East River Legal Services.

Between 2018 – 2021, 11,638 legal cases were managed by A2J, DPLS, and ERLS. Based on a state population of 886,847 (2020 U.S. Census), legal aid served between 3 - 4 per 1,000 people in South Dakota between 2018 - 2021. Child custody/visitation (1,970 cases) and divorce (1,489 cases) were the highest cases.

For purposes of the study, four populations were oversampled: Native Americans, individuals aged 60 and above, victims of domestic violence, and military veterans. Although 31% of survey respondents reported they had a physical or mental disability, the community agencies supporting individuals with disabilities declined to participate in the assessment.

Interviews and surveys from Native American individuals and agencies reported cases involving children were their highest priority. Tribal court personnel, in particular, advocated for more legal support in child custody, guardianship, abuse and neglect, and visitation cases. Other civil cases requiring legal aid were probate, involuntary commitment, social service benefit navigation, and bankruptcy or loan modification. Although some tribal courts have a public defender, some depend on DPLS to provide criminal defense services.

Individuals aged 60 or older and those that serve this population reported elder abuse as the top concern. Individuals reported they were hesitant to leave their abusive situation as they believed they had nowhere else to go. Legal aid is also needed in nursing home cases where the resident cannot afford legal representation. Access to housing, landlord/tenant, and wills were other identified case priorities.

Twelve domestic violence shelters participated in the assessment and distributed surveys to their clients. Due to the critical timeline of protection and restraining orders, many shelters assisted their clients in filling out the pro se form as securing a private attorney or legal aid may not be feasible. Most domestic violence shelters referred their clients to legal aid to address issues such as domestic violence, divorce, child custody, and child support.

Veterans are served by county and tribal Veterans Service Offices which help them navigate veterans' benefits. However, veterans and Veterans Service Officers reported they required legal assistance when benefits are denied, drafting wills and powers of attorney, and securing stable housing.

Overall, there is a disproportionate need for legal aid versus the number of resources that A2J, DPLS, and ERLS can provide as well as other agencies that provide legal aid including but not limited to Disability Rights South Dakota, Lutheran Social Services, South Dakota Network Against Family Violence and Sexual Assault, South Dakota Voices for Peace, USD Law School WORKS Program, and attorneys embedded in other social service and non-profit organizations.

RECOMMENDATIONS

A2J, DPLS, and ERLS developed recommendations based on the needs assessment. The joint recommendations were developed by the three legal aid organizations.

JOINT RECOMMENDATIONS. The following recommendations were proposed for the legal aid organizations to work together on jointly.

- Clarify the application process, eligibility, and expectations on the website. Reassess the intake process after this intervention.
- Create a referral sheet to be distributed to all South Dakota courthouses for the clerks' reference at the window. The referral sheet should list the type of cases each legal aid organization accepts as well as eligibility guidelines.
- Consider maintaining a future Advisory Council composed of A2J, DPLS, ERLS, courts, and community agencies that can continuously improve the legal aid processes and services in South Dakota.
- The three legal services programs will coordinate private attorney involvement/recruitment efforts at the annual State Bar Convention to increase private attorney recruitment for pro bono, reduced rate and Private Attorney Involvement (PAI) case opportunities through South Dakota legal services programs.
- Further define DPLS and ERLS case coordination, especially in northeastern South Dakota.
- Consider a revision to professional rules regarding the limited scope of work for pro bono cases and/or finding incentives for providing services for pro bono cases.
- Advocate for continued general fund appropriation to the Commission on Equal Access to our Courts which would be passed to the Legal Services entities.
- Explore ways to communicate with social service agencies to refer individuals to legal aid services for social service benefits and appeals.
- Educate / promote careers in legal professions that do not require a law license (i.e., tribal court, benefits appeal, victim advocates).
- Partner with the USD Law School WORKS program for law students to provide legal services to individuals under the supervision of an attorney and/or faculty.

ACCESS TO JUSTICE RECOMMENDATIONS. The A2J recommendations were developed by the A2J coordinator and committee after reviewing the findings on February 28, 2023.

- Host pro se clinics in specific areas with volunteer attorneys.
- Consider adopting an attorney workforce survey administered concurrently with the annual registration with the State Bar Association. Questions could also include an interest level in volunteering, ability to practice law in tribal courts, practice areas, and areas of interest.
- Market A2J to attorneys and teach them how to sign up for the program and how the program works.
- Market A2J to prospective clients through agencies that serve them (e.g., court houses, nonprofit organizations).
- Consider additional staffing to support the A2J program.

DAKOTA PLAINS LEGAL SERVICES RECOMMENDATIONS. The DPLS recommendations were developed by DPLS management and managing attorneys after reviewing the findings on March 10, 2023.

- Create a brief instruction pdf or video posted on the DPLS website for new employees of referral community partners and courthouses so they know whom to refer to DPLS and how to do so.
- Attend community partners' meetings to market DPLS questions and address questions. Develop a way to transition to maintain community relationships.
- Consider holding divorce pro se clinics.
- DPLS is improving its intake process at the time this report was issued. Create a process to manage expectations.
- Partner with the WORKS clinic when they hold clinics in DPLS jurisdictions. Refer clients to WORKS clinics.
- Develop a process with domestic violence shelters to process protection orders quickly. Partner with DV shelters.
- Market program as outlined in the DPLS strategic plan.
- Consider training DPLS paralegals as guardian ad litem. Work with tribal courts to appoint guardian ad litem. File motions for guardian ad litem.
- Improve communication with clients via text messages and phone messages.

