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HON. DAVID M. RUBIN
Chair, Judicial Branch Budget Committee
Chair, Litigation Management Committee

HON. MARLA O. ANDERSON
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MR. MARTIN HOSHINO
Administrative Director, Judicial Council

January 17, 2020

Ms. Diane F. Boyer-Vine
Legislative Counsel
State Capitol, Room 3021
Sacramento, California 95814

Ms. Erika Contreras
Secretary of the Senate
State Capitol, Room 400
Sacramento, California 95814

Ms. Sue Parker
Assistant Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California 95814

Re: *Peremptory Challenges in Criminal Misdemeanor Cases*, as required under Code of Civil Procedure section 231(f)

Dear Ms. Boyer-Vine, Ms. Contreras, and Ms. Parker:

Senate Bill 843 temporarily reduces the number of peremptory challenges legal counsel may utilize in criminal misdemeanor cases from the period starting on January 1, 2017, and ending on January 1, 2021. This legislative mandate also requires the Judicial Council to conduct a study and submit a report to the Legislature bearing on, but not restricted to, an examination of the number of peremptory challenges used by legal counsel for the defendant and state in criminal misdemeanor cases after January 1, 2017. Additionally, SB 843 calls for the presentation of findings pertaining to the types of misdemeanor cases that are typically decided by jury trials, and findings related to cost savings that may accrue to courts as a result of the passage of this legislation. This report represents the Judicial Council's response to this mandate.

If you have any questions related to this report, please contact Ms. Leah Rose-Goodwin, Manager, Office of Court Research, at 415-865-7708 or Leah.Rose-Goodwin@jud.ca.gov.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council

MH/DS
Enclosures

cc: Eric Dang, Policy Consultant, Office of Senate President pro Tempore Toni G. Atkins
Alf Brandt, Senior Counsel, Office of Assembly Speaker Anthony Rendon
Gabrielle Zeps, Policy Consultant, Office of Assembly Speaker Anthony Rendon
Amy Alley, Policy Advisor, Office of Senate President pro Tempore Toni G. Atkins
Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office
Tina McGee, Executive Secretary, Legislative Analyst's Office
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Administrative Director,
Judicial Council

December 17, 2019

Report title: *Peremptory Challenges in Misdemeanor Cases*

Statutory citation: Senate Bill 843 (Stats. 2016, ch. 33)

Code section: Code of Civil Procedure section 231

The Judicial Council has submitted a report to the Legislature in accordance with Code of Civil Procedure section 231(f).

The following summary of the report is provided under the requirements of Government Code section 9795.

Senate Bill 843 temporarily reduces the number of peremptory challenges legal counsel may utilize in criminal misdemeanor cases from the period starting on January 1, 2017, and ending on January 1, 2021. This legislative mandate also requires the Judicial Council to conduct a study and submit a report to the Legislature bearing on, but not restricted to, an examination of the number of peremptory challenges used by legal counsel for the defendant and state in criminal misdemeanor cases after January 1, 2017. Additionally, SB 843 calls for the presentation of findings pertaining to the types of misdemeanor cases that are typically decided by jury trials, and findings related to cost savings that may accrue to courts as a result of the passage of this legislation. This report represents the Judicial Council's response to this mandate

The full report can be accessed at www.courts.ca.gov/7466.htm

A printed copy of the report may be obtained by calling 415-865-7966.

Peremptory Challenges in Criminal Misdemeanor Cases

2020 REPORT TO THE CALIFORNIA LEGISLATURE AS REQUIRED BY SENATE BILL 843 (Chapter 33)

JUDICIAL COUNCIL OF CALIFORNIA

Judicial Council of California
Operations and Programs Division / Business Management Serivces
Office of Court Research
455 Golden Gate Avenue
San Francisco, California 94102-3688

This report was prepared for and submitted to the California Legislature as required by Senate Bill 843 (chapter 33).

This report is also available on the California Courts website at *www.courts.ca.gov.*

JUDICIAL COUNCIL OF CALIFORNIA

Hon. Tani G. Cantil-Sakauye
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Mr. David Smith
Senior Research Analyst, Project Lead, and Primary Author of Report
Office of Court Research

Background

Senate Bill 843 (Stats. 2016, ch. 33) reduces the number of peremptory challenges that may be used in misdemeanor cases beginning January 1, 2017, and ending on January 1, 2021 (see Code of Civil Procedure section 231). The legislation also requires the Judicial Council to conduct a study and submit a report to the Legislature pertaining to peremptory challenges, as described below.

Prior to the enactment of SB 843 the law granted prosecuting and defense attorneys the right to exercise 10 peremptory challenges per side in misdemeanor cases, if conviction in a case was punishable by a jail term of a year or less. When two or more defendants were tried together, existing law required these challenges to be exercised jointly, although it also granted each defendant an additional 5 peremptory challenges to be exercised separately. If the offense for which a defendant was being tried was punishable by a maximum jail term of 90 days or less, existing law entitled defense and plaintiff's counsel 6 peremptory challenges and granted each jointly tried defendant 4 additional challenges to be exercised separately.

SB 843 reduces peremptory challenges in misdemeanor cases from 10 to 6, if conviction in a misdemeanor case involves incarceration for a year or less when defendants are tried alone. If defendants are tried together additional challenges are reduced from 4 to 2. Additionally, SB 843 requires that the Judicial Council conduct a study and submit a report to the Legislature on the reductions in peremptory challenges that are associated with the enactment of SB 843. Further, SB 843 requires that information be provided pertaining to the types of misdemeanor cases that are typically decided by jury trial, as well as indications of cost savings that may accrue to the courts as a result of the passage of this legislation.

In response to this legislative mandate the following report summarizes findings from a study undertaken by the Judicial Council's Office of Court Research. The study presents findings concerning the number of peremptory challenges used by legal counsel for the prosecution and defense in misdemeanor cases after January 1, 2017, provides an overview of the types of misdemeanor case types that are typically decided by jury trials, and findings related to cost savings that may accrue to courts as a result of the passage of this legislation.

Summary of Findings

Peremptory challenges. An examination of the use of peremptory challenges clearly shows that on average, fewer peremptory challenges are employed in criminal misdemeanor cases after the passage of SB 843 than before the passage of this legislation. This pattern of findings is consistent when analyses are based on data that is drawn only from courts that were able to submit data separately for both defendants' and plaintiffs' attorneys, as well as when data is aggregated across courts to capture information that was submitted by courts that aggregated peremptory challenge data across parties to a case. Further, the distribution of peremptory challenges used in misdemeanor cases was more tightly grouped around the average of this indicator after the passage of SB 843. This suggests that there are fewer

instances in which attorneys use atypically large numbers of peremptory challenges during jury selection in misdemeanor cases.

Types of misdemeanor case filings and cases reaching disposition through jury trials.[1] For reasons that may reflect common community conditions as well as local law enforcement practices, it is evident that misdmeanor filings vary by case type in ways that are somewhat similar across courts. For example, case types including Drug Offenses, Other Non-Traffic Misdemenors, and DUI represent three of the more frequently observed filing types for the courts particpating in this study, with Assualt and Battery, Property, and Sexual Offenses representing three of the less common case filings.

Of those cases that reach disposition through a jury trial, the distribution of such cases may vary considerably from those that were initially filed with a court. For example, Assault and Battery cases were filed in relatively low numbers in courts participating in this study, despite representing one of the case types most frequently reaching conclusion through a jury trial. On the other hand, while Drug Offenses were among the most commonly filed misdemeanor cases, they appear to be overwhelmingly disposed of through case settlements and other non-trial means rather than a jury trial. Further, while there are clear differences between the average frequencies with which certain case types reach disposition through jury trials, there is also at least some variation among superior courts in terms of the proportion of their total misdemeanor caseload that is devoted to any given case type.

