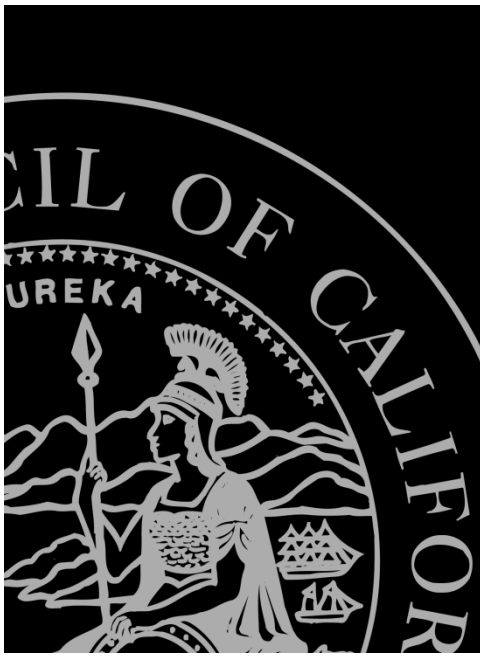

Interim Report: Improving the Juror Experience

AD HOC WORKGROUP ON
POST-PANDEMIC INITIATIVES

MARCH 2022

IMPROVING THE JUROR EXPERIENCE

"Serving on a jury is more than a civic responsibility. It is how each and every one of us provides access to justice for all."

"The courthouse is where our citizens experience the judicial system firsthand. Our judicial system works because of the commitment and service by our community."

– Chief Justice Tani G. Cantil-Sakauye, 2014–15

CHIEF JUSTICE'S AD HOC WORKGROUP ON POST-PANDEMIC INITIATIVES

In March 2021, Chief Justice Tani G. Cantil-Sakauye appointed the Ad Hoc Workgroup on Post-Pandemic Initiatives. The purpose of the workgroup is to identify, refine, and enhance successful court practices that emerged during the COVID-19 pandemic to increase access to justice, modernize services, and promote uniformity and consistency in these practices going forward.

The workgroup spent many months hearing from stakeholders from across the state on creative strategies adopted and challenges experienced throughout the pandemic. In August 2021, the workgroup released its first interim report, which focused on remote proceedings in the courts.[1] This report included a recommendation that courts continue and expand remote access on a permanent basis for most proceedings and not default to pre-pandemic levels of in-person operations.

Given the importance of efficiently assembling juries in courts, and the light shed on this crucial component of our justice system as it was made much more challenging during the pandemic, the workgroup then turned its attention to items specific to the juror experience. To date, the workgroup has heard from 10 entities regarding jury-related efforts from across the state. Those who presented to the workgroup included judicial officers, court executive officers, criminal and civil attorneys, and union representatives for court staff.[2]

The workgroup asked presenters to comment on practices adopted by courts during the pandemic to hold jury trials through innovative changes in jury administration, management, and operations, while maintaining the health and safety of court users, judicial officers, staff, and particularly prospective and sworn jurors. This report summarizes the many and varied considerations for improving the juror

[1] Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Remote Access to Courts* (Aug. 2021), https://newsroom.courts.ca.gov/sites/default/files/newsroom/2021-08/P3%20Workgroup%20Remote%20Access%20Interim%20Report%2008162021.pdf

[2] A full list of stakeholders who presented to the workgroup, as well as the organizations they represent, can be found in *Interim Report: Remote Access to Courts* at pages 11–14.

experience in both judicial proceedings and court operations. With few exceptions, presenters spoke of the value in continuing to provide court users with remote options at various stages of juror participation in all case types.

EXECUTIVE SUMMARY

The COVID-19 pandemic highlights many new and existing barriers to jury service, especially for low-income and unhoused individuals, communities of color, seniors, the disabled, parents of young children, those without access to reasonable transportation, and other vulnerable, underserved, or underrepresented populations. Expanding access to jury service increases diversity and inclusion, which results in more robust deliberations and fewer hung juries.[3] Improving the juror experience increases individual willingness to serve as a juror, which may help to instill greater public confidence and reduce court costs.[4]

The majority of judicial branch users and stakeholders who presented to the Ad Hoc Workgroup on Post-Pandemic Initiatives expressed support for

- increasing juror per diems;
- expanding the use of online juror questionnaires and hardship forms;
- staggering juror reporting times; and
- developing and spreading best practices for virtual jury selection processes.

This input confirmed that the innovative responses by courts to empanel jurors and hold jury trials despite the unique challenges posed by the pandemic, as well as identifying existing and ongoing pre-pandemic disparities that have become exacerbated, are crucial to ensuring access to justice.

Implementing these changes will address policy and operational concerns regarding jury service that the judicial branch has advocated for since 1995. Currently, the average per diem cost for fees and mileage reimbursements per juror is $13, which does not reflect the value of their service or address the financial hardships many prospective jurors experience. This contributes to longstanding perceptions of parties to cases that existing jury venires are unrepresentative of their communities. Utilizing online juror questionnaires and hardship forms greatly reduces over-summonsing and administrative costs, which average $4 and $9 per juror, respectively. Staggering juror appearance times improves court and assembly room capacities, alleviating staff time spent addressing influxes of large jury panels and the associated backlogs they create. Virtual jury selection provides new paths to modernize and improve upon existing technology that can eliminate the need for most prospective jurors to appear in person, expedite voir dire, and lessen the disruption of jury service on prospective jurors' daily lives.

[3] Samuel R. Sommers, "On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations," *Journal of Personality and Social Psychology* (2006) Vol. 90, No. 4, 597–612, https://www.apa.org/pubs/journals/releases/psp-904597.pdf.

[4] G. Thomas Munsterman, Paula L. Hannaford-Agor, and G. Marc Whitehead, eds., *Jury Trial Innovations* (2d ed. 2006), https://www.ncsc-jurystudies.org/__data/assets/pdf_file/0021/7644/jury-trial-innovations-2d-ed-2006.pdf.

