

## NOTICE TO THE BAR AND PUBLIC

### **JURY REFORMS – SUPREME COURT ACTION: (1) ADMINISTRATIVE DETERMINATIONS ON THE REPORT AND RECOMMENDATIONS OF THE COMMITTEE OF THE JUDICIAL CONFERENCE ON JURY SELECTION; (2) AMENDMENTS TO THE RULES OF COURT; AND (3) AUTHORIZATION OF A PILOT PROGRAM FOR ATTORNEY-CONDUCTED VOIR DIRE**

#### Administrative Determinations

Published with this notice are the Supreme Court's Administrative Determinations on the Report and Recommendations of the Committee of the Judicial Conference on Jury Selection. The Committee's [report](#), which contained 25 recommendations, was published for comment by notice dated April 28, 2022. Having considered the report and the comments submitted before and after its publication, the Court has reviewed and acted on each of those recommendations, as set forth in the attached Administrative Determinations document.

#### Background: Judicial Conference; Guide; Committee & Subcommittees

The Committee's report represented the penultimate step in the collaborative process first announced in [State v. Andujar](#), 247 N.J. 275, 318 (2021), in which the Court called for a Judicial Conference on Jury Selection to examine New Jersey's jury selection processes and recommend improvements designed to broaden participation and representativeness and reduce the effects of purposeful discrimination and all types of bias.

Consistent with the framework established in [Rule 1:35](#), the Court invited a broad array of stakeholders to convene in November 2021 to discuss current jury selection processes and offer suggestions for potential improvements. In advance of that hybrid gathering, the Court issued a comprehensive [Guide to the Judicial Conference on Jury Selection](#), which described current procedures and provided a critical historical perspective on various aspects of jury selection, including the sources used to comprise the source list, the standards for dismissing prospective jurors for cause, and the method of exercise -- and challenge -- of peremptory strikes. The Judiciary posted the materials presented at the Conference, including substantial public

testimony, on a dedicated Judicial Conference [webpage](#).

To develop recommendations on the topics discussed at the Conference, the Chief Justice established and chaired a Judicial Conference Committee comprised of Justices, judges, legal stakeholders, and community members. The Committee ultimately endorsed 25 recommendations as set forth in the reports of the Subcommittee on Systemic Barriers to Jury Service, the Subcommittee on Voir Dire & Peremptory Challenges, and the Subcommittee on Institutional & Implicit Bias.

Consistent with the Court's Administrative Determinations, two Orders dated July 12, 2022 are also attached: one that amends certain Court Rules that govern all jury trials, and one that authorizes a pilot program for attorney-conducted voir dire (ACVD) for criminal matters, starting in September 2022 in the Bergen, Camden, and Middlesex Vicinages.

### Order Amending Rules of Court

Implementation of the Committee's recommendations as approved by the Supreme Court will be accomplished in part through amendments to the Rules of Court. Accordingly, attached is a July 12, 2022 Order, which amends the following Rules, effective September 1, 2022:

- Rule 1:8-3 to clarify the procedure for for-cause challenges by providing that the court shall dismiss a juror for cause if it finds a reasonable basis to doubt that the juror would be fair and impartial;
- Rule 1:8-5 to formalize the scope of juror records available before selection (to include records of those who were dismissed, excused, or deferred) and to reinforce that availability is limited to parties; and
- Rule 1:38-5(g) to more accurately specify the types of juror records that are excluded from public access.

The Court in the attached Order also adopts new Rule 1:8-3A ("Reduction of Bias in the Exercise of Peremptory Challenges"), including an Official Comment with the same authority as the Rule itself, to be effective as of January 1, 2023. The Judiciary over the coming months will offer training for judges and attorneys on the new procedure established by Rule 1:8-3A for objecting to a peremptory challenge. Pending statewide adoption of the new

rule, the Court will also relax the Court Rules to extend the provisions of Rule 1:8-3A to cases in the pilot program on ACVD, as described below and in the attachments.

### Order Authorizing Pilot Program

The November 2021 Conference focused substantially on the benefits of ACVD as compared to judge-led voir dire. Among other strengths, advocates highlighted how greater attorney involvement supports more targeted questioning that leads to discovery of relevant information about jurors. With enhanced information, attorneys can raise informed challenges for cause based on individual reasons why a juror may be unable to be fair in a particular case, thereby avoiding reliance on a gut feeling, hunch, or group bias. The proper dismissal of jurors for cause in turn facilitates a fairer and more equitable process of jury selection.