Cost savings. The effective use of prospective jurors summoned to jury duty is considered by experts to be one of several important assessment indicators in the study of jury operations.[2] It is also thought to be essential to any effort to realize cost savings to a court, to the residents of a county who are called for jury duty, as well as the employers who must deal with the loss of productivity due to members of its workforce called for jury service.[3] Among the indicators that are considered essential to assessing how efficiently courts are utilizing prospective jurors are “jury panel size” (the number of prospective jurors who are assigned to a jury panel) and “jurors not reached” (the number of jurors not interviewed for potential inclusion in a jury selected to hear a case). A third indicator in the assessment of jury operations and court costs, although not directly related to the effectiveness of the voir dire process, is “in-session time” (trial length). Findings for these indicators are presented

[1] Data pertaining to misdemeanor case types reaching disposition through jury trials was extracted from a separate data archive maitained by the Judicial Council, to allow for the examination of specific misdemeanor case types.

[2] Paula Hannaford-Agor and Nicole L. Waters, *Assessment of Juror Utilization in the Superior Courts of California: Final Report* (National Center for State Courts, 2011), *www.courts.ca.gov/documents/NCSC-FinalReport5-3-2011.pdf*.

[3] Paula Hannaford-Agor, *Saving Money For Everyone: The Current Economic Crisis Is an Opportunity to Get Serious About Improving Jury Utilizations* (National Center for State Courts, 2008), *www.ncsc-jurystudies.org*.

below, although it is important to remember that all of these outcomes may be influenced by multiple factors that are at least partly independent of the requirements of SB 843.[4]

First, jury panel size decreased incrementally after the enactment of SB 843. While this data does not allow for an estimate of cost savings associated with a reduction of panel size of this sort, it can be said that such declines have been associated with cost reductions to the courts and prospective jurors in past research that has focused on this phenomenon as its central purpose.[5] In terms of prospective jurors "not reached" during the voir dire process, findings for data pooled across courts indicate that there was no significant difference in the average number of juror candidates not reached for interviews before the passage of SB 843 relative to those not reached after the passage of this legislation. Finally, "in-session time" as an indicator of trial length varied considerably among courts, with some recording small increases, others small decreases, and a third group remaining stable over time. When data was averaged across all study courts, an increase in trial length of something less than a single day was observed, a finding that may reflect the influence of a number of factors.[6]

Method

Data sources. It should be noted the no statewide archive of jury data exists in California nor does the Judicial Council routinely collect comprehensive case-level data from the courts of the kind necessary to address questions raised by SB 843. Further, jury data is typically gathered by the courts in support of their jury management processes and is usually housed separately from other forms of court case filings and dispositions data. Consequently, it was necessary for the Office of Court Research to work with courts to extract data relevant to the voir dire process to address the legislative mandate expressed in SB 843.

Additionally, data pertaining to misdemeanor case types reaching disposition through jury trials was extracted from a separate data archive (i.e., the Judicial Branch Statistical Information System) maintained by the Office of Court Research. Misdemeanor case type data was gathered in this way because the jury information management systems used by most California courts cannot generate misdemeanor case-level information of this kind.

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[4] For example, Proposition 47, passed by California voters on November 4, 2014, requires that courts consider requests for the reclassification of certain felony convictions as misdemeanors, and refers cases that would formerly be considered felony offenses to misdemeanor case calendars and courtrooms, potentially driving up case complexity and the time necessary to process cases where shifts of this kind occur.

[5] Paula Hannaford-Agor and Nicole L. Waters, *supra*, note 2.

[6] Judicial Council of Cal., Criminal Justice Services, *Early Impacts of Proposition 47 on the Courts* (Mar. 2016), *www.courts.ca.gov/documents/prop47-report-Early-Impacts-of-Proposition-47-on-the-Courts.pdf*; Paula Hannaford-Agor and Nicole L. Waters, *supra*, note 2.

Reporting; time periods covered. The data retrieved from courts was designed to cover a time period that sufficiently preceded the passage of SB 843[7] to provide a stable baseline for the use of peremptory challenges before the passage of this legislation. Thus baseline data was gathered for the entire fiscal year (FY) 2015–16 and the first half of FY 2016–17. Further, data was gathered for a period after the passage of SB 843 covering the second half of FY 2016–17, as well as FY 2017–18 through May 2019 of FY 2018–19. The May 2019 end date, as opposed to fiscal year-end (June 2019), was necessary to meet reporting deadlines.

Study design; selection of study courts. A strategic sample of courts was developed to provide misdemeanor case-level data. The sample was intended to reflect a number of important court characteristics describing a range of California courts. The criteria for the selection of study courts are described below.

A list of superior courts was initially developed for possible inclusion in a representative sample of California courts for use in the current study. It was designed to reflect the state's diversity in terms of geographical location, caseload, and size. Of the 13 courts that were invited to participate in the present study, 12 were initially able to do so. One mid-sized court was unable to proceed beyond the initial stages of the project due to a misalignment of the court's new case management system and existing jury management software that resulted in the generation of data export files that were incomplete and whose data was not extractable. This resulted in a final total of 11 courts that included an array of small, medium, and large courts serving a range of rural to highly urban communities.

As indicated above, courts participating in the current study ranged widely in size and on that basis the number of misdemeanor cases made available for the study. They include the following participants listed in the order of the number of misdemeanor cases provided.

Court1 (n = 71)	Court7 (n = 195)
Court2 (n = 72)	Court8 (n = 445)
Court3 (n = 116)	Court9 (n = 620)
Court4 (n = 133)	Court10 (n = 717)
Court5 (n = 165)	Court11 (n = 2638)
Court6 (n = 187)	Total N = 5359 misdemeanor cases

All courts indicating an interest in participating in the study were encouraged to provide data elements relevant to the objective of the study using two standard reports produced by a jury information software package commonly used in California. The number of files varied by court jurisdiction, sometimes including as many files as there were major court locations in a given county.

[7] SB 843 specifies that peremptory challenges would be temporarily reduced starting on January 1, 2017, of FY 2016–17.

Data types, extraction, cleaning, and management. The data elements that were requested from courts included court names and ID numbers, case numbers, case type indicators, voir dire data elements, general case outcome information, beginning and ending dates for court cases and certain aspects of the voir dire process, and basic courthouse location information. In large part they represent all data extracted from the data files provided by participating courts.

All but three of the participating courts used the reporting system described above. Those courts providing misdemeanor data through some other means did so with proprietary mechanisms developed and used by each court. In this instance data files contained only misdemeanor cases and usually covered all courthouse locations in a single file for a given fiscal year.

Depending on the implementation of the jury management software used by most courts, exported data files contained criminal and civil case types. Once the case mix was determined and naming conventions verified, misdemeanor cases were extracted using a multistage process that chiefly employed Excel and R programming code. The data extracts then passed through a second-level data cleaning and management to produce files that used common data element definitions and formats. Where second-level processes of data cleansing detected data elements that could not be rationalized or were incomplete, courts were contacted and where necessary new files were generated after the source of each problem could be diagnosed and addressed.

These separate data files were then reviewed and merged into court-specific data sets, as well as undergoing further review and cleansing where necessary. Separate court-level data sets were then merged into a master data file. This archival file represents cleaned and rationalized data across all participating courts and court locations. Files were exported from this archive to statistical software packages for data analysis.