EAST RIVER LEGAL SERVICES RECOMMENDATIONS. The evaluator met with the ERLS staff and board members on February 6, 2023, to review the findings. Based on the findings, ERLS had implemented or planned to implement the following recommendations:

- ERLS created a Benefit Specialist position to assist clients in navigating social service or benefits systems such as public benefits, medical programs, and disability benefits.
- ERLS also created a Housing Specialist to assist clients in understanding their rights and assist clients with landlord/tenant issues, eviction, and foreclosure.
- ERLS is improving its intake process at the time this report was issued. Create a process to manage expectations.
- Create a brief instruction pdf or video posted on the ERLS website for new employees of referral community partners and courthouses so they know whom to refer to ERLS and how to do so.
- Attend community partners' meetings to market ERLS questions and address questions. Develop a way to transition to maintain community relationships.
- Create marketing messages that are transparent about what eligibility and type of cases are accepted and how the intake process works.
- Partner with the WORKS clinic when they hold clinics in ERLS jurisdictions. Refer clients to WORKS clinics.
- Consider assisting clients with pro se forms.
- Consider a standing clinic for individuals who speak a specific language.
- Develop a process with domestic violence shelters to process protection orders quickly.

NEEDS ASSESSMENT BACKGROUND

Background | Access to Justice

Access to Justice, Inc. (A2J) came about as the result of ten years of state planning for legal services in South Dakota. The State Bar realized attorneys are ethically obligated to do what they could to provide legal assistance to indigent citizens who lacked the financial resources to hire attorneys. Today, A2J is a statewide program based in Pierre, and its primary function is to administer the State Bar of South Dakota pro bono and reduced-rate programs. The A2J program does not have staff attorneys and relies 100% on licensed South Dakota attorneys who volunteer for A2J pro bono and reduced-rate cases each year.

Background | Dakota Plains Legal Services

Dakota Plains Legal Services (DPLS) was originally incorporated as South Dakota Legal Services in 1970 as a nonprofit legal aid organization in South Dakota. The program was originally funded to provide legal services exclusively to Native Americans. In 2003, DPLS merged with Black Hills Legal Services in Rapid City and expanded its mission to include all low-income and elderly clients in western South Dakota, as well as continuing its mission to serve the Native American population. Legal services are provided from seven offices in South Dakota located in Eagle Butte, Fort Thompson, Mission, Pine Ridge, Sioux Falls, Sisseton, and Rapid City. DPLS also has one office in Fort Yates, North Dakota, which serves the Standing Rock Reservation located in both North and South Dakota. DPLS' 12 attorneys and 10 full and part-time paralegals focus their representation in state and tribal courts on the critical legal needs of their clients, particularly in family law, housing, and Indian Law. Funding for DPLS comes primarily from the Legal Services Corporation (LSC), with additional funding from the Older Americans Act, United Way of the Black Hills, U.S. Department of Justice, and Pennington County for appointed criminal representation.

Background | East River Legal Services

Established in 1970, East River Legal Services (ERLS) is a non-profit community law firm committed to providing high-quality civil legal assistance to low-income people. Their mission is advancing equal access to justice for the most vulnerable citizens of eastern South Dakota. ERLS strives to make the legal system accessible through innovative counseling and advocacy. To reach that mission, they are continually exploring new avenues and new approaches to better serve South Dakota citizens living in poverty. ERLS assists those who have been pushed to the margins of self-sufficiency by utilizing a systemic delivery approach consisting of direct representation, limited services, advice, and advocacy. They also provide user-friendly explanations of the law, conduct outreach, and community education and work with other entities that serve low-income people, including social service providers, members of the private bar, and the courts. Located in Sioux Falls, ERLS has a staff of 23, with 8 attorneys. The program's service encompasses 33 eastern South Dakota counties.

Evaluation Team

The lead evaluator was Sharon Chontos, Sage Project Consultants. Ms. Chontos has a B.S. in Chemical Engineering from South Dakota School of Mines and Technology and completed her M.A. in Program Evaluation from Michigan State University. She maintains an active membership with the American Evaluation Association. She has over 15 years of evaluation, grant management, and consulting experience. Ms. Chontos has been the lead external evaluator on 62 program evaluations and needs assessments. The graphic artist was LaCosta Jackson. Ms. Jackson designed this report and all supporting documentation related to the study.

Evaluation Funders and Stakeholders

The South Dakota Legislature made a one-time appropriation to the Commission on Equal Access to Our Courts (CEAC) in 2021 to conduct a state-wide legal needs assessment. Once the CEAC received the appropriation, they awarded a grant to A2J, DPLS, and ERLS to fund a legal needs assessment. The three partners collaborated to develop a Request for Proposal (RFP) for a contractor to conduct the assessment. DPLS has been the fiscal agent. Denise Langley, A2J, has been the primary point of contact for the evaluator.

Intended Beneficiaries and Intended Use

Table 1 describes the evaluation beneficiaries and how they use the results.