These innovations significantly reduce time spent processing prospective jurors at all stages of jury service, from the initial summons through to the verdict, which corresponds with improved case processing times and cost savings in day-to-day court operations, as well as much-needed boosts to juror satisfaction. The efficiencies these created in the juror selection process played a crucial role in allowing courts to process cases in a timely manner during this incredibly challenging time, helping to alleviate the growing backlog of cases caused by the COVID-19 pandemic. In this "new normal" we are facing as a result of the pandemic, the need for courts to adapt and better leverage technology will be key to ensuring courts have sufficient numbers of jurors available for trials.

Given the importance of addressing these issues, the workgroup makes the following interim recommendations:

1. The Judicial Council should encourage and support efforts to secure **designated and ongoing state funding for juror pay** and **mitigate transportation issues** in order to reduce potential barriers to juror participation.

2. In order to increase efficiency and access to the public, California courts should consider allowing jurors to complete their **juror questionnaires and hardship forms online,** before being required to physically appear in court for voir dire.

3. California courts should consider **staggering jury service appearance times** with varying panel sizes in order to maximize efficiency for court staff and the public.

4. California courts should consider developing or adopting **virtual jury selection platforms** that incorporate modules for conducting voir dire, which can help to streamline the juror selection process and gather information related to for-cause and peremptory challenges.

This interim report provides a condensed, selective summary of comments the workgroup received from a variety of judicial branch stakeholders on the use of these innovative practices in jury administration, management, and operations. It includes the benefits identified, areas of concern, and considerations that will need to be addressed in successfully implementing these changes fairly, consistently, and permanently.

BACKGROUND

Each year, more than 4 million people in California complete jury service, whether in person, on call, on telephone standby, as sworn jurors, as an alternate, or as a prospective juror. Their service requires sacrifice: interruptions to their jobs and familial obligations, traveling long distances, and deliberating over traumatic or complex cases affecting their communities.

During the pandemic, prospective jurors have been asked to assume even heavier burdens. They faced risks to their health and safety. They wore masks, gloves, and face shields for hours each day they appeared. They endured multiple health screenings and temperature checks and sat between plexiglass barriers in reconfigured courtrooms or across multiple areas participating through video-teleconference monitors. Many served in high school auditoriums, gymnasiums, county fairgrounds, repurposed municipal buildings, and online platforms. The creativity of judges, justice partners, court staff, court users, and prospective jurors during this uniquely challenging time is a testament to our enduring commitment to equal access to justice and the democratic ideal of trial by jury.

Emergency Response to the COVID-19 Pandemic

On March 23, 2020, in response to the COVID-19 pandemic and under authority granted to her by the California Constitution, Chief Justice Tani G. Cantil-Sakauye issued a statewide order suspending all jury trials. This order was extended for an additional 30 days on April 29, 2020, as a result of increasing risk to public health and safety. The Judicial Council continued to direct superior courts to make use of available technology to conduct judicial proceedings and court operations remotely, when possible, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, witnesses, and prospective jurors.

In light of the public health issues caused by the pandemic, and in order to allow cases to move forward during this time, the council adopted emergency rule 3 of the California Rules of Court, effective April 6, 2020, which authorized courts to conduct proceedings remotely, with parties appearing by videoconference or expanded use of telephone appearances.[5] For many months, remote proceedings authorized by that rule—including holding jury trials—have been a critical means of balancing access to justice and the public health needs of parties, court staff and judicial officers, and the public generally.

In September 2021, the Legislature, at the urging of stakeholders including the council, enacted Senate Bill 241,[6] authorizing, among other things, courts to conduct proceedings through the use of remote technology (not limited to telephone alone) in all civil cases, under new section 367.75 of the Code of Civil Procedure. The statute, which became effective January 1, 2022, required the Judicial Council to adopt rules of court around the use of remote technology in civil cases. Section 367.75 applies to remote proceedings in all civil cases, which preempts emergency rule 3's application in those cases. To avoid any conflict with the new rules or any ambiguity, the council recently amended emergency rule 3 to exclude civil proceedings from the scope of the

[5] On March 27, 2020, the Governor issued an executive order giving the Judicial Council authority to take necessary action to respond to this crisis, including by adopting emergency rules that otherwise would be inconsistent with statutes concerning civil practice and procedure. See Executive Order N-38-20, https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf.

[6] Stats. 2021, ch. 214, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB241.

rule effective January 1, 2022. Amended emergency rule 3 still applies to criminal proceedings but will sunset June 30, 2022, pursuant to an action taken by the Judicial Council at its meeting on March 11, 2022.[7]

Under the authority of the emergency rules and existing law, courts have incorporated several innovative practices in their jury selection processes during the pandemic, including

- video, audio, and telephonic means for remote and/or socially distanced jury selection and/or voir dire;
- utilizing new software solutions to improve the process of jury selection and/or voir dire;
- prescreening and time-qualifying prospective jurors through the use of jury portals, online questionnaires, or other means; and
- staggering the appearances of prospective jurors summoned for service across a given court day.

To assist courts in conducting and maintaining these operations during the pandemic, a Judicial Council working group developed and published the *Pandemic Continuity of Operations Resource Guide*. The guide, released in June 2020, includes jury-related considerations and approaches to help trial courts with their pandemic continuity of operations while providing a safe environment for court users, staff, justice partners, and prospective jurors. By September 2020, all courts had resumed holding jury trials across every case type. In February 2021, the *Pandemic Continuity of Operations Resource Guide* was updated to include promising strategies from the courts' jury departments. Many of these considerations came directly from successful models at individual courts, such as using non-courthouse locations for one or more trials, using multiple courtrooms for individual trials, installing plexiglass barriers and socially distanced seating, as well as embracing virtual and remote technology to prescreen jurors and conduct voir dire.

