**Administrative Determinations by the Supreme Court
on the Report and Recommendations of the Committee of the
Judicial Conference on Jury Selection
(Issued July 12, 2022)**

The Supreme Court has acted on the April 2022 report and recommendations of the Committee of the Judicial Conference on Jury Selection, which the Court previously published for comment. This document sets out the Court's administrative determinations as to each of the Committee's recommendations.

STRATEGIES TO ADDRESS SYSTEMIC BARRIERS TO JURY SERVICE

Recommendation 1: Composition of the Jury List
- The Supreme Court should add records from the Department of Labor to those used to create the single jury list.

- In addition, the Legislature should continue to explore additional steps to formalize and standardize the records used to create the list.

Determination: The Court approves this recommendation. The Court will exercise its existing authority, see N.J.S.A. 2B:20-2(c), to add to the single jury list records from the Department of Labor. Such action will be implemented as part of the 2023 annual list creation. In addition, the Court will refer the second part of this recommendation for consideration by the Legislature.

Recommendation 2: Restoration to Juror Eligibility of Some Individuals with Prior Criminal Convictions
- The Legislature should explore options for an individual who has completed their sentence (including any term of supervision) to be restored to eligibility to serve as a juror, subject to potential challenge for cause or peremptory challenge.

Determination: The Court approves this recommendation and will refer for consideration by the Legislature.

Recommendation 3: Juror Compensation
- The Legislature should explore options to increase juror compensation.

Determination: The Court approves this recommendation and will refer for consideration by the Legislature.

Recommendation 4: Term of Service
- All counties, except for the lowest-volume counties, should adopt a one-day-or-one-trial term of petit jury service.

Determination: The Court approves this recommendation for implementation when appropriate based on operational considerations.

Recommendation 5: Juror Summons
- The Judiciary should continue to use an initial postcard jury notice and should add a QR code to connect jurors to online information.

Determination: The Court approves this recommendation.

Recommendation 6: Written Communications
- The Judiciary should maximize readability of printed communications.

- The Judiciary should continue to offer online options for qualification and to communicate with jurors through electronic methods.

Determination: The Court approves this recommendation.

Recommendation 7: Community Engagement
- The Judiciary should engage in targeted outreach to educate the community about jury service.

- The Judiciary should launch a multifaceted media campaign on the importance of answering the call to jury service.

Determination: The Court approves this recommendation.

Recommendation 8: Juror Appreciation
- The Judiciary should expand juror appreciation efforts.

Determination: The Court approves this recommendation.

Recommendation 9: Public Access to General Jury Information
- The Judiciary should continue to provide general information about the jury process.

Determination: The Court approves this recommendation.

Recommendation 10: Party Access to the Petit Jury List
- The Supreme Court should amend <u>Rule</u> 1:8-5 to formalize the scope of juror records available before selection and to confirm that availability is limited to parties.

Determination: The Court approves this recommendation as provided in the attached July 12, 2022 Rule Amendment Order.

Recommendation 11: Juror Records Excluded from Public Access
- The Supreme Court should amend <u>Rule</u> 1:38-5(g) to more accurately specify the types of juror records that are excluded from public access.

Determination: The Court approves this recommendation as provided in the attached July 12, 2022 Rule Amendment Order.

Recommendation 12: Jurors Who Fail to Respond or Fail to Appear
- The Judiciary should continue to take steps to recapture eligible jurors who initially fail to respond or fail to appear.

- The Judiciary should continue to refrain from imposing penalties on jurors who do not respond to the summons or do not appear when scheduled.

Determination: The Court approves this recommendation. Monetary penalties should not be imposed except in extreme situations, such as when an empaneled juror without excuse refuses to report during an ongoing trial. However, Assignment Judges retain discretion to schedule "listening sessions" in which jurors who repeatedly fail to report for service appear before a judge to explain such non-appearance.

VOIR DIRE & PEREMPTORY CHALLENGES

Recommendation 13: Attorney Conducted Voir Dire (ACVD)
- The Supreme Court should authorize exploration of a New Jersey model of attorney conducted voir dire (ACVD).

- The Supreme Court should explore ACVD through a voluntary pilot program that also includes a consent-based reduction in the number of peremptory challenges available to each party.

Determination: The Court approves this recommendation as implemented in the attached July 12, 2022 Order.

Recommendation 14: For-Cause Challenges -- Standard
- Judges should dismiss a juror for cause if there is "a reasonable basis to doubt that the juror would be fair and impartial."

Determination: The Court approves this recommendation as provided in the attached July 12, 2022 Rule Amendment Order.

Recommendation 15: For-Cause Challenges -- Data
- The Judiciary should refine its data collection categories to differentiate between hardships and other for-cause challenges.

Determination: The Court approves this recommendation. As a first step, the Judiciary will implement enhanced data collection for criminal trials in the counties involved in the ACVD pilot program. The use of differentiated data categories (hardship dismissals vs. for-cause challenges) will expand statewide in 2023.