Table 1: Intended Beneficiaries

Access to Justice (A2J) Dakota Plains Legal Services (DPLS) East River Legal Services (ERLS)	A2J, DPLS, and ERLS will use the needs assessment to determine priority cases, improve operations, and mitigate barriers to legal aid.
Legal Service Corporation (LSC)	LSC requires its grantees, including DPLS and ERLS, to conduct a legal needs assessment periodically to determine priority cases and respond to its jurisdiction’s needs.
Commission on Equal Access to Our Courts (CEAC)	CEAC will use the findings and recommendations to assist A2J, DPLS, and ERLS to deliver legal aid. They will consider the policy and workforce recommendations for implementation.
South Dakota State Legislature	The legislature will use the recommendations from the report to consider appropriations to fund legal aid for low-income, senior citizens, individuals with a disability, veterans, victims of violence, and Native Americans.
State Bar of South Dakota	The Bar will use findings and recommendations to influence innovative workforce initiatives, policies to remove barriers to legal aid, and private attorney involvement.
University of South Dakota (USD) Knudson School of Law	The USD School of Law will use the report to inform the WORKS program and workforce recommendations.
Unified Judicial System (UJS) Tribal Courts	UJS and Tribal Courts will use the report to consider pro se recommendations.
State Agencies (e.g., South Dakota Division of Social Services; Division of Human Services) Tribal Agencies (e.g., Indian Child Welfare Act Office)	State and tribal agencies such as CPS, ICWA, the Long-Term Care Ombudsman Program, and other agencies intersect with legal aid in that they provide services to the same target audiences. The needs assessment findings regarding the intersection between their services and legal aid may influence collaboration.
Community Partners	Community partners may find the recommendations align with their missions and strategic plans and find opportunities to partner with legal aid organizations to provide legal representation to their clients.

Institutional Research Board and Research Permit

University of South Dakota | IRB-22-108. The project was submitted to the Office of Human Subjects Protection at the University of South Dakota (USD) to determine if the project was considered human subjects research. After review, they rendered the decision that the scope of the project was not human subjects research and Institutional Research Board (IRB) review was not required. Research is defined in the relevant federal regulations (46 CFR 45.102(I)) as certain activities “designed to develop or contribute to generalizable knowledge.” Because the legal needs assessment is intended to guide the internal improvement of the legal services of A2J, DPLS, and ERLS and not to contribute to the wider fields’ knowledge base, it does not meet this definition.

Sisseton Wahpeton Oyate Research Permit | SWO-2022-1004. The project was also submitted to the Sisseton Wahpeton Oyate Tribal Research Office. The research permit was approved on September 1, 2022.

Cultural Responsiveness

A2J, DPLS, and ERLS instructed the evaluator to focus on low-income, senior citizens, individuals with a disability, veterans, victims of domestic violence, and Native American citizens in the needs assessment design. The evaluator, therefore, oversampled these populations by reaching out and interviewing professionals and clients of homeless shelters, domestic violence shelters, and veterans’ offices. The evaluator visited all nine tribal communities in South Dakota in person. The tribal communities each have unique cultural strengths that lift up their members as well as the area of opportunities where legal aid may be able to fill in the gaps. The evaluator met people where they worked and gathered and made every effort to encourage them to tell their stories in their own words.

NEEDS ASSESSMENT METHODS

A2J, DPLS, and ERLS outlined the needs assessment requirements in the RFP. The evaluator used the outline as a framework and created methods and instruments. The evaluator researched legal needs assessments from other states to create the survey and interview instruments. The evaluator met with the partners and the Advisory Council to further edit the instruments. The Partners and Advisory Council helped the evaluator open doors in the communities to gain access to community participation. The need assessment methods are explained below:

Method | Demographic Data

Demographic data was organized by county. The following data was summarized and compared to legal aid cases:

Population (number)	Individuals with Disability (%)	Housing Units (number)
Age 65 and Older (%)	Veterans (number)	Poverty Level (%)
Age 18 and Younger (%)	Median Household Income (\$)	

Method | Legal Aid Case Analysis

A2J, DPLS, and ERLS downloaded all cases between 2018 – 2021. The evaluator cross-tabulated the data by open/closed and rejected cases, case type, and county. Within the county analysis, the data was further cross-tabulated by year, reasons for closing, race, gender, funding source, total household size, number of adults helped, number of children helped, marital status, housing status, and intake type. The legal aid case and demographic data were summarized in county infographics for dissemination and tabular format to be included in this report.

Method | Pro Se Case Analysis

Unified Judicial System (UJS) provided the number of pro se court cases (2018 – 2021) in South Dakota. The data was supplemented with qualitative feedback from the interviews, particularly from UJS court employees, and surveys.

Method | Community Interviews

The evaluator traveled to 21 communities across the state to conduct interviews. Interviews were conducted with the following groups of constituents to better understand the legal needs in their community:

- Tribal and UJS court judges, court clerks, administrators, and other relevant court staff/officials
- Child Protection Services (CPS) and Indian Child Welfare Act (ICWA) representatives
- County Human Services Department representatives
- Domestic violence shelters
- County and Tribal veterans' offices
- Non-profits serving target audiences

Method | Surveys

Prospective Clients. The survey questions were informed by legal aid needs assessment survey instruments from Minnesota, Iowa, Colorado, and Illinois. The survey primarily asked about their legal needs and barriers to legal representation. Surveys were distributed directly to prospective clients by the evaluator and through community partners. The surveys were accompanied with a self-addressed stamped envelope. Participants who completed the survey received a \$5 gift card to a local grocery store.

Community Partners. The evaluator requested those participants who were interviewed to also complete a survey that asked what legal cases should be prioritized by legal aid, barriers to legal aid, and suggestions to mitigate those barriers.

UJS Court Clerks. Based on the encouragement of court administrators and court clerks interviewed, the evaluator emailed the professional survey to the UJS court clerks and administrators.

Data Analysis

The qualitative data (interviews) was coded for key themes. For quantitative analysis, the team screened variables for missing values, outliers, and inconsistent or abnormal values and made necessary transformations. A descriptive analysis was completed. Inferential analysis was not in the scope of this project.