The use of technology and innovative best practices for jury operations has been instrumental in enabling courts to continue to serve the public and provide access to justice during the pandemic. The courts have been successful in these efforts, as indicated by the widespread innovation they have exhibited and creative strategies they have utilized to adapt their day-to-day operations and hold jury trials for various case types.[8] Notably, courts also went to new lengths to communicate these changes through press releases, updates to websites and mailed materials, and coordination with local news media. Several courts even produced their own public service announcements with videos detailing the new procedures they were implementing to protect jurors' health and safety while holding jury trials (see Figure 1).

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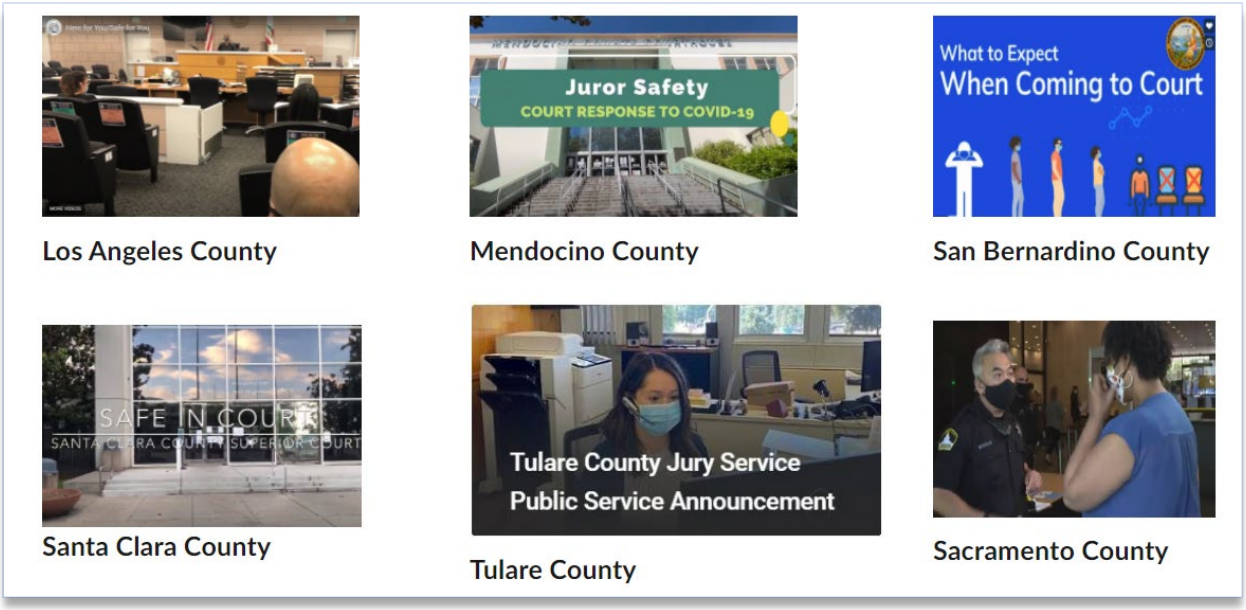
[7] On March 11, 2022, the Judicial Council approved a recommendation from its six internal committees to amend emergency rules 3, 5, 6, 7, 8, 9, 10, and 13 to sunset on June 30, 2022. See *Report to the Judicial Council: Sunset Emergency Rules in Response to the COVID-19 Pandemic*, https://jcc.legistar.com/View.ashx?M=F&ID=10575622&GUID=05465A22-2FA1-4711-81BE-01058BEE7710.

[8] California Courts Newsroom, "Jury Service Begins for Trials Delayed by COVID-19 Pandemic," news release, June 26, 2020, https://newsroom.courts.ca.gov/news/jury-service-begins-trials-delayed-covid-19-pandemic.

Figure 1. Juror Public Service Announcements from Local Trial Courts



Los Angeles County | Mendocino County | San Bernardino County

Santa Clara County | Tulare County | Sacramento County

As the pandemic continues to present courts with unprecedented challenges, these innovations in jury selection remain critical tools for continuing court operations. When the most recent variant of COVID-19 forced postponements or adjustments to normal jury procedures yet again, being able to quickly implement these practices allowed courts to continue providing essential services and processing cases while maintaining the safety of their jurors. The ability to efficiently replicate these practices will serve both the court and the public should future variants or other emergency situations arise.

BENEFITS

Individuals and organizations that presented to the workgroup voiced support for improving the juror experience in the selection process through a variety of innovative practices, leveraging new or existing technology, and reducing barriers to participation in jury service. One of the main issues discussed was the barrier of financial or economic hardships that have worsened for so many during the pandemic and resulted in concerns about demographic diversity, equity, and inclusion.

I. INCREASING JUROR PER DIEMS

"[A]n increase in juror fees and a reconsideration of juror compensation issues is long overdue. … The message sent by these outdated rates is that California does not really value jurors' time."
– Blue Ribbon Commission on Jury System Improvement (May 1996)

There is a long history of attempting to address the inadequacy of juror per diems in California. The current juror per diem reimbursement in California is $15 per day (excluding travel mileage) beginning on the second day of in-person service. The current mileage reimbursement rate in California is $0.34 per mile, which covers only miles traveled *going to* the courthouse.[9] According to the National Center for State Courts' Center for Jury Studies, California ranks comparatively low for juror per diems relative to other states, and well below U.S. federal court.[10] This includes flat-rate models, where pay is static for every day of service, as well as graduated-rate models, where pay increases after the first day and, in certain cases, increases again after another daily benchmark of service is reached.