Following months of study, the Committee recommended -- and the Court now authorizes -- a pilot program to explore an ACVD model for New Jersey, as detailed in the attached July 12, 2022 Order. In addition to ACVD, the consent-based pilot program will also enable assessment of other jury reforms, including the use of electronic written questionnaires, a voluntary reduction in peremptory challenges, and the new protocol for objecting to a peremptory challenge.

Questions about this notice, the Administrative Determinations on the Report and Recommendations of the Committee of the Judicial Conference on Jury Selection, or the Court's attached July 12, 2022 Orders may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.



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Stuart Rabner  
Chief Justice



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Glenn A. Grant  
Administrative Director

Dated: July 12, 2022

**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 Rule 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 Rule 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 State v. Dangcil 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 Rule 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 Rule 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.**

## SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 1:8-3 (“Examination of Jurors; Challenges”), 1:8-5 (“Availability of Petit Jury List”), and 1:38-5 (“Administrative Records Excluded from Public Access”) of the Rules Governing the Courts of the State of New Jersey are adopted to be effective September 1, 2022; and

It is FURTHER ORDERED that attached new Rule 1:8-3A (“Reduction of Bias in the Exercise of Peremptory Challenges”) is adopted to be effective January 1, 2023.

For the Court,



Chief Justice

Dated: July 12, 2022

### Rule 1:8-3. Examination of Jurors; Challenges

(a) Examination of Jurors. ...no change

(b) Challenges in the Array; Challenges for Cause. Any party may challenge the array in writing on the ground that the jurors were not selected, drawn or summoned according to law. A challenge to the array shall be decided before any individual juror is examined. A challenge to any individual juror which by law is ground of challenge for cause must be made before the juror is sworn to try the case, but the court for good cause may permit it to be made after the juror is sworn but before any evidence is presented. All such challenges shall be tried by the court on the record and outside the hearing of the other jurors. The court shall require the party challenging the juror to state the basis for the challenge and shall permit the other party or parties to state their position. If the court finds there is a reasonable basis to doubt that the juror would be fair and impartial, the court shall grant the for-cause challenge and state the reason for its determination.

(c) Peremptory Challenges in Civil Actions. ...no change

(d) Peremptory Challenges in Criminal Actions. ...no change

(e) Order of Exercising of Peremptory Challenges. ...no change

(f) Conference Before Examination. ...no change

(g) Jury Selection Must be Conducted in Open Court. ...no change

Note: Source — R.R. 3:7-2(b)(c), 4:48-1, 4:48-3. Paragraphs (c) and (d) amended July 7, 1971 to be effective September 13, 1971; paragraph (d) amended July 21, 1980 to be effective September 8, 1980; paragraph (a) amended September 28, 1982 to be effective immediately; paragraph (d) amended July 22, 1983 to be effective September 12, 1983; paragraph (d) amended July 26, 1984 to be effective September 10, 1984; paragraph (d) amended November 5, 1986 to be effective January 1, 1987; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (e) added July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (f) added July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 27, 2006 to be effective September 1, 2006; paragraph (g) added July 9, 2013 to be effective September 1, 2013; paragraphs (a) and (d) amended July 27, 2018 to be effective September 1, 2018; paragraph (b) amended July 12, 2022 to be effective September 1, 2022.

#### Rule 1:8-5. Availability of Petit Jury List

The list of the general panel of petit jurors, including jurors who have been disqualified, excused, or deferred, as well as jurors who are scheduled to report for selection, shall be made available by the clerk of the court to any party requesting the same at least 10 days prior to the date fixed for trial. Such lists shall not be provided to anyone who is not a party to the case. Any provision of juror lists shall be subject to a prohibition against unauthorized use or dissemination.

Note: Source — R.R. 3:7-2(a). Amended July 16, 1979 to be effective September 10, 1979; amended September 28, 1982 to be effective immediately; amended July 27, 2018 to be effective September 1, 2018; amended July 12, 2022 to be effective September 1, 2022.