Data Limitations

Date/time variables. For the majority of the courts participating in the study, nuanced indicators of beginning and ending dates for voir dire and other case-related events were not available beyond those specifying the day/month/year on which an event occurred. Since most events pertaining to the jury selection process are measured in hours and minutes rather than days, determining voir dire time-related events with any exactness was not possible.

Specificity of data elements. The jury management software that is most commonly used in California courts allows courts to define data fields with some latitude to suit their local needs and organizational sensibilities. For that reason, the definition and meaning of a given data element may vary at least slightly from one court jurisdiction to another. This may limit the extent to which findings may be compared with exactness from one court to another.

Findings

Peremptory challenges. A peremptory challenge is one of a limited number of challenges defendants' and plaintiffs' attorneys may make to the inclusion of a prospective juror on a jury that is being empaneled to hear a criminal or civil case. A challenge of this kind does not need to be supported by an explicitly stated reason, may be made without inquiry into its substance or intention, and is only subject to review by the court if an opposing party makes a prima facie showing that the challenge was used to discriminate on the basis of race, ethnicity or sex.[8]

While peremptory challenges have long been recognized as an essential part of a jury trial in most states, the number of challenges that attorneys may make in a criminal case varies from one state jurisdiction to another for reasons that are not always evident. Further, there is ongoing concern that peremptory challenges may result in the exclusion of prospective jurors who are well qualified to serve on a given jury, as well as unnecessarily extending the time devoted to the voir dire process[9]. Finally, the number of peremptory challenges that California has allowed ranks consistently among the highest in the country in most case categories. SB 843 emerged from a discussion of these issues and seeks to set new, if temporary, limits on the number of peremptory challenges that attorneys may make in misdemeanor cases and thus improve and potentially expedite the jury selection process.

Of the 11 courts participating in the present study, all were able to provide data on peremptory challenges taken by attorneys representing defendants and plaintiffs in a misdemeanor case. However, of this number, only 9 courts could provide data that was disaggregated into separate subsamples of challenges made by plaintiff's and defense counsel. On that basis the aggregated data that constitutes the full number of peremptory challenges occurring across all 11 study courts will first be reviewed.

Peremptory challenges aggregated. The results of analyses clearly indicate that on average fewer peremptory challenges are being used in criminal misdemeanor cases after the passage of SB 843 (mean = 8.4) than before its passage (mean = 11.5).[10] This pattern of findings is consistent across all courts participating in the current study (figure 1).[11]

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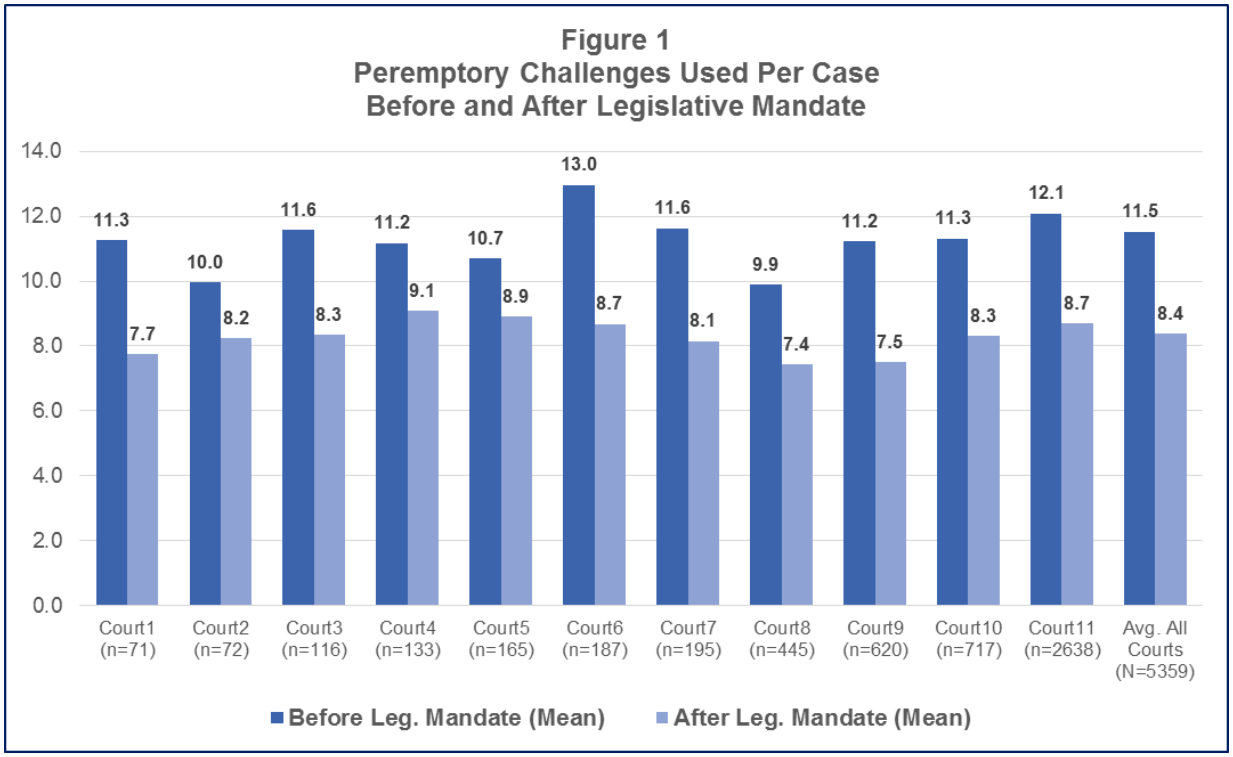
[8] Black's Law Dict. (8th ed. 1999), p. 245.

[9] William H. Levitt et al., "Expediting Voir Dire: An Empirical Study," 44 *So.Cal. L.Rev*. 916 (1971).

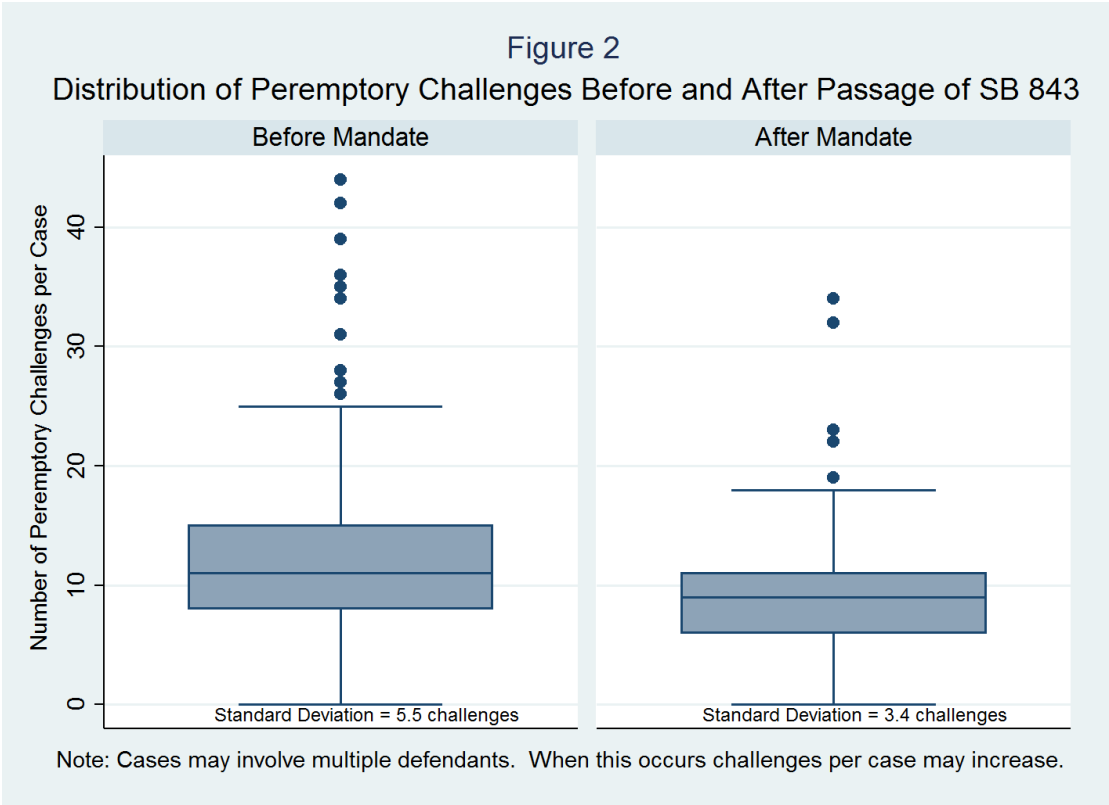
[10] Overall difference between the use of peremptory challenges before and after the passage of SB 843 is statistically significant at the $p < .001$.