Limitations

Twenty-one state and tribal communities ranging in populations from 700 to 200,000 were visited in person to conduct community interviews, prospective client surveys, and community partner surveys. The community interviews and distribution of surveys were limited to those who agreed to be interviewed. For the most part, Tribal and UJS court judges, court administrators and court clerks, CPS and ICWA staff, homeless shelters, domestic violence shelters, welfare offices, and veteran's offices and hospitals agreed to be interviewed and distribute surveys to their clients. Although 31% of survey respondents reported they had a physical or mental disability, the community agencies supporting individuals with disabilities declined to participate in the assessment.

There were two paths to attaining prospective client surveys. The first was to meet with individuals in a focus group or community intercept (e.g., at a grocery store, or community partner agency) setting. With the exception of one community (Fort Thompson/Crow Creek), individuals were hesitant to meet with the evaluator in person to discuss sensitive issues of their personal life. The second path was providing instructions to community partner case workers and requesting them to administer the survey to their clients. The second method proved to be more successful. However, it was evident that some survey respondents checked off more categories than they likely personally experienced. For example, some survey respondents checked off more than ten case types. The evaluator captured all of their responses in the surveys as it was still indicative of issues the respondents are experiencing.

RESULTS

The results are summarized in the next nine pages. The report is accompanied by appendices, community interview infographics, and county infographics with demographics and legal aid data.

Demographic and Legal Aid per Capita by County

Between 2018 – 2021, 11,638 legal cases were managed by A2J, DPLS, and ERLS. Each agency downloaded all of its cases between 2018 – 2021. The legal aid case and demographic data were summarized in county infographics for dissemination and tabular format to be included in this report. Based on a state population of 886,847 (2020 U.S. Census), the three legal aid agencies completed 3.3 cases per 1,000 people.

Between 2018 - 2021, legal aid served between 3 - 4 per 1,000 people in South Dakota. The legal aid cases decreased in 2020 and 2021 due to the COVID-19 pandemic.

Table 1 illustrates the counties that received the highest and lowest amount of legal aid support from 2018 – 2021.

Figure 1

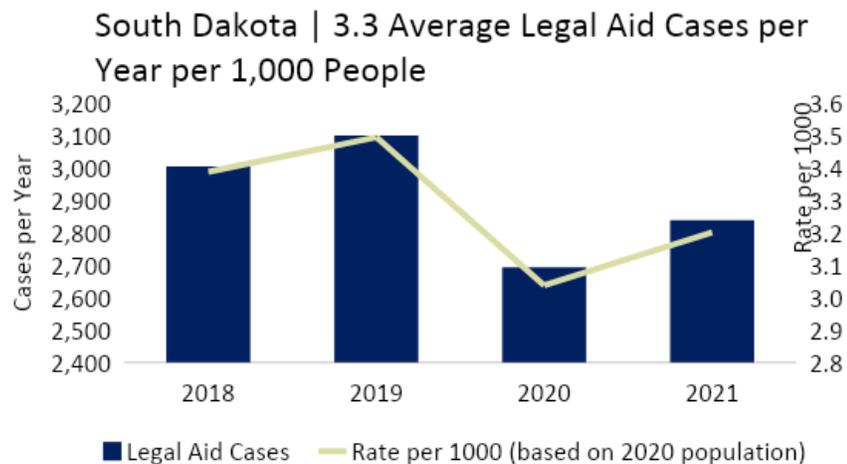


Table 1

Highest 10 Counties		Lowest 10 Counties	
Average Legal Aid Case Rate per 1,000 (2018 – 2021)		Average Legal Aid Case Rate per 1,000 (2018 – 2021)	
Dewey County	21.2	Deuel County	0.1
Todd County	13.5	Hand County	0.3
Charles Mix County	12.9	Sully County	0.3
Buffalo County	10.7	Hyde County	0.4
Walworth County	10.4	Perkins County	0.4
Oglala Lakota County	9.6	Jones County	0.5
Pennington County	6.5	Clay County	0.6
Roberts County	6.4	Hanson County	0.6
Ziebach County	6.1	Potter County	0.6
Mellette County	5.9	Hutchinson County	0.7

Eight of the ten counties with the highest average legal aid case rate per capita correspond with the Tribal sovereign nations of Cheyenne River Sioux Tribe (Dewey and Ziebach Counties), Rosebud Sioux Tribe

(Todd and Mellette Counties), Yankton Sioux Tribe (Charles Mix County), Crow Creek Sioux Tribe (Buffalo County), Oglala Lakota Sioux Tribe (Oglala Lakota County), Sisseton Wahpeton Oyate Sioux Tribe (Roberts County). These areas either have a physical DPLS office or an assigned attorney and paralegal.

Seven of the ten counties with the highest average legal aid case per capita correspond with those counties with the highest poverty rate. Three of the ten counties with the highest poverty rate had the following legal aid case rate per capita: Bennett County – 2.3, Corson County – 4.9, and Jackson County – 3.6.

None of the ten counties with the highest percentage of individuals aged 65 and older were in the highest average legal aid case rate per capita (Custer, Campbell, Fall River, McPherson, Potter, Jerauld, Perkins, Day, Hand, Haakon, and Sully).

Refer to Appendix A for South Dakota demographic data and Appendix B for the 2018 – 2021 Legal Server data analysis for A2J, DPLS, and ERLS cases. Infographics for the state and 66 counties are available that outline demographic data, legal aid cases, and legal aid cases per capita.