Rule 1:38-5. Administrative Records Excluded from Public Access

The following administrative records are excluded from public access:

(a) ...no change

(b) ...no change

(c) ...no change

(d) ...no change

(e) ...no change

(f) ...no change

(g) Records used to compile juror [Juror] source lists, and the list prepared pursuant to N.J.S.A. 2B:20-2[,]; jury qualification questionnaires completed pursuant to N.J.S.A. 2B:20-3, any other questionnaires completed by prospective jurors, and individual juror information maintained by the Judiciary[,]; and [preliminary] lists prepared pursuant to N.J.S.A. 2B:20-4 of persons [to be] summoned for possible service as grand or petit jurors, which shall remain confidential, except as provided in Rule 1:8-5, unless otherwise ordered by the Administrative Director of the Courts [Assignment Judge];

(h) ...no change

(i) ...no change



(j) ...no change

(k) ...no change

(l) ...no change

(m) ...no change

(n) ...no change

(o) ...no change

(p) ...no change

(q) ...no change

(r) ...no change

(s) ...no change

Note: New Rule 1:38-5 adopted July 16, 2009 to be effective September 1, 2009; paragraph (g) amended January 5, 2010 to be effective immediately; paragraph (p) amended and new paragraph (q) added October 18, 2011 to be effective immediately; new paragraph (r) adopted November 12, 2014 to be effective immediately; paragraph (h) amended December 9, 2014 to be effective immediately; paragraph (b) amended May 30, 2017 to be effective immediately; new paragraph (s) adopted April 23, 2019 to be effective May 1, 2019; paragraph (g) amended July 12, 2022 to be effective September 1, 2022.

Rule 1:8-3A. Reduction of Bias in the Exercise of Peremptory Challenges

(a) A party may exercise a peremptory challenge for any reason, except that a party shall not use a peremptory challenge to remove a prospective juror based on actual or perceived membership in a group protected under the United States or New Jersey Constitutions or the New Jersey Law Against Discrimination. This Rule applies in all civil and criminal trials.

(b) Upon the exercise of a peremptory challenge, the court or any party who believes that the challenge may violate paragraph (a) above may call for review of the challenge pursuant to this Rule.

(c) Any such review shall take place outside the hearing of the jurors.

(d) In the review of a contested peremptory challenge,

(1) The party exercising the peremptory challenge shall give the reasons for doing so; and

(2) The court shall determine, under the totality of the circumstances, whether a reasonable, fully informed person would find that the challenge violates paragraph (a) of this Rule.

(e) A peremptory challenge violates paragraph (a) of this Rule if a reasonable, fully informed person would believe that a party removed a prospective juror based on the juror's actual or perceived membership in a group protected under that paragraph.

(f) If the court finds that a reasonable, fully informed person would view the contested peremptory challenge to violate paragraph (a) of this Rule, the court shall impose an appropriate remedy. No finding of purposeful discrimination or bias is required.

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#### Official Comment

(1) Paragraph (a) prohibits the exercise of a peremptory challenge to remove a prospective juror based the juror's actual or perceived membership in groups protected by the United States or New Jersey Constitutions and the New Jersey Law Against Discrimination. Currently, the statute protects against discrimination on the basis of race or color; religion or creed; national origin, nationality, or ancestry; sex, pregnancy, or breastfeeding; sexual orientation; gender

identity or expression; disability; marital status or domestic partnership/civil union status; and liability for military service. The Rule is intended to cover any future amendments to the statute.

(2) Consistent with RPC 3.1, any call for a review of a peremptory challenge should be advanced in good faith.

(3) In considering the reasons given for a peremptory challenge pursuant to paragraph (d)(1), the court shall bear in mind that the following reasons have historically been associated with improper discrimination, explicit bias, and implicit bias in jury selection and are therefore presumptively invalid: “(i) having prior contact with law enforcement officers; (ii) expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling; (iii) having a close relationship with people who have been stopped, arrested, or convicted of a crime; (iv) living in a high-crime neighborhood; (v) having a child outside of marriage; (vi) receiving state benefits; (vii) not being a native English speaker”; (viii) having friends or family members who were victims of crime; and (ix) understating the degree to which the juror or the juror’s family or friends have been victims of crime, based on a belief that only serious violent crime results in victimization. See Wash. Gen. R. 37(h).

A party exercising a challenge on one of those bases may overcome the presumption of invalidity by demonstrating to the court’s satisfaction that the challenge was not exercised in violation of paragraph (a), but rather based on a legitimate concern about “the

prospective juror’s ability to be fair and impartial in light of particular facts and circumstances at issue in the case.” See Conn. Proposed New Rule (h).