In comparison, the current per diem for those serving on federal juries in California is $50 per day, with the potential to increase to up to $60 per day after serving 10 days as a juror on a given trial and a second potential increase after 45 days of service (never to exceed the $60 upper limit). The mileage reimbursement in federal juries in California is approximately $0.58 per mile and covers the cost of a juror's roundtrip travel (from the individual's home to the courthouse). The optional reimbursement of parking expenses is left to the discretion of each individual federal court.[11]

Insufficient per diems and low compensation for transportation costs continue to serve as barriers for many prospective jurors in California. Added transportation challenges, including parking difficulties and lack of adequate public transit programs offered by courts, can make these barriers even steeper. This, in addition to the long distances that many in remote areas must travel to court, make participating in jury service difficult even if other aspects of juror participation, such as daily compensation, were to be improved. Efforts aimed at mitigating such transportation challenges, such as increasing reimbursements for gas mileage and improving public transportation options for jurors, should be supported and considered as part of this recommendation.

Timeline of Relevant Action

The Judicial Council has worked on the topic of juror pay for a significant period. In 1995, the Judicial Council created the Blue Ribbon Commission on Jury System Improvement (BRC) "to conduct a comprehensive evaluation of the jury system and to make timely recommendations for improvement."[12]

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[9] Code Civ. Proc., § 215(a)–(c).

[10] National Center for State Courts, Center for Jury Studies, "Comparative Data," https://www.ncsc-jurystudies.org/state-of-the-states/jury-data-viz.

[11] See 28 U.S.C. § 1871.

[12] Judicial Council of Cal./Administrative Office of the Courts, *Final Report of the Blue Ribbon Commission on Jury System Improvement* (1996), p. 1, https://www.courts.ca.gov/documents/BlueRibbonFullReport.pdf.

The BRC's findings were presented to the council in May 1996. Among a variety of recommendations, the report specifically recommended amending Code of Civil Procedure section 215 to "provide for juror fees of $40 per day for each day of jury service after the first day and $50 per day for each day of jury service after the thirtieth day, and to provide for reimbursement to jurors at the rate of $0.28 per mile for travel to and from the court."[13] According to the BRC's report, "[i]t is insulting to tell jurors that, in return for their service, the State will 'compensate' them at a rate of $5 per day and $0.15 per mile to (but not from) the court."[14] If adjusted for inflation since 1996, the BRC's recommended juror pay rate would be between $71 per day for the first 30 days of service and $89 per day after the thirtieth day, while the juror mileage reimbursement rate would be $0.50 per mile.

In 1997, the Judicial Council sponsored Senate Bill 14 (1997, Calderon), which sought to implement the BRC report's recommendations to increase juror fees and mileage reimbursement. Specifically, SB 14, as introduced, proposed to increase juror per diem fees from $5 to $40 per day after the first day and mileage reimbursement from $0.15 per mile to $0.28 per mile one-way for jurors. The bill was held by a legislative policy committee without a hearing and was later amended to address another non-judicial branch issue.

In 1998, the Judicial Council sponsored Assembly Bill 2551 (1998, Migden), which, as introduced, sought to increase juror per diem fees from $5 to $40 per day after the first day and mileage reimbursement from $0.15 per mile to $0.28 per mile one-way for jurors. During the legislative process, the juror per diem increase proposed in the bill was reduced to $10 per day. AB 2551 was ultimately vetoed by the Governor. The following year, the Judicial Council sponsored Assembly Bill 592 (1999, Migden), which, as introduced, would have increased juror per diem fees from $5 to $15 per day after the first day and added a provision for jurors to receive dependent-care reimbursement of up to $50 per day. AB 592 was ultimately held in a legislative fiscal committee.

In 2000, Assembly Bill 2866 (Stats. 2000, ch. 127), a trailer bill that was part of the Budget Act of 2000, raised juror per diem fees to the current rate of $15 per day for the second and subsequent days of jury service, effective July 1, 2000. This represented the first raise in juror compensation in California since 1957. The trailer bill also eliminated first-day juror pay as part of the implementation of the one-day or one-trial jury service policy.

In 2002, to eliminate waste related to the existing mileage reimbursement, Assembly Bill 2925 (Stats. 2002, ch. 144.), effective January 1, 2003, removed first-day mileage and increased the reimbursement rate for mileage from $0.15 per mile to $0.34 per mile, matching the then-current rate for state employees.

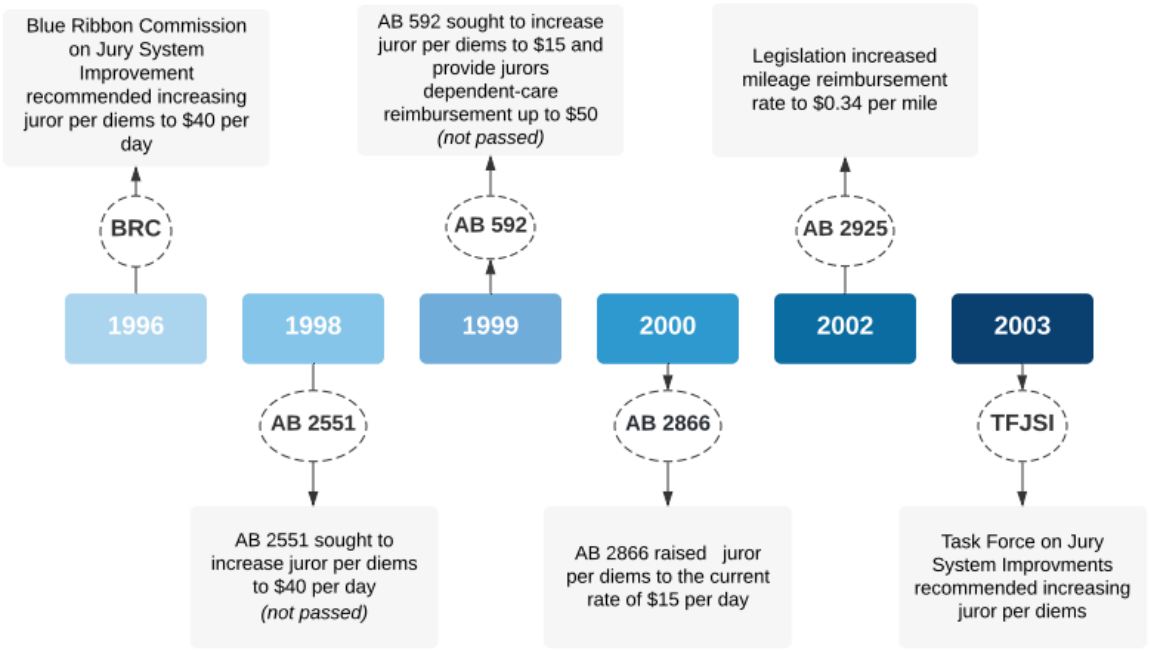
In 2003, the Task Force on Jury System Improvements, which was created by the Judicial Council in 1998, released its final report. Among a variety of recommendations, the task force indicated the need for the state to "[c]ontinue to raise juror pay toward a level that shows adequate respect for jurors'

[13] *Id.* at p. 7.