Legal Aid Case Analysis

The 14,494 A2J, DPLS, and ERLS open, closed, and rejected cases from 2018 – 2021 were analyzed within the scope of this study. Overall, family law cases were both the highest case category accepted and rejected by the legal aid organizations. In other words, those individuals reaching out to legal aid are primarily doing so due to family law cases. Family law cases included custody/visitation, divorce, domestic abuse, guardianship (child and adult), name change, adoption, and parental rights. DPLS also accepted criminal cases from the Tribal Courts and held contracts with the Pennington County public defender’s office which accounted for 16% of the cases.

Figure 2



During the intake process, the legal aid clients self-identify if they had a disability, their age, a victim of domestic violence, and veteran status. Some clients identified in more than one category. For example, several senior citizens (age 60+) also indicated they had a disability. Legal aid clients also identify their gender. A majority (65%) of the clients identified as female. There were also 20 clients that were identified as a group, meaning there was more than one party involved in the case. DPLS and ERLS both hold the Older Americans Act grant, which provides funding for legal services to individuals 60 years and older. It should be noted that the average year of death is age 79 for White South Dakotans and age 60 for Native Americans as reported by the South Dakota Department of Health, Office of Health Statistics.

Figure 3 shows the number of senior citizens, individuals with a disability, veterans, and domestic violence victims served by legal aid organizations between 2018 – 2021. Figure 4 shows the number of females, males, and groups served during the same period.

Figure 3

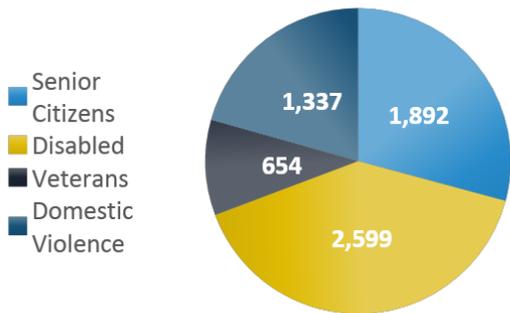
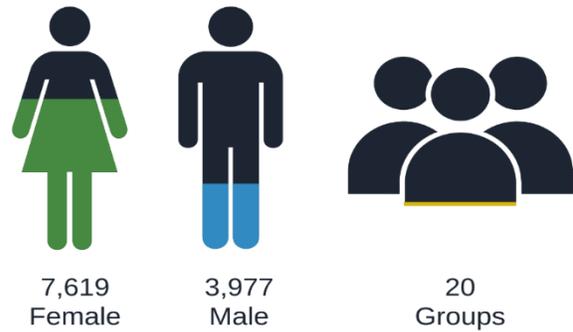


Figure 4



A majority of clients identified as White (not Hispanic) (43%) and Native American (41%). Due to the LSC contract held by DPLS to serve Native Americans (NA), the NA population is disproportionately served by legal aid as shown in Figure 5 and Table 2. Clients who self-identified as Hispanic and Black were also disproportionately served by legal aid.

Figure 5

Most legal aid clients were White and Native American

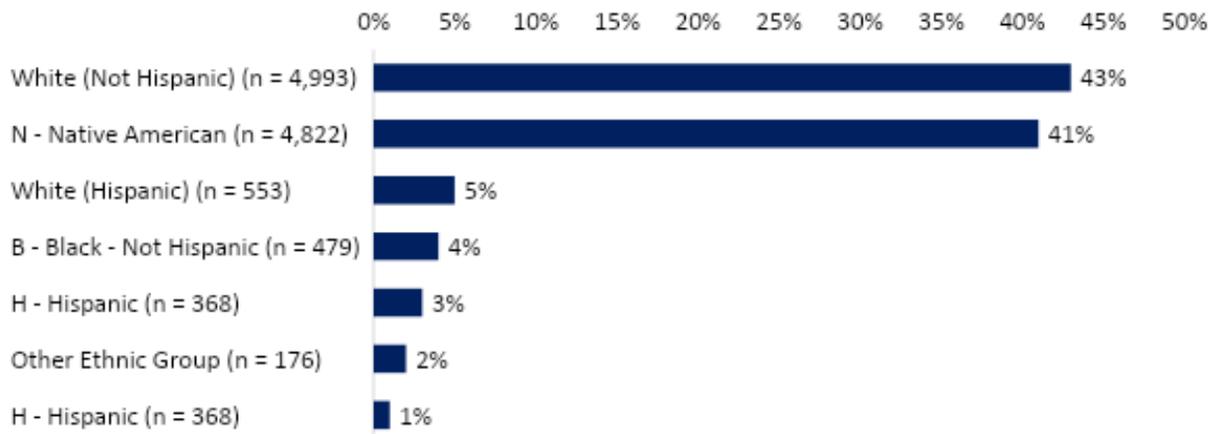


Table 2

	South Dakota Population Race and Ethnicity (%)	Race and Ethnicity (%) of Clients Served by Legal Aid
White (Not Hispanic)	84.2%	42.9%
Native American	9.0%	41.9%
Hispanic	4.6%	8.0%
Black (Not Hispanic)	2.5%	4.1%
Other	2.0%	1.5%
Asian	1.7%	0.7%

Rejected Cases. One out of every five cases is rejected. Between the three agencies, 2,856 cases were rejected between 2018 – 2021. Nearly half of the rejected cases were custody/visitation (n = 804) and divorce (n = 495). The community interviews and client surveys indicated the perception of why their cases did not receive legal aid was a) due to a conflict of interest between the office and the parties to the case, or b) due to a lack of attorneys to accept the number of applications submitted. DPLS and ERLS confirmed conflict of interest and lack of attorneys were the primary barriers to accepting cases.