The court shall also consider that certain conduct-based reasons for peremptory challenges have also historically been associated with improper discrimination, explicit bias, and implicit bias in jury selection. “Such reasons include allegations that a prospective juror: was sleeping, inattentive, staring, or failing to make eye contact; exhibited a problematic attitude, body language, or demeanor; or provided unintelligent or confused answers.” Wash. Gen. R. 37(i).

(4) In making its determination as to a contested peremptory challenge pursuant to paragraph (d)(2), the court should consider circumstances that include, but are not limited to: (i) “the number and types of questions posed to the prospective juror,” including whether and how “the party exercising the peremptory challenge[] questioned the prospective juror about the alleged concern; (ii) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the” challenged juror in comparison to other jurors; (iii) whether other prospective jurors gave similar answers but were not challenged by that party; (iv) whether a reason might be disproportionately associated with a protected group identified in paragraph (a); and (v) “whether the party has used peremptory challenges disproportionately against” members of a protected group as defined in paragraph (a). See Wash. Gen. R. 37(g).

(5) Paragraph (f) calls upon the court to impose an appropriate remedy for a violation of paragraph (a). The following remedies may be applied in response to a court determination that a party has impermissibly exercised a peremptory challenge: (i) reseal impermissibly challenged juror(s); (ii) reseal impermissibly challenged juror(s) and order forfeiture of challenges; (iii) require subsequent peremptory challenges to be exercised at sidebar; (iv) grant additional peremptory challenges to non-offending party or parties; (v) dismiss empaneled jurors and start voir dire over; and (vi) combine multiple remedies. State v. Andrews, 216 N.J. 271 (2013).

Note: Adopted July 12, 2022 to be effective January 1, 2023.

## **SUPREME COURT OF NEW JERSEY**

The Supreme Court in State v. Andujar, 247 N.J. 275 (2021), announced a plan “to examine the jury selection process -- with the help of experts, interested stakeholders, the legal community, and members of the public -- and consider additional steps needed to prevent discrimination in the way we select juries.” The Court called for a Judicial Conference on Jury Selection, which convened in November 2021. Informed by Chief Justices of jurisdictions that have reformed jury processes, as well as professors, attorneys, and representatives of the community, the Conference explored ways in which jury selection in New Jersey aligns with -- and differs from -- procedures in other jurisdictions, in order to identify areas for improvement.

For more than a half century, New Jersey state court judges have been responsible to conduct voir dire. See State v. Manley, 54 N.J. 259, 280-83 (1969). As part of the current practice, judges in criminal matters ask jurors nearly 30 mandatory model questions. Attorney involvement is limited to the advance submission of additional open-ended questions and occasional follow-up questions if permitted by the judge.

As discussed at the Judicial Conference, New Jersey is one of only a handful of state court jurisdictions that continue to use a judge-led system of voir dire. Many scholars, jurists, and practitioners advocate for an alternate

approach known as Attorney-Conducted Voir Dire (ACVD). While different forms of ACVD exist, the general model is one in which attorneys question jurors, typically as a group, under the oversight of a judge who intervenes if and as appropriate, including for sidebar discussions and determination of challenges.

Proponents of ACVD contend that the attorney-driven process enables more robust and probing voir dire, which facilitates discovery of relevant information about prospective jurors and informs for-cause challenges. In particular, supporters of ACVD submit that a transition from judge-led voir dire to an attorney-conducted process would reduce the effects of discrimination and bias in jury selection.

Having considered the information shared at the Conference as well as the subsequent work of its Committee, the Court now authorizes a pilot program for Attorney-Conducted Voir Dire to explore its potential benefits. The program will start on or after September 1, 2022, consistent with the attached framework.