[11] It is useful to note that challenges for cause, a term referring to a judge's decision to dismiss a prospective juror for a compelling reason based on the belief that the individual in question cannot be fair and unbiased or is otherwise not capable of serving on a jury appear to be unaffected by the passage of SB 843 ($r = .003$, $p = .81$).



Note: Baseline data for the period preceding the passage of SB 843 was gathered covering FY 2015–16 and the first half of FY 2016–17. Data for the period after the passage of SB 843 was gathered for the second half of FY 2016–17, as well as FY 2017–18 and the first five months of FY 2018–19.

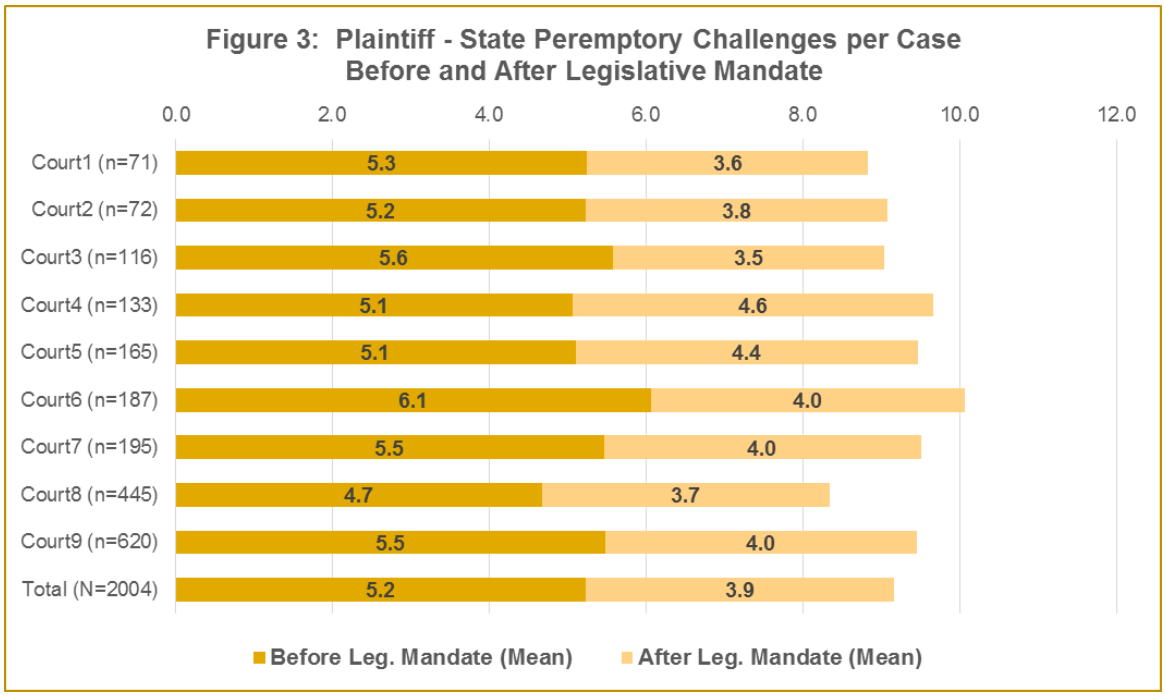
It is also important to note that the dispersion of peremptory challenges in misdemeanor cases has decreased since the passage of SB 843 (figure 2).



Note: Cases may involve multiple defendants. When this occurs challenges per case may increase.

Assuming that the average number of defendants involved in a case is reasonably stable over reporting periods, this suggests that there are fewer instances in which attorneys used larger numbers of peremptory challenges during voir dire after the passage and implementation of SB 843 (figure 2) than before. Unfortunately, limitations in study data makes it difficult to unpack this finding further.

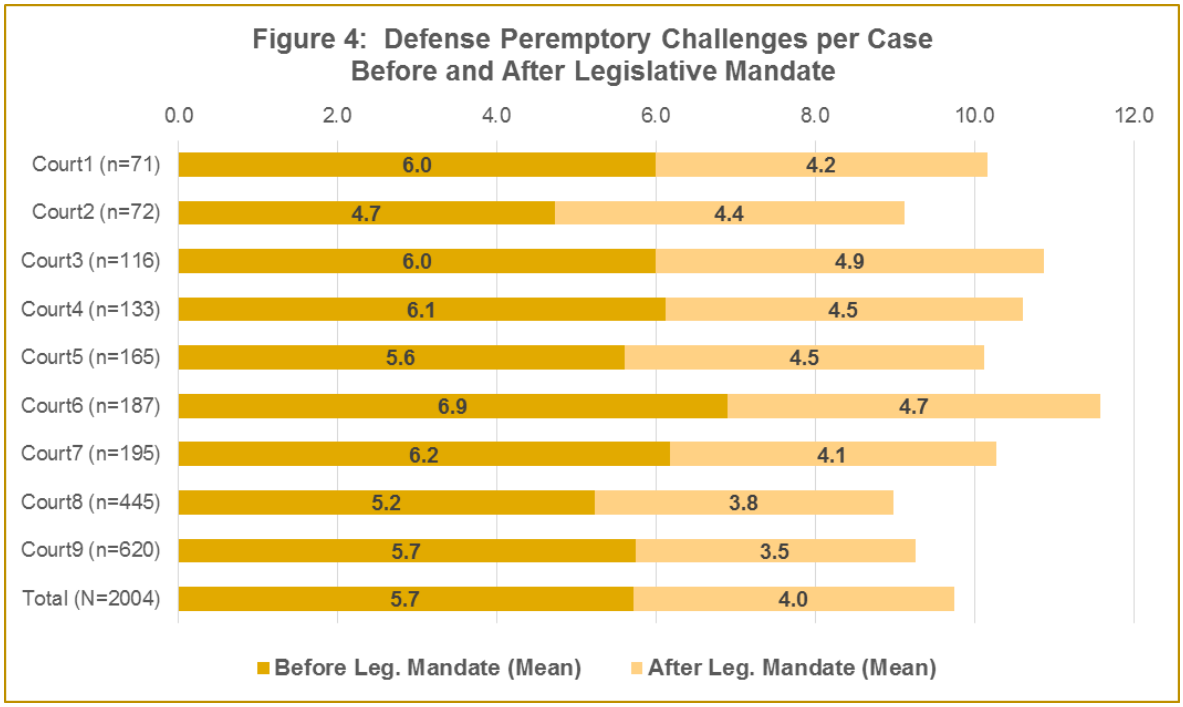
Peremptory challenges disaggregated. A similar pattern of findings was noted for the nine courts that were able to provide disaggregated data on peremptory challenges that were exercised separately by defense and plaintiffs' counsel.[12] For example, in this data plaintiffs' counsel averaged 5.2 peremptory challenges a case prior to the passage of SB 843 and 3.9 challenges after its passage (figure 3).