Pro Se Process

Pro Se is when an individual acts on their own behalf during a legal action, rather than through an attorney. Both Tribal and UJS Court Systems offer pro se forms for several legal case types. Both the Tribal and UJS Court Systems court schedules are booked out, some for months. In focus groups with local private attorneys, they observed that family law cases with children may take a long time to complete, and their high caseload prevents them from taking on new cases. As a result, approximately 80% of pro se cases in some regions are family law including divorce, guardianship, visitation, and protection orders.

According to the court clerks, the parties have a difficult time understanding the details. The court staff cannot provide legal advice when helping people fill out the pro se forms, leaving individuals on their own as most cannot afford an attorney.

Note: Mental illness in Figure 7 is involuntary commitments that began with a pro se process.

Source: South Dakota Unified Judicial System

Figure 6

The number of pro se cases South Dakota UJS processes was an average of 9,941 per year between 2018 - 2021.

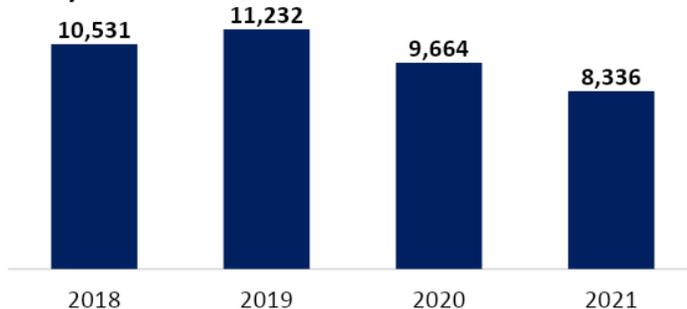
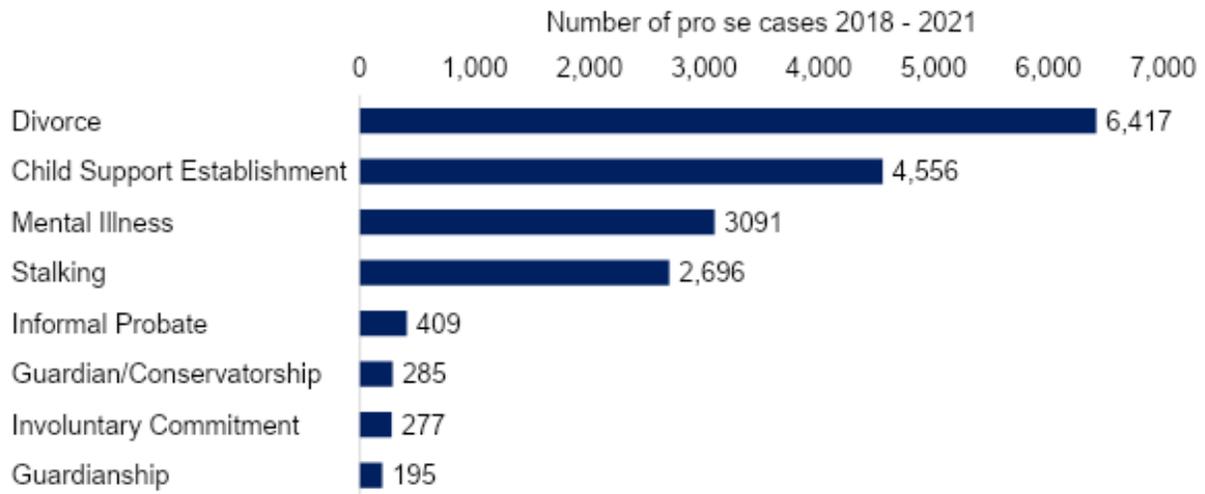


Figure 7

Divorce was the highest pro se legal case between 2018 - 2021.



Prospective Client, Community Partner, and UJS Clerk Surveys

Three target audiences were surveyed for the needs assessment.

Prospective Clients. The survey questions were informed by legal aid needs assessment survey instruments from Minnesota, Iowa, Colorado, and Illinois. The survey primarily asked about their legal needs and barriers to legal representation. Surveys were distributed directly to prospective clients by the evaluator and through community partners. The surveys were accompanied with a self-addressed stamped envelope. Participants who completed the survey received a \$5 gift card to a local grocery store.

Community Partners. The evaluator requested those participants who were interviewed to also complete a survey that asked what legal cases should be prioritized by legal aid, barriers to legal aid, and suggestions to mitigate those barriers.

UJS Court Clerks. During the course of the legal needs assessment, the evaluator interviewed several court administrators, clerks of courts, and court clerks while completing community interviews. The court staff provided invaluable feedback based on their observations. The evaluator requested permission from Greg Sattizahn, UJS, to send a survey to the clerk of courts to inform what priority cases A2J, DPLS, and ERLS will focus on.

Table 3 summarizes the results of the surveys. The prospective clients' highest priority included navigating social service systems. The community partners observed the need for family law, housing, and Native American/Tribal Law.

Table 3

Prospective Clients (n = 174)	Community Partners (n = 104)
<ul style="list-style-type: none">▪ Tribal Court Cases (111)▪ Food Stamps/TANF (81)▪ Medicaid (75)▪ Access to Housing (64)▪ Child Custody (51) (Note)▪ SSI/SSDI (43)▪ Domestic Abuse (43)▪ Mental Health (41)▪ Guardianship (38)▪ Landlord/Tenant (33)▪ Disability Rights (Individual Rights) (31)	<ul style="list-style-type: none">▪ Child Custody (144) (Note 2)▪ Divorce (58)▪ Guardianship (Children and Adults) (54)▪ Landlord/Tenant (45)▪ Domestic Abuse (43)▪ Visitation (41)▪ Protection Orders (40)▪ Access to Housing (29)▪ Child Support (32)▪ Abuse and Neglect (29)▪ SSI/SSDI (28)

Note: Child Custody was listed on the Prospective Clients Survey as Getting/Keeping Custody with 28 responses and Child Custody Modifications with 22 responses. In the Community Partner Survey, Getting/Keeping Custody had 74 responses and Child Custody Modifications had 70 responses.