For the Court,



Chief Justice

Dated: July 12, 2022



## **New Jersey Judiciary Pilot Program for Attorney-Conducted Voir Dire – For Implementation on or After September 1, 2022**

1. Locations. The pilot program will begin in Bergen, Camden, and Middlesex Vicinages.
2. Eligibility for Participation. At the outset, eligibility for participation in the pilot program will be limited to single-defendant criminal matters.
3. Voluntariness. Participation in the pilot program will be voluntary and will require the consent of both the prosecuting attorney and defense counsel. The court will provide written notice to the attorneys and will meet to explain the protocols and answer questions, including about the process for ACVD and the reduction in available peremptory challenges. The court will conduct a hearing with the defendant as well as counsel to confirm understanding and consent before finalizing a date for jury selection. In addition to that oral discussion, the attached mutual consent and waiver (Attachment A) will be executed before proceeding to jury selection as part of the ACVD pilot program.
4. For cases in the pilot program, jury selection will proceed as follows:
  - a. Random Selection. Consistent with usual practices, jurors will be randomly selected to create a panel that will be assigned to the trial. That panel will be comprised of jurors who have completed the standard qualification process and confirmed their availability to report for service.
  - b. Demographic Information. As part of qualification, and as directed by the Court in State v. Dancil, 248 N.J. 114 (2021), the Judiciary will collect demographic information as voluntarily provided by jurors during qualification. In the pilot counties, voluntary juror demographic information will also be collected for cases not participating in the pilot program.
  - c. Electronic Written Questionnaires. Before the start of oral voir dire, the panel of jurors at the courthouse will complete an electronic questionnaire, using the attached model with

appropriate customization. See Attachment B. Jurors will submit their responses electronically, using their own technology or Judiciary technology as appropriate, and subject to any ADA or other accommodations. Juror responses will be compiled and provided to the judge and attorneys before the start of oral voir dire.

- d. Pre-Voir Dire Challenges. The court can dismiss a juror for a hardship, or excuse a juror for cause, based on the juror's responses to the written questionnaire. Pre-voir dire dismissals and excusals should occur only in straightforward situations. Any pre-voir dire excusals will be addressed on the record in the presence of at least the attorneys.
- e. Oral Voir Dire. All remaining jurors will proceed to oral voir dire. The preference is for all oral voir dire to be conducted in person in a single large room. However, oral voir dire may be conducted in stages if necessary to empanel a jury.
- f. Expanded Jury Box. An "expanded box" of jurors will be seated in a group. That expanded box will include the total number of jurors to be empaneled plus the total number of peremptory challenges available to the attorneys. Additional jurors will be seated in the courtroom to the extent possible. If necessary, and with the consent of the attorneys, technology can be used to enable additional jurors to see and hear voir dire.
- g. Process of Questioning. Instructions and questions will be posed to the expanded box, except for follow-up and sidebar questions.
  - i. The judge will describe the case and ask the following questions:

***Question 1 (qualifications)***

In order to be qualified under New Jersey law to serve on a jury, a person must have certain qualifying characteristics. A juror must be age 18 or older; a citizen of the United States; able to read and understand the English language; and a resident of [the summoning] county.

Also, a juror must not have been convicted of any indictable offense in any state or federal court and must not have any physical or mental disability that would prevent the person from properly serving as a juror. Note that the Judiciary will provide reasonable accommodations consistent with the Americans with Disabilities Act.

Does anyone not meet those requirements?

***Question 2 (availability and hardship)***

a. This trial is expected to last for [duration]. Is there anything about the length or scheduling of the trial that would interfere with your ability to serve?

b. Do you have any medical, personal or financial problem that would prevent you from serving on this jury?

c. Do any of you have a special need or require a reasonable accommodation to help you in listening, paying attention, reading printed materials, deliberating, or otherwise participating as a fair juror? The court will provide reasonable accommodations to your special needs, but I will only be aware of any such needs if you let me know about them. My only purpose in asking you these circumstances relates to your ability to serve as a juror. If you have any such request, please raise your hand and I will speak to you at sidebar.

***Question 3 (knowledge of counsel and parties)***

The judge will introduce the lawyers and the parties and then ask the group:

Do any of you know either/any of the lawyers?

Has either/any of them or anyone in their office ever represented you or brought any action against you?

Do you know (names of parties)?

***Question 4 (knowledge of witnesses)***

The judge will read names of potential witnesses and then ask the group: Do you know any of the potential witnesses?

***Question 5 (knowledge of other jurors)***

Do you know anyone else in the jury box other than as a result of reporting here today?

- ii. The judge will also ask the following:

I have already briefly described the case. Do you know anything about this case from any source other than what I've just told you?

The attorneys may follow up with further questions about juror knowledge of the case.