Note: Baseline data for the period preceding the passage of SB 843 was gathered covering FY 2015–16 and the first half of FY 2016–17. Data for the period after the passage of SB 843 was gathered for the second half of FY 2016–17, as well as FY 2017–18 and the first five months of FY 2018–19.

Defense counsel in the nine courts providing disaggregated data also clearly used fewer peremptory challenges on average after the passage of SB 843 (figure 4). More specifically, defendants' attorneys used an average of 5.7 challenges in the reporting period before the passage of SB 843 and an average of 4.0 after its passage. Once again, these findings are found consistently across the nine courts providing disaggregated challenge data of this kind.

[12] Overall difference between the use of defense or plaintiff peremptory challenges before and after the passage of SB 843 is statistically significant at the $p < .001$.



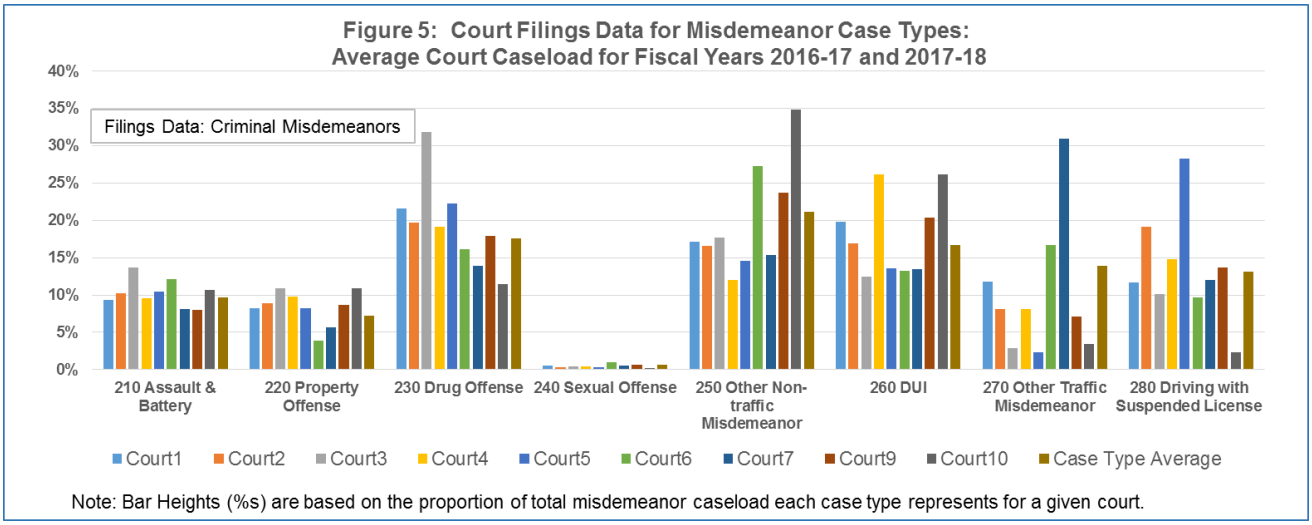
Note: Baseline data for the period preceding the passage of SB 843 was gathered covering FY 2015–16 and the first half of FY 2016–17. Data for the period after the passage of SB 843 was gathered for the second half of FY 2016–17, as well as FY 2017–18 and the first five months of FY 2018–19.

The findings show that there was a reduction in challenges of this kind across reporting periods and in a very consistent way within courts. However, the cross-sectional nature of the data makes it difficult to establish with exactness the role that SB 843 played in the reduction of peremptory challenges after its passage and implementation.

Additional issues related to SB 843. In addition to the examination of peremptory challenges, SB 843 calls for the presentation of findings pertaining to the types of misdemeanor case types that are typically filed with courts, an overview of the cases that are decided by jury trials, and findings related to cost savings that may accrue to courts as a result of the passage of this legislation. These issues are presented in turn in the following sections.

Misdemeanor Case Types: Filings

To provide context for the presentation of findings pretaining to the mix of misdemeanor case types that are decided by jury trials, an overview of misdemenaor case type filings is first presented. Toward that end it should be noted that misdmeanor filings vary by case type in ways that are at least somewhat similar across courts (figure 5). For example, case types including Drug Offienses, Other Non-Traffic Misdemeanors, and DUI represent three of the more common filings types, with Assualt and Battery, Property, and Sexual Offienses representing three of the less common case filings. Additionally, there appears to be some not insignificant variation between courts in terms of the incidence of certain case types, including those that were previously mentioned as the most frequently filed (e.g., Other Non-Traffic Misdemeanor).



It should be noted that processing misdemeanor cases may involve significant work for a court regardless of whether a case is settled early on or only after reaching conclusion through a full jury trial. While criminal cases that pass through a full trial may represent the outward edge of resource investment on the part of the court and other justice system partners, court staff may be called on to invest heavily in pretrial activity when processing misdemeanor filings, particularly after the passage of Proposition 47.[13] The passage of this legislation not only calls upon court staff to address and process requests for the reclassification of certain felony convictions as misdemeanors, it channels cases that were formerly felony offenses to misdemeanor case calendars and courtrooms, thus driving filings in this area upward over time.

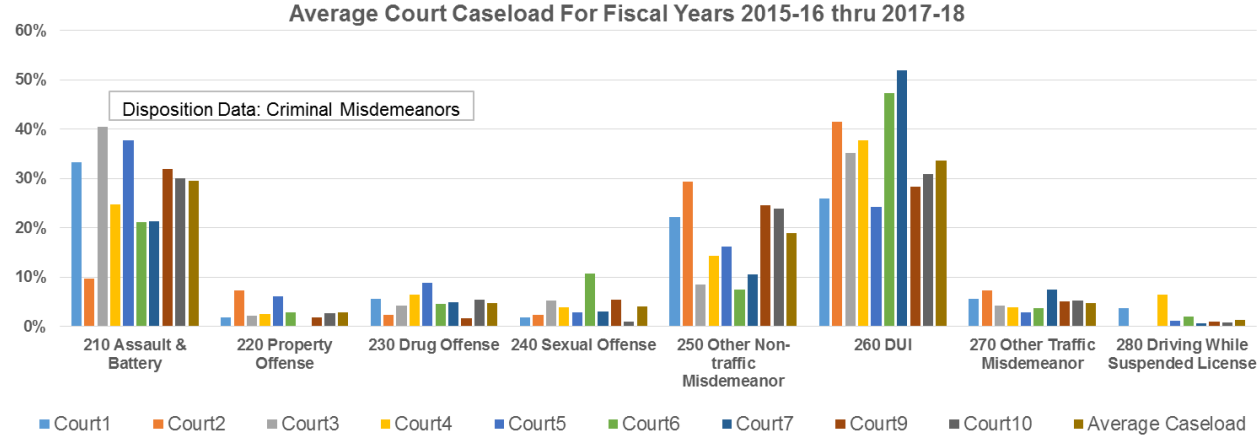
[13] Judicial Council of Cal., Criminal Justice Services, *Early Impacts of Proposition 47 on the Courts* (Mar. 2016), www.courts.ca.gov/documents/prop47-report-Early-Impacts-of-Proposition-47-on-the-Courts.pdf.