The UJS Court Clerks prioritized the following cases: divorce, mental health, abuse and neglect, probate, immigration, and child custody cases.

Refer to Appendix C for the Prospective Client Survey report, Appendix D for the Community Partner Survey report, and Appendix E for the UJS Court Clerk Survey report.

Community Interviews

The evaluator traveled to 21 communities across the state to conduct interviews. Interviews were conducted with the following groups of constituents to better understand the legal needs in their community:

- Tribal and UJS court judges, court clerks, administrators, and other relevant court staff/officials
- Child Protection Services (CPS) and Indian Child Welfare Act (ICWA) representatives
- County Human Services Department representatives
- Domestic violence shelters
- County and Tribal veteran’s offices
- Non-profits serving target audiences (veterans, low-income, disability)

Refer to Appendix F for Community Interview summaries for individual towns, regions, and tribal sovereign nations.

The overwhelming majority of the community interviews with non-profits, municipalities, state agencies, and Tribal and UJS courts said the **highest priority cases are those that involve children.**

The second overall theme was the **critical shortage of legal aid attorneys in South Dakota.** When clients do not have attorneys, they represent themselves through the pro se process or do nothing. As a result, individuals in the civil court may make decisions or mistakes that have devastating impact on the welfare of their children, their families, and themselves.

“The experience of going to court is overwhelming and intimidating. They need to be prepared to address questions. They are embarrassed as everything is read out loud to the court. They do not ask questions and just go along with whatever the court says.”

“People are willing to make the most important decision in their lives without understanding the consequences.”

“People have the right to access justice but are not getting the help they need.”

The evaluator separated feedback and observations from the community interviews regarding the attorney workforce in South Dakota. Refer to Appendix G – Attorney Workforce findings.

The cases below were suggested as priority cases for legal aid or private attorney pro bono cases. Family law cases are listed first followed by the remaining prioritized case types.

Child Custody. Child custody cases are difficult when one or both parents do not have an attorney. Cases where both parents have an attorney go much smoother; parents are willing to listen to attorneys and make a reasonable plan.

“Typically, one parent has an attorney, and the other does not, which tips the scale.”

Domestic Abuse. Domestic violence victims are particularly vulnerable. Usually, the non-abusive parties are financially dependent on their abuser. The abusers will try to withhold and control the children at all costs. Sometimes a victim will initially choose the abuser over the children because they are fearful of losing everything. When the victim finally makes the decision to leave their abuser and cannot afford an attorney, one of two scenarios play out: a) the non-abuser spouse leaves the marriage without any assets and possibly, non-custodial rights of the children; or b) the non-abuser spouse gives up, as they do not want to lose custody of the children and cannot afford to live on their own; therefore, they stay in the abusive relationship.

“The legal process is overwhelming even with an attorney. They are anxious and scared.”

Human Trafficking. Human trafficking was also reported as a priority for law enforcement and prosecutors but was understood that this was not a legal aid priority. However, sex and labor trafficking victims and survivors require several legal services that do fall within the legal aid scope of work. Examples include criminal expungement, identification documents, and child custody.

“Boys and girls are being trafficked by their parents, boyfriends, and other people they know. They manipulate the victims with drugs. If the victims can get away, they need to get into treatment.”

“They are too afraid to report to law enforcement due to shame, addiction, and fear of being killed.”

Guardianship (Children). Both Tribal and UJS court representatives prioritized guardianship of children as a high priority. CPS screens approximately 16,000 reported abuse and neglect cases across the state each year. If needed, CPS will first try to place the children in kinship (grandparents, aunts, uncles, etc.) care. If the children do not go into the system, attaining legal guardianship is important to be able to access medical services, school services, and any other resource that requires proof of guardianship. Sometimes, children are placed with a neighbor or friend. If the kids do not go into the system, the kin does not receive services including legal services. Sometimes, the third party (kin, friend, neighbor) can afford to get an

attorney to file for guardianship of the child. Rarely do parents or kin have the funds to hire an attorney. Many people wait months to years for legal help. These cases are incredibly difficult for the child. In addition, there is no social worker to guide them.

“If a family member (grandparents, siblings, aunts/uncles) needs to secure guardianship as they are taking care of their family member’s children, they are expected to pay for their own attorney. This puts the family member in a difficult situation as they need to admit/report that the parent (their daughter/son, sister/brother) has abused the child.”

Guardianship (Adults). The agencies that serve senior citizens suggested guardianship and elder abuse as a priority for legal aid cases. Elder abuse, particularly financial abuse, was observed when the American Recovery and Protection Act (ARPA) funds were released.

“The family should not always be the guardian. Guardians are needed that will have the best interest of the senior citizen and not offend the family.”

“We observe many instances of elder abuse (financial and physical). They need a voice at the end of their life. Elders are taken out of the nursing home and found wandering the streets afterward.”