- iii. Except as listed above, the model voir dire questions incorporated in the [Judiciary Bench Manual on Jury Selection](#) will not be required or recommended. Instead, the attorneys will cover relevant topics through use of the electronic questionnaire and during oral voir dire.
- iv. The judge will introduce legal principles and juror responsibilities as determined in consultation with counsel before trial. While the judge will explain the law, attorneys can and should pose follow-up questions to the jurors.

- h. Flexibility and Scope of ACVD. Attorney-conducted voir dire is a flexible and fluid process. Accordingly, there is no requirement to pose questions in a specific sequence or wording. Consent and waiver to participate in the pilot program includes waiver of use of the model voir dire questions. Attorneys will ask questions, both independently and to follow up on juror responses. No relevant questions or topics are off-limits during ACVD.

- i. Challenges for Cause. Consistent with the Court’s July 12, 2022 Order, the court will apply a liberal standard in dismissing jurors for cause.
  - j. Number of Peremptory Challenges. As a condition of participation in the pilot program, the State and defense will agree to reduce peremptory challenges as follows:
    - i. The State will have **6** peremptory challenges, and the defense will have **8** peremptory challenges, for criminal matters in which the defendant has been indicted for kidnapping, murder, aggravated manslaughter, manslaughter, aggravated assault, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, aggravated arson, arson, burglary, robbery, forgery if it constitutes a crime of the third degree as defined by N.J.S.A. 2C:21-1(b), or perjury; and
    - ii. In all other criminal actions, the State and defense will each have **5** peremptory challenges.
  - k. Exercise of Peremptory Challenges. Peremptory challenges will be exercised after the completion of questioning by the judge and attorneys. Consistent with Rule 1:8-3(e)(2), the court will establish the order of challenges, which will be set forth on the record before the start of the jury selection process. If some peremptory challenges are not exercised, then jurors will be selected based on seating or at random to reduce the panel to the number for empanelment.
  - l. Objections to Peremptory Challenges (Batson/Gilmore Standard). For cases that opt into the pilot program, Rule 1:8-3 is relaxed and supplemented so that objections to peremptory challenges will be handled consistent with the provisions of new Rule 1:8-3A.
5. Data Collection. The Judiciary will continue to collect standard data as to jurors and jury trials. To evaluate ACVD, the Judiciary will also collect and publish data as to those cases that participate in the program, as well as other cases in the pilot counties that do not

participate in the pilot. That initial report is expected to include, among other data points, the following information: numbers and percentages of cases that choose to participate in the pilot program; size of jury panels; voir dire duration; and data as to the timing and volume of dismissals for hardships, challenges for cause, and peremptory challenges. To the extent practicable, that report will also contain aggregate demographic data, including as to the composition of seated juries in the pilot and non-pilot cases.

6. Training for Judges and Attorneys. Meaningful training will be provided to judges and attorneys in order to support a successful pilot exploration of ACVD. Such training will be coordinated with key stakeholders, including the Attorney General, the Public Defender, the New Jersey State Bar Association, the County Prosecutors Association, and the Association of Criminal Defense Lawyers.

## Attachment A: Consent and Waiver

*Please note that this form is intended to be dynamic, the highlighted items will be entered via text or drop down.*

### INSERT CAPTION

The Supreme Court in its July 12, 2022 Order has approved the Attorney-Conducted Voir Dire (“ACVD”) Pilot Program (“ACVD Pilot”). In ACVD, the attorneys (rather than the judge) take the lead in questioning jurors, without the use of mandatory voir dire questions.

In the above-captioned matter, the State, represented by PROSECUTOR, and the defendant, NAME, represented by DEFENSE ATTY, (collectively “the parties”) consent to participate in the ACVD Pilot. Participation in the ACVD Pilot requires the parties’ knowing consent to waive a certain number of peremptory challenges, and to proceed with a new approach to handling an objection to a proposed peremptory challenge, as detailed below.

The defendant, NAME, has been indicted and charged with the following:

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The parties acknowledge and understand the following:

- The ACVD Pilot program will give the parties a greater role in questioning prospective jurors directly.
- The parties may participate in the selection of jurors and use of peremptory challenges in this matter.
- A peremptory challenge allows the parties to excuse a potential juror without giving any explanation or reason for doing so, although a reason may be required in the event of a challenge.
- Under N.J.S.A. 2B:23-13 and the Rule 1:8-3(d), in cases of this type the State is entitled to [12/10] peremptory challenges and the Defendant is entitled to [20/10] peremptory challenges based upon the indictment in this matter.