Misdemeanor Case Types: Dispositions

The distribution of cases that reach disposition through a jury trial may vary considerably from those cases that were initially filed with a court. For example, Assault and Battery cases were filed in relatively low numbers in courts participating in this study, while representing a case type that most frequently reaches conclusion through a jury trial (figure 6).

In contrast, while Drug Offenses were among the most commonly filed misdemeanor cases, they appear to be overwhelmingly disposed of through case settlements and other non-trial means rather than jury or court trials.

Figure 6: Court Disposition Data for Jury Trials -- Misdemeanor Case Types: Average Court Caseload For Fiscal Years 2015-16 thru 2017-18



Note: Bar Heights (%s) are based on the proportion of total misdemeanor caseload each case type represents for a given court.

Misdemeanor Case Type	Court1	Court2	Court3	Court4	Court5	Court6	Court7	Court9	Court10	Average
210 Assault & Battery	33.3%	9.8%	40.4%	24.7%	37.7%	21.2%	21.3%	31.9%	30.0%	29.6%
220 Property Offense	1.9%	7.3%	2.1%	2.6%	6.1%	2.9%	0.0%	1.9%	2.8%	2.8%
230 Drug Offense	5.6%	2.4%	4.3%	6.5%	8.9%	4.6%	5.0%	1.7%	5.4%	4.7%
240 Sexual Offense	1.9%	2.4%	5.3%	3.9%	2.8%	10.8%	3.1%	5.5%	1.0%	4.1%
250 Other Non-traffic Misdemeanor	22.2%	29.3%	8.5%	14.3%	16.2%	7.5%	10.6%	24.6%	23.9%	19.0%
260 DUI	25.9%	41.5%	35.1%	37.7%	24.3%	47.3%	51.9%	28.4%	30.8%	33.7%
270 Other Traffic Misdemeanor	5.6%	7.3%	4.3%	3.9%	2.8%	3.7%	7.5%	5.0%	5.2%	4.8%
280 Driving While Suspended License	3.7%	0.0%	0.0%	6.5%	1.2%	2.1%	0.6%	1.1%	0.9%	1.3%
Total Misdem Dispositions x Court	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

While there are clear differences between the average frequencies with which certain case types reach disposition through jury trials, there is also at least some variation among superior courts in terms of the proportion of their total misdemeanor caseload that is devoted to a given case type. For example, Court 7 devotes more of its misdemeanor caseload to DUI cases (51.9 percent) than any other court participating in this study, while hearing a smaller proportion of cases in Assault and Battery and Sexual Offenses. This form of variation suggests that some courts may face unique challenges when dealing with misdemeanor cases, whether through early settlement or a full jury trial.

Cost Savings

The effective use of prospective jurors summoned to jury duty is considered by experts to be one of several important assessment indicators in the study of jury operations[14]. Achieving this type of efficiency is also thought to be essential to any effort to realize cost savings to a court, to the residents of a county who are called for jury duty, as well as the employers who must deal with the loss of productivity due to members of its workforce called for jury service.[15] Two of the indicators that are considered to be important to assessing how efficiently courts are utilizing prospective jurors are jury panel size or the number of prospective jurors that are assigned to a jury panel, and the number of jurors not reached for inclusion in the jury selection process. A third indicator, trial length or in-session time, is also considered to be an indicator of cost,[16] although it is not a formal factor within the voir dire process. Findings for these indicators are presented below, although it is important to remember that all of these outcomes may be influenced by multiple factors that are at least partly independent of the mandate associated with SB 843.[17]

Jury panel size. An examination of average jury panel size before and after the passage of SB 843 indicates that the majority of courts participating in this study recorded at least incremental declines in the average size of jury panels, although these differences are statistically significant only for the four largest courts ($p < .03$ or better[18]) (figure 7). More specifically, when data is pooled across participating courts, findings indicate that jury panels have decreased in size from an average of 50.1 prospective jurors to 47.1, with the largest courts participating in this study recording similar reductions. By applying these findings to misdemeanor jury trials statewide, the reduction in the number of jurors sent to the courtroom for voir dire can be inferred to be in the thousands.[19] Such declines in panel size have been associated with cost reductions to the courts, prospective jurors, and the community at large.[20]

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[14] Paula Hannaford-Agor and Nicole L. Waters, *supra*, note 2.

[15] Paula Hannaford-Agor, *supra*, note 3.

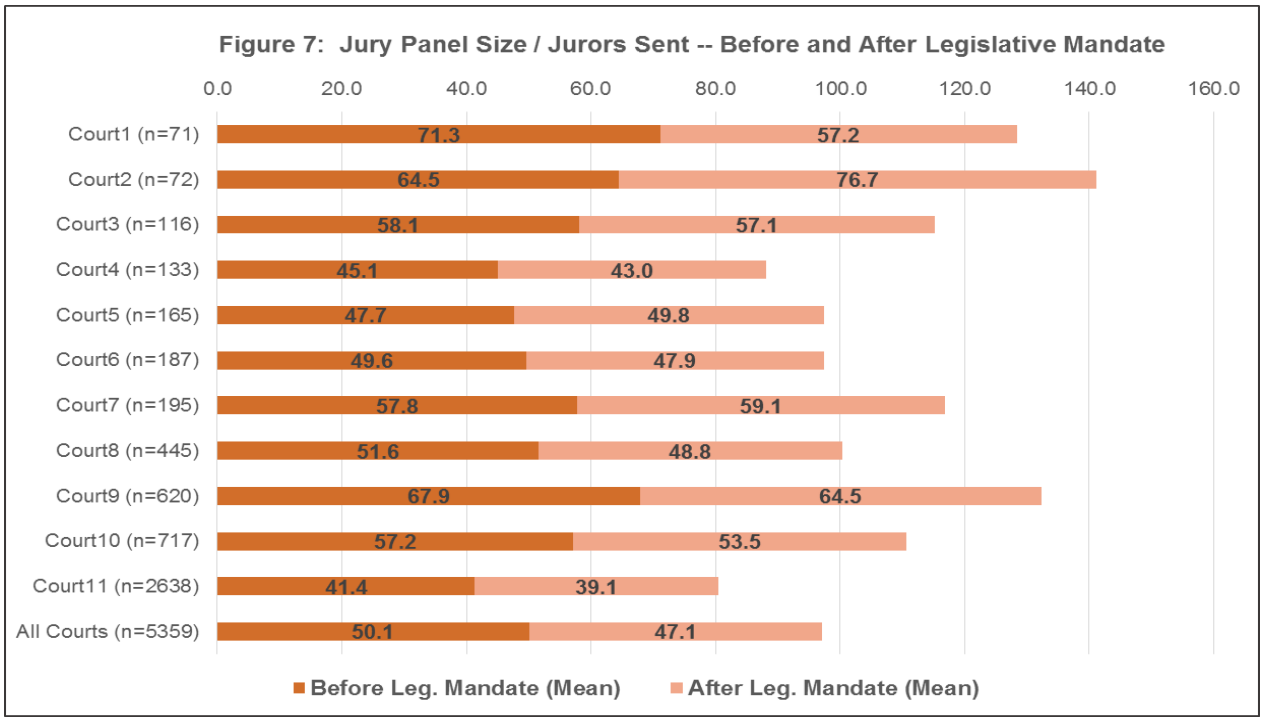
[16] *Ibid.*

[17] For example, Proposition 47 requires that courts consider requests for the reclassification of certain felony convictions as misdemeanors, and refers cases that were formerly felony offenses to misdemeanor case calendars and courtrooms, potentially driving up case complexity and the time necessary to process cases where shifts of this kind occur.