Recommendation 16: Juror Utilization
- The Judiciary should collect and share data as to the effects on juror utilization of the proposed pilot program on ACVD and reduced peremptory challenges.

- The Judiciary should compile and publish quantitative and qualitative data for cases within and outside of the pilot program.

Determination: The Court approves this recommendation. Further information on the pilot program, including the data to be collected and published, will be provided before implementation.

STRATEGIES TO ADDRESS INSTITUTIONAL & IMPLICIT BIAS

Recommendation 17: Demographic Data Collection and Analysis
- The Judiciary should implement the Court's direction in <u>State v. Dangcil</u> by adding three questions -- on race, ethnicity, and gender -- to the juror qualification questionnaire. 248 N.J. 114, 146 (2021)

Determination: The Court approves this recommendation. Collection of voluntary juror demographic information will begin on a limited basis in the counties selected for the ACVD pilot program. The Judiciary anticipates expansion of demographic data collection to all counties by 2023.

Recommendation 18: Juror Demographic Data -- Publication
- The Judiciary should publish aggregate juror demographic data on an annual basis.

Determination: The Court approves this recommendation.

Recommendation 19: Juror Demographic Data -- Availability Pretrial
- Aggregate demographic information (for jurors scheduled to report on a selection date) should be included in the petit jury list provided before selection pursuant to <u>Rule</u> 1:8-5.

Determination: The Court approves this recommendation. The Judiciary plans to implement this enhancement initially on a limited basis, starting in the counties selected for the ACVD pilot program, with expansion statewide in 2023.

Recommendation 20: Prescreening of Jurors Before Voir Dire
- The Judiciary should issue public information about processes for screening jurors before voir dire.

Determination: The Court approves this recommendation.

Recommendation 21: Data on Juror Outcomes -- Hardships
- The Judiciary should collect more nuanced data as to juror outcomes, including to differentiate between hardship dismissals and for-cause challenges. [See #15 for this same recommendation.]

Determination: The Court approves this recommendation. As a first step, the Judiciary will implement enhanced data collection for criminal trials in the counties involved in the ACVD pilot program. The use of differentiated data categories (hardship dismissals vs. for-cause challenges) will expand statewide in 2023.

Recommendation 22: Data on Juror Outcomes -- For-Cause Challenges
- The Judiciary should develop a method to collect data as to applications and determinations of for-cause challenges.

Determination: The Court approves continued enhancement of data collection and analysis.

Recommendation 23: Implicit Bias Training for Judges and Attorneys
- Judiciary should continue to require implicit bias training for judges and staff.

- In collaboration with stakeholders, the Judiciary should expand implicit bias training focused on jury selection.

Determination: The Court approves this recommendation for training of state court judges and attorneys engaged in jury trials.

Recommendation 24: Best (or Preferred) Practices for Presenting the Issue of Implicit Bias to Jurors

- The Juror Impartiality Video should be used statewide during juror orientation, with an in-person introduction by a judge.

- The model jury instructions should be enhanced to reinforce juror awareness of implicit bias.

- Two new model voir dire questions should be promulgated for required use by judges in judge-led voir dire and for optional use by attorneys during ACVD.

Determination: The Court approves this recommendation. The Juror Impartiality Video will be rolled out for statewide use in September 2022 in conjunction with enhanced model jury instructions.

In addition, for cases outside of the ACVD pilot program, effective September 1, 2022 the judge will pose the following new model voir dire questions:

> **Question 1: In the juror orientation video and my introductory remarks, the concept of implicit bias was defined and discussed. In light of that information, do you think you will be able to decide the case fairly and impartially? Please explain.**

> **Question 2: Some of the witnesses, parties, lawyers, jurors, or other people involved with this case may have personal characteristics (such as their race, ethnicity, or religion) or backgrounds different from yours, or they may be similar to yours. Would those differences or similarities make it difficult for you to decide this case impartially based solely on the evidence and the law? Please explain.**

For cases that opt into the ACVD pilot program, attorneys at their choice and in their own words may ask jurors about their capacity to participate fairly and impartially.

The Court also approves updates to the model jury charges, effective September 1, 2022, to address impartiality and implicit bias. The full text of those updated charges will be promulgated and posted.

Recommendation 25: Court Rule on the Exercise of Peremptory Challenges
- Following receipt and consideration of public comments, the Supreme Court should adopt a version of proposed new Rule 1:8-3A (with Official Comment).

Determination: The Court approves this recommendation and adopts new <u>Rule</u> 1:8-3A ("Reduction of Bias in the Exercise of Peremptory Challenges") as set forth in the attached July 12, 2022 Rule Amendment Order, to be effective January 1, 2023. The Official Comments operate with the same authority as the text of the Rule.

Pending statewide adoption, the Court will also relax the Court Rules in order to extend the provisions of the new rule to cases in the ACVD pilot program. The Judiciary will provide training for jurists and practitioners on the new approach to object to a peremptory challenge.