- Participation in the ACVD Pilot will reduce the number of peremptory challenges otherwise allotted to each party.
- The State may exercise [6/5] peremptory challenges in the ACVD Pilot.
- The Defendant may exercise [8/5] peremptory challenges in the ACVD Pilot.

Having had an opportunity to consult with counsel, the parties knowingly and voluntarily waive their right to the full number of peremptory challenges provided by law and request to participate in the ACVD Pilot. The parties and their attorneys have discussed the advantages and disadvantages of participation in the ACVD Pilot and agree to a reduced number of peremptory challenges in this matter. The parties further agree that any objection to a peremptory challenge will be handled consistent with the provisions of new Rule 1:8-3A (“Reduction of Bias in the Exercise of Peremptory Challenges”). The Supreme Court in its July 12, 2022 Order has adopted new Rule 1:8-3A to be effective statewide as of January 1, 2023. The Court has relaxed the Court Rules to extend the provisions of Rule 1:8-3A to cases in the ACVD Pilot.

The parties understand that a jury verdict in this case in the ACVD Pilot will have the same force and effect as a jury verdict in a case not in the pilot program.

The parties acknowledge that the participation in ACVD without use of mandatory voir dire questions, as well as consent and waiver of a certain number of peremptory challenges, and agreement to a new approach to objections to peremptory challenges, is being made freely and voluntarily and that they have not been subject to any threats, pressure or coercion to induce their participation nor have they been assured of any leniency or expectations of reward in consideration of their participation.

Dated: \_\_\_\_\_  
Defendant

Dated: \_\_\_\_\_  
Defense Counsel

Dated: \_\_\_\_\_  
Prosecutor



Dated: \_\_\_\_\_

Approved by: \_\_\_\_\_, J.S.C.

## Attachment B: Model Criminal Questionnaire

*(to be completed electronically before oral voir dire)*

We are using your answers to this questionnaire to get information directly from you to help us pick trial jurors who can be completely fair to both sides for this particular case.

Your answers to the following questions are very important to the proceedings in this case. Please answer each question honestly and completely.

We all have attitudes, feelings, opinions, and life experiences that can affect the way we consider the testimony of a witness or how we evaluate evidence. It is okay to admit and talk about these feelings, opinions, and life experiences, and we need you to do so to ensure justice is served in this case.

Please do not withhold information. Please make sure your answers are as complete as possible. Complete answers are more helpful and will likely shorten the time it takes to select a jury. Do not be concerned with whether your answers are “right” or “wrong”; this is not any sort of test. Just be honest and candid in your answers.

You are not allowed to do any research or investigation regarding this case. You may not look up the parties or the lawyers. As a trial juror you must decide the case based on the evidence presented during trial.

The information you provide will be reviewed only by the court, the lawyers, and the parties in this case. For purposes of the public record, your name and identifying information will be deleted.

If you have trouble reading, understanding, or filling out this questionnaire, please [insert how you want the juror to seek help].

1. Juror Number
2. Name
3. Are you a resident of X County?  
☐ Yes      ☐ No

4. Are you a citizen of the United States?  
☐ Yes      ☐ No
5. Have you been convicted of an indictable offense?  
☐ Yes      ☐ No
6. Do you have difficulty understanding or reading English?  
☐ Yes      ☐ No
7. Do you have any difficulty seeing or hearing, or have any other medical problems that may affect your ability to serve as a juror?  
☐ Yes      ☐ No
8. This section provides you with information about the case.  
Have you seen, heard, or read anything about this case?  
☐ Yes      ☐ No
9. Have you, or any members of your close family or friends, ever been involved in a case with facts similar to this?  
☐ Yes      ☐ No      ☐ Unsure

{If the juror answers yes or unsure to this or other questions,  
a narrative filed would be provided, as shown.}

10. Please explain.
11. Is there anything about the nature of this case that might cause you to favor one side over the other?  
☐ Yes      ☐ No      ☐ Unsure
12. What caused you to answer “Yes” or “Unsure” to the prior question?
13. The following people may testify at trial: [insert names of potential witnesses]. Do you think you might know any of these people?  
☐ Yes      ☐ No      ☐ Unsure
14. The law requires the State to prove that a Defendant is guilty beyond a reasonable doubt. A Defendant in a criminal case is presumed by law

to be innocent until proven guilty beyond a reasonable doubt. The law does not require a Defendant to testify or present any evidence. Can you accept these principles of law?