[14] *Id.* at p. 42.

efforts and time away from their regular duties (at least the $40 per diem currently in effect in the federal courts), along with mileage reimbursement for their trips home as well as to the courthouse."[15] "In addition, the antiquated practice of reimbursing jurors for mileage 'in going only' (that is, one way) should be ended in favor of round-trip mileage reimbursement at the state rate."[16] (For a summary of the actions related to increasing juror per diems, see Figure 2.)

Figure 2. Timeline of Select Efforts to Increase Juror Per Diems



If juror pay as it was originally set in 1957 were adjusted for inflation using the Consumer Price Index calculator provided by the Bureau of Labor Statistics,[17] it would be approximately $50 per day. (It is notable that this is the exact amount of the current federal rate.) If juror mileage were adjusted to the amount set by the Internal Revenue Service,[18] which is the standard by which most public agencies measure their mileage reimbursement rates, it would be approximately $0.58 per mile. This does not account for the lack of roundtrip reimbursement.

[15] Judicial Council of Cal./Administrative Office of the Courts, *Task Force on Jury System Improvements: Final Report* (Apr. 2003, rev. Apr. 2004), p. 4, https://www.courts.ca.gov/documents/tfjsi_final.pdf.

[16] *Id.* at p. 38.

[17] U.S. Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm. See this calculation using $5 in January 1957 compared to the most recent available period of November 2021.

[18] Internal Revenue Service, "IRS issues standard mileage rates for 2022," news release, December 17, 2021, https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2022.

Increasing juror per diems demonstrates the value of jury service and provides sufficient compensation for individuals with income insecurity to participate. Increasing juror per diems is likely to

- improve diversity in jury panels;
- minimize the likelihood of challenges to jury venires and the use of peremptory challenges;
- reduce the number of prospective jurors a court must summon and potentially impanel; and
- improve public perception of jury service.

Based on these projected benefits, the Judicial Council may wish to consider and compile cost analyses and implementation models to be used when determining new juror per diem rates for pay/fees and mileage. This may include reviewing current federal juror per diem and mileage reimbursement rates, budgetary information on actual costs of jury administration, and data gathered in the Judicial Council's annual Jury Data Report, which is used as an efficiency measurement of a trial court's performance and workload in its jury department. These analyses may reveal additional efficiencies and benefits that could be realized by increasing juror per diems.

Assembly Bill 1452 ("Be the Jury")

In addition to those considerations mentioned above, the Judicial Council may wish to evaluate the impact of Assembly Bill 1452[19] to inform its efforts related to juror per diems. AB 1452, which was signed by the Governor in October 2021, established a pilot program to increase juror pay in the Superior Court of San Francisco County. This "Be the Jury" pilot program will compensate low-income jurors $100 per day for their jury service in criminal trials, with the goal of establishing juries that are more reflective of San Francisco's diverse communities.[20]

It may be advisable for increases to juror per diems implemented at a statewide level to include a similarly structured pilot program or one modeled on similar studies in other state courts that have raised their juror per diems. A study of the impact of this program would require, at a minimum, the collection of demographic data before, during, and after the pilot. Outcomes of this pilot may be used to direct ongoing efforts to diversify juries and improve the juror experience across the state.

[19] Stats. 2021, ch. 717, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1452.

[20] City and County of San Francisco, "New CA Bill Pilots Higher Compensation for Low-Income Jurors in San Francisco," news release, June 30, 2021, https://sftreasurer.org/new-ca-bill-pilots-higher-compensation-low-income-jurors-san-francisco.

II. UTILIZING ONLINE JUROR QUESTIONNAIRES AND HARDSHIP FORMS

"[T]he use of questionnaires for jury selection was an efficient way to gather basic juror information and was less stressful for prospective jurors than asking them questions in open court."
– Task Force on Jury System Improvements

"Making this part of the process virtual has sped up in-court jury selection immensely."
– Judge Christopher C. Hite, Superior Court of San Francisco County

Over the course of its work, the workgroup heard various perspectives on ways to increase efficiency in the jury selection process, including transitioning several appropriate stages of this process online. To assist jurors during the initial stages of jury summons, many courts across the state already utilize public-facing portals that allow prospective jurors to quickly access or request information related to their summonses online (see Figure 3). Many of these online tools also allow jurors to request a postponement or excusal of their service. Given the critical role that these virtual services have played in court efficiency, especially in times when courthouse access was limited, courts have continued to develop and improve these portals throughout the pandemic.

Figure 3. Online Juror Resources (Superior Court of Orange County)

The Superior Court of Orange County allows jurors to register, check summons status, and request postponements or excuses on its virtual portal before being required to appear in court.

In addition to providing virtual methods of requesting information and excusals immediately following one's initial summons, some courts have begun offering later stages of the juror selection remotely. One such strategy courts have implemented to promote efficiency during the pandemic is offering online versions of juror questionnaires and hardship forms to help facilitate and expedite voir dire. Providing summonsed jurors with the option to complete their initial questionnaires or hardship forms online,

after they are empaneled but before having to physically come to the courthouse, can result in significant efficiencies in court resources, while promoting greater access to the public.