Nursing Home Discharge. The top legal aid priority identified by the Department of Human Service (DHS) Long Term Care Ombudsman Program was the discharge and transfer of elderly citizens transferring out of nursing homes. The residents receive a 30-day written notice to move out of the nursing home facility. The resident can request a fair hearing. However, the facility has an attorney at the hearing and the residents typically represent themselves. If DHS is notified, an ombudsman will attend the meeting with the resident. The resident is confused, and they may not have the cognitive ability to understand what is happening at the hearing. The judge usually makes an appropriate decision. Nevertheless, an attorney would ensure the resident’s rights are protected.

Juvenile. State and non-profit agencies also raised the concern of helping parents and guardians with juveniles with behavioral issues. Currently, caregivers and these agencies do not know whom to turn to.

“Children with severe behavioral issues don’t come under abuse and neglect. Parents do not know what to do. They don’t want to give up parental rights but cannot handle the child anymore. They need help but are not sure where to go. We see quite a bit of this.”

Driver’s License. The UJS Court representatives observed some individuals begin their journey with the legal system with a traffic stop as illustrated by the following example:

“An individual drives to Rapid City from rural South Dakota to run errands. While in Rapid City, they are stopped by the police department and issued a ticket. They drive home the same day and forget or do not choose to pay for the ticket. Three years later, they are back in Rapid City, and they are stopped again. The police officer runs their license and sees they have a warrant. The situation snowballs resulting in their car being impounded, possible arrest, and possible driver’s license taken away. Now they cannot take their kids to school or go to work. They are stuck in this community until they can get their car back.”

Identification Paperwork. Similar to rescinding a driver’s license, the lack of identification inhibits individuals from receiving benefits, applying for the military or employment, or getting an education.

“Kids cannot apply for an ID if they do not have a birth certificate. The parents are so disorganized that they don’t have it any longer. Or the kids do not know who the parents are or where they live. They end up in a cycle that is difficult to get out of.”

Immigration. Due to the scores of open positions and the economic development in South Dakota, immigrants have been drawn to fill the workforce that the current labor workforce cannot fill. This has led to two legal needs: immigration and employment law. Employment issues are especially exasperated when employees get hurt at work. There is typically a language gap and there is a lack of translation services in the region. There are very few attorneys in South Dakota who accept immigration cases, and most are in Sioux Falls. Like the rest of the country, there are many cases in the backlog. All Minnesota, North Dakota, and South Dakota cases are handled by a court in Ft. Snelling, MN. The lack of translation services at many state, local, and nonprofit agencies makes it difficult to receive even basic services.

Housing. Housing issues are another priority case for legal aid. Community partners observed that renters do not know their rights.

“All of their belongings are thrown out and they have nowhere to live. They don’t realize the landlord does not have the right to just evict without proper notice. Both sides have a hardship.”

Involuntary Commitment. Involuntary Commitment due to mental illness or substance use disorder was identified as another situation that is difficult to navigate without an attorney.

“Families don’t know what to do in this situation. In the past, there were 200 cases per year and now there are over 600 cases per year in our jurisdiction.”

System Navigation. Finally, the interviewees and the prospective client surveys both stated that individuals need assistance in navigating social service systems. High priorities include **food stamps/TANF**, **Medicaid**, and **housing** assistance. Filling out the paperwork is difficult without assistance. If they are denied, they are not sure whom to turn to.

Legal Aid Gratitude. The evaluator did speak to individuals in the community interviews that did receive legal services from DPLS and ERLS. They were grateful for the help and observed their attorneys were able to navigate them through a very difficult situation so they could continue to support and care for their families.

“Legal aid gives victims a voice. When you are in trauma, it is hard to represent yourself.”

Attorney Workforce Findings

The evaluator conducted focus groups in eight communities with 27 private attorneys. Many of the attorneys had served or were currently serving on the State Bar Foundation or as a State Bar Commissioner. The focus group questions included legal needs that private attorneys cannot address in their communities, factors that help and hinder pro bono and modest means participation, and attorney workforce recruitment and retention observations and suggestions. In addition, UJS judges, tribal judges, States Attorneys, tribal attorneys, and other attorneys provided observations on the attorney workforce in South Dakota. Refer to Appendix G – Attorney Workforce Findings.

As noted above, **they all agreed South Dakota is experiencing a severe attorney workforce shortage in rural areas, but most especially in tribal nations.** As one focus group noted, if an individual has money,

they can find an attorney to represent them. Nevertheless, the attorneys observed there was a critical shortage of attorneys in the practice areas of **immigration, bankruptcy, family law, and Native American law**.

The attorneys acknowledged the Sioux Falls and Rapid City markets recruit most of the attorneys graduating from law school, moving into the state, or moving within the state. They also observed it is difficult to get attorneys to go to mid-sized communities and those that do are required to be general practitioners. Attorneys who want to specialize need to be in a larger community such as Sioux Falls or Rapid City. Pierre attracts attorneys who want to work for the state government and / or do policy work.

In 2013, the South Dakota Legislature approved the Recruitment Assistance Pilot Program (SDCL 16-23) to address the current and projected shortage of lawyers practicing in small communities and rural areas of South Dakota. This program provides qualifying attorneys an incentive payment in return for five (5) continuous years of practice in an eligible rural county or municipality.

Most attorneys that participated in the focus group had completed pro bono and/or modest means cases either on their own accord or through A2J, DPLS, or ERLS. Most agreed 50 hours per year of pro bono services is reasonable. Attorneys explained it is the attorney's oath and South Dakota codified law to volunteer hours.

Legal Aid Policies

In addition to the assessment above, Appendix H outlines the 2021 National Center for Access to Justice (NCAJ) at Fordham Law School that ranks the U.S. states on selected best policies for access to justice. This appendix may be used by legal aid organizations, the South Dakota State Bar Association, and/or South Dakota UJS.