☐ Yes      ☐ No      ☐ Unsure

15. [This question would be included unless waived by the Defendant.] A Defendant has a constitutional right to remain silent. Would your opinion of the Defendant's guilt or innocence be affected by a Defendant's decision to remain silent?

☐ Yes      ☐ No      ☐ Unsure

16. Do you think you would hold a Defendant's decision to remain silent against them?

☐ Yes      ☐ No      ☐ Unsure

17. The judge will instruct you on the law in this case. Sometimes people have beliefs about what they wished the law was, or they believe that certain conduct should be legal. Do you believe you will be able to apply the facts to a law you disagree with?

☐ Yes      ☐ No      ☐ Unsure

18. Do you have any opinions about law enforcement officers that might cause you to favor one side over the other? [This question would not generate a narrative box.]

☐ Yes      ☐ No      ☐ Unsure

19. Have you, or any members of your family or close friends, ever served as a law enforcement officer?

☐ Yes      ☐ No      ☐ Unsure

20. Have you, a family member, or close friend ever been arrested, charged, or convicted of a crime other than a minor traffic offense?

☐ Yes      ☐ No      ☐ Unsure

21. Have you, a close relative, or close friend ever been the victim of a crime?

☐ Yes      ☐ No      ☐ Unsure

22. Was it you or someone you know?  
☐ Me      ☐ Someone I know      ☐ Both me and someone I know
23. What offense(s)?
24. Briefly describe what happened.
25. Would this cause you to favor one side?  
☐ Yes      ☐ No      ☐ Unsure
26. Have you ever witnessed a crime?  
☐ Yes      ☐ No
27. This trial is scheduled to start XX and continue until XX. The daily schedule will be Monday through Thursday, from XX a.m. to 4:30 p.m., with no trial on Fridays. There is a lunch break from noon until 1:00 p.m., and usually one mid-morning and one mid-afternoon break. The law provides that a juror can be excused from service only if their absence from work would impose an undue hardship on the juror. Is there anything about our anticipated trial schedule that presents an undue hardship for you?  
☐ Yes      ☐ No      ☐ Unsure
28. Have you ever been called as a witness in court?  
☐ Yes      ☐ No
29. Have you ever served on a jury?  
☐ Yes      ☐ No
30. What type of case was it or what was it about?
31. Were you the foreperson of the jury?  
☐ Yes      ☐ No      ☐ Unsure
32. Have you ever served on a grand jury?  
☐ Yes      ☐ No
33. Age:

34. What is the highest level of education you completed? [options]
35. Are you currently attending college or another educational program?  
☐ Yes      ☐ No      ☐ Unsure
36. What is your current employment status?  
☐ Employed full time  
☐ Employed part time  
☐ Retired  
☐ Student  
☐ Unemployed looking for work  
☐ Unemployed not looking for work  
☐ Caregiver or homemaker  
☐ Other [with narrative field]
37. Do you know anyone who works at the XX County Attorney's Office?  
☐ Yes      ☐ No
38. Have you had any interaction with or experience with law enforcement officers from [investigating agency]?  
☐ Yes      ☐ No
39. Is there anything that would make you unable to come to a verdict in this case?  
☐ Yes      ☐ No      ☐ Unsure
40. Is there anything else you think we should know about your ability to be a juror in this case?
41. [Defendant] has made the decision to represent themselves at this trial. Defendants have the right to represent themselves during trial. Do you have an opinion about a person's decision to represent themselves?  
☐ Yes      ☐ No      ☐ Unsure
42. [Insert language] will be spoken or used during this trial and the [Defendant/victim/witness] will use an interpreter because they are more comfortable hearing or viewing what is communicated in [insert

language]. Do you have an opinion about the use of interpreters during trial?

☐ Yes      ☐ No      ☐ Unsure

43. Do you speak, sign, or understand [insert language] in any way?

☐ Yes      ☐ No

44. You are required to consider the statements of the interpreter rather than your own understanding of what has been communicated in [insert language]. Would you have any difficulty in doing this?

☐ Yes      ☐ No      ☐ Unsure

45. By typing my name, I swear or affirm the answers given in this questionnaire are true.