[18] The level of statistical significance is expressed as a *p*-value between 0 and 1. In general, the larger the *p*-value, the more reliable the finding.

[19] *3-year average misdemeanor jury trials equals 3,256 (FY2015-16, FY2016-17, FY2017-18). Based on the findings from this study showing an average reduction of 3 prospective jurors per panel, the resulting annual savings can be estimated to be approximately 10,000 prospective jurors statewide.*

[20] Paula Hannaford-Agor and Nicole L. Waters, *supra*, note 2.



Note: Baseline data for the period preceding the passage of SB 843 was gathered covering FY 2015–16 and the first half of FY 2016–17. Data for the period after the passage of SB 843 was gathered for the second half of FY 2016–17, as well as FY 2017–18 and the first five months of FY 2018–19.

Apart from variation punctuated by the passage of SB 843, variation in juror panel size was also substantial among participating courts, with the smaller courts having some of the largest jury panels in the study and the largest court having the smallest panels on average. The factors that are responsible for jury panel size are not clear, although panel size is most strongly related to voir dire events occurring after jury panels are established. For example, the primary correlates of panel size in this data include releases of prospective jurors for hardship/stipulation ($r = .65$, $p < .001$)[21], as well as not reaching jurors for interviews during voir dire ($r = .69$, $p < .001$).[22]

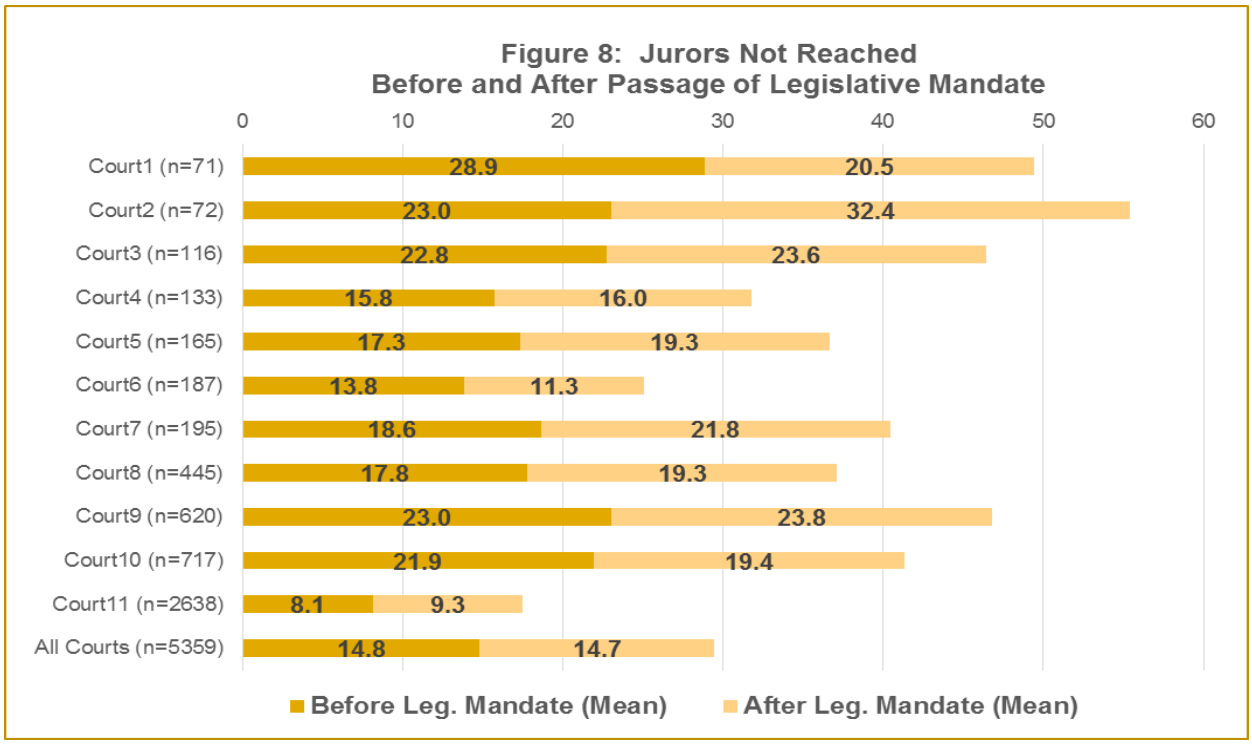
Jurors not reached. Among the elements of the jury selection process, experts consider "jurors not reached" as one of several important indicators of court efficiency and general cost savings by experts in the field.[23] The phrase "jurors not reached" refers to those prospective jurors who have been sent to a courtroom for jury selection but are not interviewed as part of the voir dire process. This occurs when a sufficient number of a juror's peers are questioned and subsequently chosen before the juror can be interviewed.

[21] The letter "r" is a symbol denoting a correlation coefficient, a measure of the strength of linear relationship between two variables. Values of "r" may vary from 0 to 1.0.

[22] These factors retain their importance as correlates of panel size in follow-up multiple regression analyses that were employed to examine the robustness of these relationships.

[23] Paula Hannaford-Agor and Nicole L. Waters, *supra*, note 2.

Prospective jurors of this kind amounted to an average of approximately 15 persons per case across reporting periods and courts (figure 8).



Note: Baseline data for the period preceding the passage of SB 843 was gathered covering FY 2015–16 and the first half of FY 2016–17. Data for the period after the passage of SB 843 was gathered for the second half of FY 2016–17, as well as FY 2017–18 and the first five months of FY 2018–19.

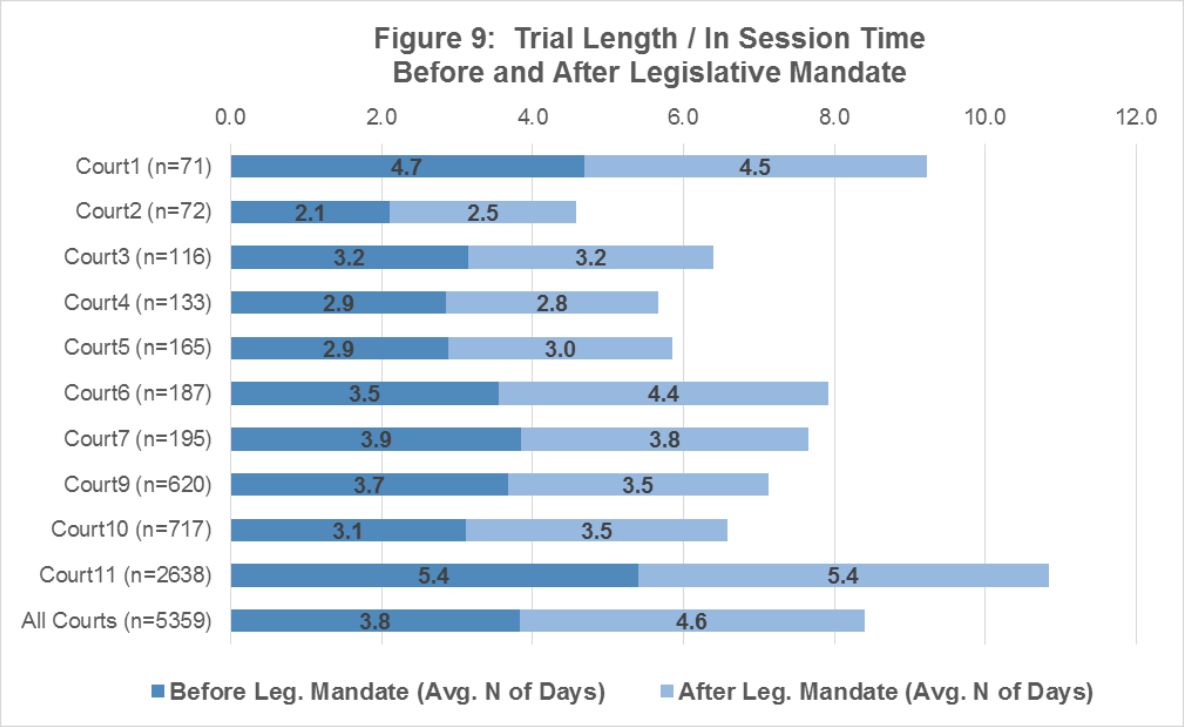
Although there were exceptions, the number of jurors not reached in criminal misdemeanor cases was relatively stable across reporting periods, with this pattern growing stronger among courts reporting larger numbers of cases.[24] Between court variation in relation to "jurors not reached" was clearly greater, with larger courts tending to report smaller numbers of prospective jurors who were not reached for interviews during voir dire (r = -32, p < .001).