Presenters mentioned various ways of remotely disseminating and collecting juror questionnaires. Courts that are making juror questionnaires available via email have emphasized the importance of collecting accurate contact information from prospective jurors. Although courts reported varying success rates of questionnaire completion, some noted to the workgroup that questionnaires submitted online often included an increased level of detail. This could be attributed to increased time to answer questions, clearer instructions, or greater levels of juror comfort and satisfaction. Several presenters also noted that online questionnaires allowed courts to collect valuable information about juror comfort with pandemic-related protocols, which allowed courts to be more responsive to the public's needs.

Creating online options for virtual and/or remote participation from the beginning of the summonsing process through jury selection itself will increase accessibility for those with sufficient technology and who may have competing demands on their time. Utilizing online juror questionnaires and hardship forms has also resulted in several positive impacts on the court. These practices can help to reduce over-summonsing, which reduces physical over-crowding and alleviates pressure on court staff, as well as to lower administrative costs, which currently average $9 per juror.

Presenters to the workgroup mentioned several additional factors that courts may wish to consider when determining whether to incorporate online juror questionnaires and hardship forms into their jury operations. Adopting these practices may require: changes or updates to a court's jury management system software; utilizing online juror questionnaires from third-party vendors; or additional collection and verification of juror contact information. Courts may also wish to leverage existing master services agreements for conducting hardship screenings and successful online form collection methods from counties where these are currently in use. Presenters also expressed the benefits of hybrid models that maintain in-person options for court users to submit forms, especially those with limited access to the internet. Additionally, several courts continue to conduct entire jury trials remotely. Thus, for some, virtual options for jurors may extend long after those mentioned here.

III. STAGGERING JUROR SUMMONS TIMES

"There is nothing more demoralizing for a juror than showing up at 8:30 a.m. and waiting around until 3:00 p.m. without being used, only to be told to return the next day."
– Blue Ribbon Commission on Jury System Improvement

Jury assembly rooms can get congested, particularly in older courthouses that were not designed for larger volumes of people. Some estimates show that indoor public spaces may need to have their seating capacity reduced to about 20 percent of normal to comply with current social distancing rules. (California courts continue to follow specific guidance from Cal/OSHA and local public health officials to reduce workplace exposures for all court staff and court facility users.) Some courts operate without the use of jury assembly rooms. If courtrooms are traditionally used for this purpose, courts may be experiencing a significant drop in the number of available jurors due to physical occupancy constraints.

In order to limit overcrowding during the pandemic, courts adopted various strategies to ease traffic flow within courtrooms, ensure the safety of court staff and prospective jurors, and improve overall jury management. Several courts, for example, began conducting offsite juror assembly, using locations such as high school auditoriums and municipal buildings to gather prospective jurors in order to maintain social distancing that accommodated larger groups and to reduce traffic in the courthouse (see Figure 4).

Figure 4. Offsite Juror Assembly (Placer County)

In Placer County, the court utilized space at Whitney High School to safely distance people reporting to jury duty.

Another successful strategy utilized by courts was the staggering of jurors' initial appearance times. This practice may involve summonsing small groups of prospective jurors at one- to two-hour intervals, or summonsing jurors in morning or afternoon groups. This technique has helped many courts to meet the needs of adequately spacing jurors within the limitations of their current facilities. Presenters to the workgroup reported that staggering jury summons times also allowed for scheduling efficiencies that freed up staff time to provide support for other calendars, self-help services, and answering phones. Reduced wait times caused by staggering jury calendars may also result in increased juror satisfaction and greater public confidence in the jury selection process. Notably, staggering juror appearance times reduces the impact of jury service on people's schedules, whether those are related to their jobs, families, or other commitments. This may therefore significantly lower barriers for participation in jury service and increase diversity within jury pools.

When determining whether and how to adopt a staggered jury summons calendar, courts may wish to consider replicating current models and best practices for staggering appearance times, such as those in use in the superior courts of Los Angeles, San Joaquin, Orange, Alameda, Placer, San Diego, and San Mateo, among other counties. Presenters to the workgroup also encouraged courts adopting these practices to consider utilizing more than one courtroom at a time to assist in juror staggering; ensuring new calendars are incorporated into the court's public messaging and clearly conveyed in juror notices; and the impact, if any, these practices would have on court staffing levels and staff schedules.

IV. IMPLEMENTING A VIRTUAL JURY SELECTION PLATFORM

"The feedback from jurors on the [virtual juror selection] process was overwhelmingly positive. The only negative feedback we received was that we didn't implement something like this sooner."
– Judge Michael S. Groch, Superior Court of San Diego County

Virtual jury selection provides new paths to modernize and improve upon existing technology that can eliminate the need for most prospective jurors to appear in person, expedite voir dire, and lessen the disruption caused by jury service on jurors' daily lives. During the pandemic, several courts developed or expanded the use of virtual tools to select jurors using remote technology. Presenters to the workgroup described the ways that implementing or enhancing virtual juror selection has helped to save valuable time and resources for jurors, attorneys, and the court. These tools have allowed courts to convene juries in a timely manner, which has helped substantially in easing the backlog of cases many courts continue to face due to the pandemic. Virtual jury selection platforms also act as a uniquely and particularly powerful tool in handling challenges for cause, peremptory challenges, and any subsequent motions made regarding the exercise of such challenges.

eJuror—Superior Court of San Diego County

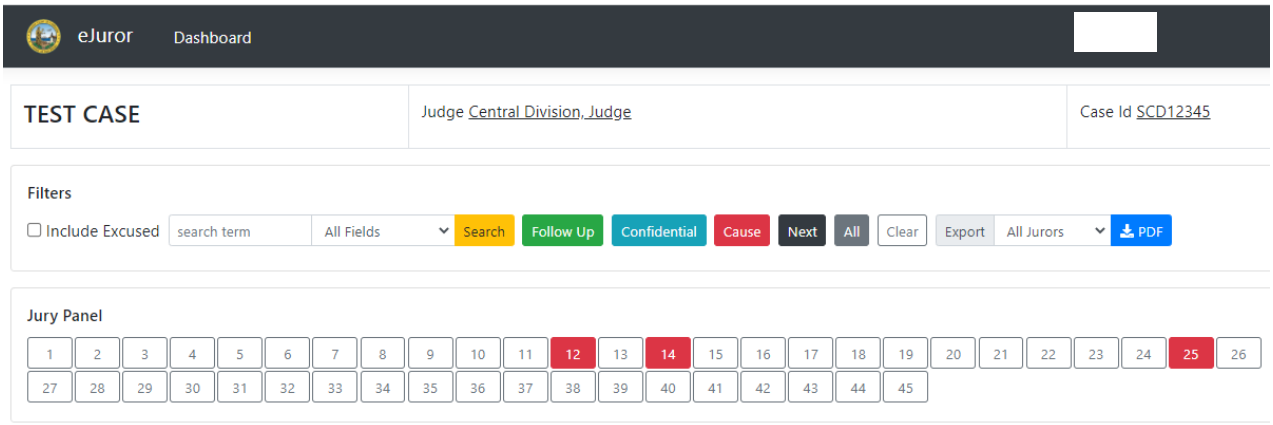
One creative and promising example of a virtual juror selection platform was developed in San Diego County. In July 2021, the workgroup received a demonstration from a representative of the Superior Court of San Diego County on a recently developed online juror selection platform known as "eJuror." This platform was designed by the bench, in collaboration with court information technology staff, in response to the jury intake challenges presented by the pandemic.[21] Presenters noted, however, that restrictions on the flow of jury trials caused by the pandemic have significantly reduced the opportunities for judges to utilize the eJuror platform. The platform, therefore, has not been fully implemented in all trials. Still, in the few cases where the platform has been used, it was reported to significantly streamline the jury selection process and boost juror satisfaction.

The eJuror platform is a web-based application that can be configured to work with the court's case management system to assist in juror selection, including a module for virtually conducting voir dire. The online nature of this application allows a judge or attorney to access it from outside the courthouse, which may help to meaningfully reduce the time required for juror selection. Presenters reported that in the cases where this platform has been used, it has reduced the time needed to physically document juror answers in voir dire and instead allowed users more time analyze and consider juror responses. The platform's chat feature also allows a judicial officer to quickly communicate with attorneys, which reportedly saved parties significant time on sidebars.

[21] The Superior Court of Los Angeles County also utilizes a virtual juror selection platform that has assisted the court in continuing and streamlining its jury operations during the pandemic. Several other trial courts in the state have incorporated virtual elements into their jury selection infrastructure, including the superior courts in the counties of Alameda, Contra Costa, San Francisco, Orange, and San Bernardino, among others. The Superior Court of San Diego County is discussed in this report because members of the workgroup received a presentation specific to a platform designed and implemented in San Diego County.

The platform offers users the opportunity to create private or shareable notes, as well as searchable text, allowing users to quickly find tags and easily return to past notes directly on the platform. Presenters noted that this allows one to easily identify individuals for follow-up and clearly and reliably track the next juror ready to be seated. Jurors who are ready to be seated are automatically highlighted, and users are able to organize them by placing them into a virtual "jury box" (see Figure 5). The workgroup also heard from the chief deputy district attorney in San Diego County in a separate presentation, who noted similar efficiencies provided by this platform from the attorney perspective.

Figure 5. eJuror Jury Selection Platform Dashboard (Superior Court of San Diego County)



The eJuror platform allows users to easily organize jurors, flag notes for follow-up, and track information related to for-cause and peremptory challenges.

Peremptory Challenges

In addition to increased efficiencies, these virtual platforms have been shown to be useful in gathering information related to for-cause and peremptory challenges, which the judicial officer could reference when ruling on a challenged juror excusal. Once a judicial officer is finished reviewing for voir dire, the officer is able to apply filters to see which challenges have been made and which jurors were excused by the court. At any point, attorneys or judges using the platform can create a PDF including all notes made on specific jurors. The application will also automatically save periodically, which helps to ensure that accurate and consistent documentation can be made throughout the selection process.

Presenters repeatedly expressed the benefits of these types of tools in gathering this important information needed to determine whether discrimination has occurred in a party's challenge of a juror, according to the objective test specified in Assembly Bill 3070.[22] This bill sought to strengthen jury selection procedures and increase transparency to ensure attorney challenges to exclude jurors are not for discriminatory purposes. The use of virtual platforms for jury selection will be specifically and particularly relevant for protecting the record against improper questions and/or challenges during voir

[22] Assembly Bill 3070 (Stats. 2020, ch. 318) was signed into law by Governor Newsom on September 30, 2020, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3070.

dire, as well as limiting the potential impacts of implicit bias on trial proceedings. These virtual platforms may therefore serve as powerful tools for courts in complying with AB 3070 and preventing implicit bias in jury selection.

Presenters noted that courts will need to collaborate closely with information technology staff in order to implement a virtual jury selection application, address data security concerns to ensure privacy of juror information, and train judges and attorneys on how to appropriately use the application. When estimating the costs of application development and maintenance, courts may wish to consider the benefits of replicating models currently in use in other counties.

ONGOING JURY EFFORTS

"The right to trial by a jury of our peers is central to our justice system, and we must continue to safeguard that right. We join a broad statewide and national dialogue that is focused on ensuring juries fairly represent the communities they serve."