Trial length/In-session time. As was indicated earlier, the length of a misdemeanor trial is considered a useful indicator of court efficiency and cost. The phrase "in-session time" in criminal misdemeanor cases may be described as the period marking the beginning of the jury selection process to the conclusion of the trial, not counting days in which the court case is not in session. In a rigorous examination of in-session time in any trial type, it would be highly useful to have an estimate of trial length that was based on the number of days, hours, and even minutes that a case was in session. However, rather than this more exacting measure of in-session time, the data available from study courts was based on entire days as the initial unit of measurement. While averaging over misdemeanor cases in any court did

[24] Even as the indicator for "jurors not reached" was relatively stable across reporting periods, peremptory challenges (beta = .35, p < .001) and challenges for cause (beta = .41, p < .001) were inversely related to this indicator in follow-up regression analyses.

provide for fractional estimates of trial length, caution should be exercised in the interpretation of these findings given their lack of initial specificity.

Before the passage of SB 843, in-session time in criminal misdemeanor cases ranged from 2.1 to 5.4 days in study courts, while after passage of this legislation it ranged from 2.5 to 5.4 days (figure 9). In terms of individual courts, four were observed to experience small decreases in trial length across reporting periods, while four other courts showed small increases in in-session time.



Note: Baseline data for the period preceding the passage of SB 843 was gathered covering FY 2015–16 and the first half of FY 2016–17. Data for the period after the passage of SB 843 was gathered for the second half of FY 2016–17, as well as FY 2017–18 and the first five months of FY 2018–19.

Two courts showed no change in trial length as measured, including the court providing the largest number of misdemeanor cases in this study. When data was averaged across all study courts, an increase in trial length of something less than a single day was observed.

A number of factors may be contributing to the fractional increase in the length of misdemeanor cases noted above. This includes an increase in the complexity of some misdemeanor case types after the passage of Proposition 47 in 2014, which may require the reclassification of certain felony charges as misdemeanors and the referral of these cases to misdemeanor court calendars. Additionally, courts may be required to process requests for the reclassification of past felony convictions as misdemeanors, which, depending on where

and when they occurred, can involve significant work by court staff to prepare these requests for review by the court.[25]

Correlates of trial length. It should be noted that peremptory challenges and challenges for cause were weakly associated with trial length (r = .12 and r = .17 respectively, p < .05 in each), as were the two reporting periods associated with the passage of SB 843 (r = .16, p < .01). The single strongest correlate of in-session time was the court in which a case was heard (r = .32, p < .001), with the relative strength of these relationships persisting in follow-up multivariate analyses. These findings are consistent with other research focusing exclusively on trial length, which found that the mix of case types that a court may hear in a given year and the community characteristics of a court's service area, as well as local legal culture, are the more important factors in the prediction of the length of court trials.[26]

Conclusions

An examination of the use of peremptory challenges before and after the passage of SB 843 clearly shows that on average, fewer peremptory challenges are employed in criminal misdemeanor cases after the passage of this legislation. This change appears to be largely independent of the use of challenges for cause initiated by judicial officers in the same cases;[27] suggesting that different, if overlapping, sets of factors are responsible for trends in the use of these challenge types. Variation in the average use of peremptory challenges among participating courts was also noted, even as the general trend in the use of this type of challenge was downward.

Of those misdemeanor case types that reached disposition through a jury trial, study findings indicate that they may vary considerably from those case types that were initially filed with the court. For example, Assault and Battery cases were filed in relatively low numbers in courts participating in this study, while representing one of the case types most frequently reaching conclusion through a jury trial. Drug Offenses were among the most commonly filed misdemeanor cases, although they also appear to represent a case type that rarely reaches its conclusion through a jury trial. Finally, whether a misdemeanor case is settled before a trial commences or after a full jury trial has reached conclusion, courts may have to undertake and complete considerable case processing activity.

As was noted earlier, the effective use of prospective jurors summoned to jury duty is thought to be essential to generating cost savings for the courts, for residents of a county who are

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[25] Judicial Council of Cal., Criminal Justice Services, *Early Impacts of Proposition 47 on the Courts* (Mar. 2016), *www.courts.ca.gov/documents/prop47-report-Early-Impacts-of-Proposition-47-on-the-Courts.pdf*.

[26] Dale Anne Sipes et al., *On Trial: The Length of Civil and Criminal Trials* (National Center for State Courts, Publication No. R-104, 1998).

[27] The frequency of use of challenges for cause by judicial officers appears to be unrelated to the passage of SB 843 (r = .003, p = .81).

called for jury duty, as well as for their employers.[28] One such indicator of effectiveness, jury panel size, was shown in study data to have decreased incrementally after the passage of SB 843. In situations like this cost savings have been shown, in other research, to accrue to courts that have experienced such declines.[29] An important mechanism in this decline may reside with judicial officers, through their developing view that the permissible number of peremptory challenges in misdemeanor cases has been reduced in their courtrooms through the full weight of a legislative mandate. As judges are convinced that challenges of this kind have been permanently reduced, they may conclude that fewer prospective jurors need to be summoned to court on a given day, and in turn anticipate that smaller jury panels are necessary for jury selection in their courtrooms.

With respect to prospective jurors "not reached" for interviews during voir dire, study findings indicate that these values have essentially been stable across the time periods associated with the passage of SB 843. Given that there tends to be an inverse relationship between peremptory challenges and jurors not reached, findings here suggest that other factors may be more important correlates of this indicator. In contrast, in-session time in criminal misdemeanor cases varied, with some courts recording small increases, others small decreases, and a third group remaining stable over time, with the strongest correlate of this indicator of trial length the court in which a case was heard. When data was averaged across all study courts, an increase in trial length of something less than a single day was observed. Finally, these findings and those reviewed earlier in this report suggest that there are probably multiple factors driving costs associated with the voir dire process that almost certainly extend beyond the use of peremptory challenges.

[28] Paula Hannaford-Agor, *supra*, note 3.

[29] Paula Hannaford-Agor and Nicole L. Waters, *supra*, note 2.