– Justice Kathleen E. O'Leary, Chair, Jury Selection Work Group

The recommendations in this report align with the ongoing statewide efforts to promote diversity in jury pools by reducing steep barriers to jury service, many of which have been exacerbated by the pandemic. The work of the Ad Hoc Workgroup on Post-Pandemic Initiatives on jury-related items particularly complements that of the California Supreme Court's Jury Selection Work Group. In January 2020 the Supreme Court announced the creation of the Jury Selection Work Group to study whether modifications or additional measures are needed to guard against impermissible discrimination in jury selection.[23] Some of the questions the work group is studying focus on policies and systemic solutions that may be implemented to address bias and reduce or eliminate barriers to fuller participation by all community members.[24] Over the last year, the work group has studied a broad range of topics related to jury selection, including diversity in California jury pools, changes to jury instructions, and the impact of unconscious bias. The work group will present its final report to the Judicial Council later this year.

In December 2021, the Judicial Council's Executive and Planning Committee approved the creation of the Jury Administration and Management Subcommittee. This body will serve as a subcommittee of the council's Court Executives Advisory Committee, which is comprised of court executive officers from across the state. Through this new subcommittee, the Court Executives Advisory Committee will review jury operations and make recommendations and identify best practices in jury operations, reforms, and other post-pandemic issues. The Ad Hoc Workgroup on Post-Pandemic Initiatives will liaise with this body to ensure coordinated efforts on juror systems improvements.

CONCERNS

In addition to the benefits identified by the individuals who presented to the workgroup, several concerns were mentioned. These generally relate to implementation challenges and include legislative, fiscal, and policy support; the digital divide and other technology issues; and the effect of these changes to jury administration, management, and operations on juror morale and public perception. Most of these issues can be resolved by maintaining good partnerships with the other branches of government, securing adequate funding, and strengthening digital and physical infrastructure, as well as providing sufficient education and outreach to ensure court personnel, court users, justice partners, and other stakeholders are informed of and invested in these innovations.

[23] California Courts Newsroom, "Supreme Court Announces Jury Selection Work Group," news release, January 29, 2020, https://newsroom.courts.ca.gov/news/supreme-court-announces-jury-selection-work-group.

[24] *Ibid.*

The Digital Divide

Although the expansion of the use of remote technology increased access to justice in many areas, as outlined above, those who presented to the workgroup identified some specific concerns related to the digital divide in the jury selection process that must be addressed.[25] Inadequate internet bandwidth, affordability, and varying user proficiency with remote technology remain significant concerns when courts are considering implementing virtual options in jury selection. Online juror questionnaires and hardship forms may not be as accessible to court users in rural or low-income areas with limited internet access. Presenters to the workgroup noted that maintaining in-person options for completing juror forms helped to alleviate these barriers in many instances. In addition, virtual juror selection platforms, if adopted, may require training for judicial officers, attorneys, and court staff, who may have varying levels of comfort with these platforms.

Additional Barriers to Participation

This report presents only select barriers to juror participation. In addition to concerns about inadequate juror per diem rates and transportation challenges, the high cost of childcare for summonsed jurors continues to be a significant hardship. This topic has been studied at length by the Blue Ribbon Commission on Jury System Improvement and the Task Force on Juror System Improvements and was included in the groups' final set of recommendations.

Many jurors must make special childcare arrangements as a result of jury service. This issue may continue to make participating in jury service difficult, even if juror compensation is increased or select elements of the juror selection process are offered virtually. When evaluating the recommendations in this report, courts should consider data available on jurors excused due to childcare disparities and related hardships and attempt to determine the impact this may have on court operations, diversity of jury pools, the conduct of voir dire, and the use of peremptory challenges. Efforts aimed at lowering barriers involving childcare should continue in order for California's juries to better reflect its diverse communities.

Privacy Issues

Presenters to the workgroup mentioned several privacy concerns that may impact whether and how courts decide to implement several of the recommended practices in this report. Perceived lack of privacy, particularly during voir dire and selection, can lead many jurors to not mention potentially important information or to feel that their responses will not be taken seriously and be protected accordingly. Presenters to the workgroup noted that implementing virtual juror selection platforms may require added security to protect juror responses and other data.

[25] For more information on concerns related to the digital divide, see the Ad Hoc Workgroup on Post-Pandemic Initiatives' first interim report on remote court proceedings, *Interim Report: Remote Access to Courts* (Aug. 2021), https://newsroom.courts.ca.gov/sites/default/files/newsroom/2021-08/P3%20Workgroup%20Remote%20Access%20Interim%20Report%2008162021.pdf.

Benefits of In-Person Interaction

Some presenters noted that, in certain instances, the ability to see juror body-language and make other observations during in-person interactions can be helpful. Although many stages of the juror selection process may be able to be done fully remotely, there is reason to be thoughtful about moving away completely from the humanity of in-person proceedings for the sake of efficiency.

CONCLUSION

The innovative practices in jury selection mentioned above were reported to have substantially eased burdens on prospective jurors and assisted courts in lessening their growing case backlogs during the pandemic. Continued use of these practices may result in further efficiencies, increased access to the public, and greater diversity in juries across the state. Given the importance of improving the juror experience as an access-to-justice issue, as well as an issue of quality of justice and service to the public, the workgroup makes the following interim recommendations:

1. The Judicial Council should encourage and support efforts to **secure designated and ongoing state funding for juror pay** and **mitigate transportation issues** in order to reduce potential barriers to juror participation.

2. In order to increase efficiency and access to the public, California courts should consider allowing jurors to complete their **juror questionnaires and hardship forms online** before being required to physically appear in court for voir dire.

3. California courts should consider **staggering jury service appearance times** with varying panel sizes in order to maximize efficiency for court staff and the public.

4. California courts should consider developing or adopting **virtual jury selection platforms** that incorporate modules for conducting voir dire, which can help to streamline the juror selection process and gather information related to for-cause and peremptory challenges.

Individuals and organizations that presented to the workgroup identified policy and implementation questions that must be considered to improve the juror experience. Effective partnerships between the three branches of government at the state and local levels; practice and coordination among the courts, justice partners, and prospective jurors; and the adoption of rules, practices, and procedures—together with education and training for judges, court staff, and court users—will address many of these concerns.