

Performance Measures for Jury Operations

2023

**State-of-the-States
Survey of Jury Improvement Efforts**

Paula Hannaford-Agor, JD, MPP

Morgan Moffett, MPP



Strengthening
the **sixth**
JUSTICE FOR ALL

Performance Measures for Jury Operations

State and local courts increasingly embrace performance management to identify operational strengths and weaknesses and improve overall system effectiveness. In the context of jury operations, effectiveness is defined by how well the jury system achieves four key objectives:

1. Securing an adequate number of prospective jurors from which to select juries;
2. Ensuring that the jury pool reflects a fair cross section of the community;
3. Managing court resources, including jurors' time and talents, efficiently; and
4. Treating jurors with dignity and respect.

The performance measures most often employed to assess jury operations are jury yield and juror utilization. Jury yield measures how much effort courts make to secure enough qualified jurors to be able to select juries. Juror utilization measures how effectively courts use prospective jurors once they've invested the effort to summon and qualify them for jury service. These measures are most closely related to the first and

third objectives of jury system management. However, because the four objectives are highly interrelated, poor jury yield is often a sign that the court has difficulty ensuring that jury pools reflect a fair cross section of the community while poor juror utilization indicates disrespect for jurors' valuable time.

This issue of the *2023 State-of-the-States Survey of Jury Improvement Efforts* (2023 SOS Survey) describes jury yield and juror utilization in state courts based on 1,240 responses from jury managers and court administrators to a survey of local court practices (Local Court Survey). The responses reflect jury operations in 45 states plus the District of Columbia, Puerto Rico, and the Northern Mariana Islands. Approximately 40% of responses were collected in 2018 or 2019, when NCSC first began its effort to replicate the 2007 SOS Survey; the remaining 60% of responses were collected between September 2022 and March 2023 with funding for the Strengthening the Sixth project in collaboration with the National Association of Criminal Defense Lawyers, the Association of Prosecuting Attorneys, and RTI International.

Jury Yield

The technical definition of jury yield is the number of qualified and available jurors expressed as a percentage of the number of mailings — qualification questionnaires and jury summons — sent to prospective jurors. The formula for calculating jury yield differs depending on whether the court employs a one-step or a two-step jury system.

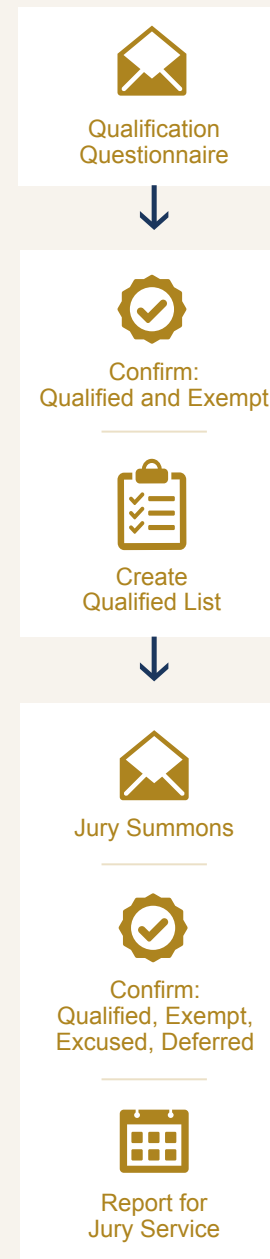
In two-step jury systems, the court randomly selects names of prospective jurors from the master jury list to receive a juror qualification questionnaire (Step 1). The qualification questionnaire asks jurors if they meet the statutory criteria for jury service in the jurisdiction, which typically includes U.S. citizenship, residency in the geographic area served by the

court, adult (age 18 or older), English fluency, and the absence of felony conviction or current felony indictment. Many courts also permit prospective jurors to claim an exemption from jury service (e.g., advanced age, sole caregiver of a minor or incapacitated adult, previous jury service, or based on occupational status) at the qualification stage. **The “qualified yield” is the number of jurors who are qualified and who do not claim an exemption from jury service expressed as a percentage of the total number of qualification questionnaires mailed.**

The names of qualified jurors are placed on the qualified juror list to be randomly selected to receive a jury summons as needed for upcoming jury trials (Step 2). The jury summons is a court order that directs the juror to report to the courthouse on a specific date and time. At this stage, the prospective juror can request to be excused due to poor health, financial hardship, or lack of transportation, or deferred to a more convenient date if the juror has a preexisting conflict on the reporting date. **The “summoning yield” is the number of qualified jurors who are available for jury service on the reporting date — that is, not excused or deferred — expressed as a percentage of the total number of jury summonses mailed.** Multiplying the qualified yield and the summoning yield produces the overall jury yield.

In one-step jury systems, the qualification and summoning steps are combined into a single step. The court randomly selects names of prospective jurors from the master jury list to receive a jury summons for an upcoming jury trial. The jury summons includes the juror qualification questionnaire, and the prospective juror is directed to report for jury service unless the court finds they are not qualified or they are exempt, excused, or deferred to another date. The summoning yield and the overall jury yield are the same in one-step jury systems: the number of qualified and available jurors expressed as a percentage of the number of jury summonses mailed.

TWO-STEP Qualify then Summon



ONE-STEP Summons and Qualify



Regardless of whether juror qualification and summoning are performed as a single step or two steps, if the mailing is returned marked undeliverable by the US Postal Service or if the prospective juror fails to respond as directed, they will not be included as a qualified, available juror in the jury yield calculation.

To gauge the impact of COVID-19 on jury yield, the 2023 SOS Local Court Survey asked respondents to provide the percentage breakdown for the jury yield components for 2019 and for the most recent calendar year available at the time they completed the survey. For most courts, the most recent year was 2021, but for some courts it may have been 2022. Table 1 shows the average jury yield as reported in the 2007 and 2023 SOS Local Court Surveys.

Table 1 makes it very clear that one-step courts have consistently higher jury yields than two-step courts. In the 2007 SOS Survey, average jury yield for two-step courts was 12 percentage points lower than one-step courts (40% compared to 52%). Large differences in average jury yield continue in 2019 (11 percentage points) and in the most recent year available (13 percentage points).

TABLE 1 | Jury Yield for 1-step and 2-step jury systems by year

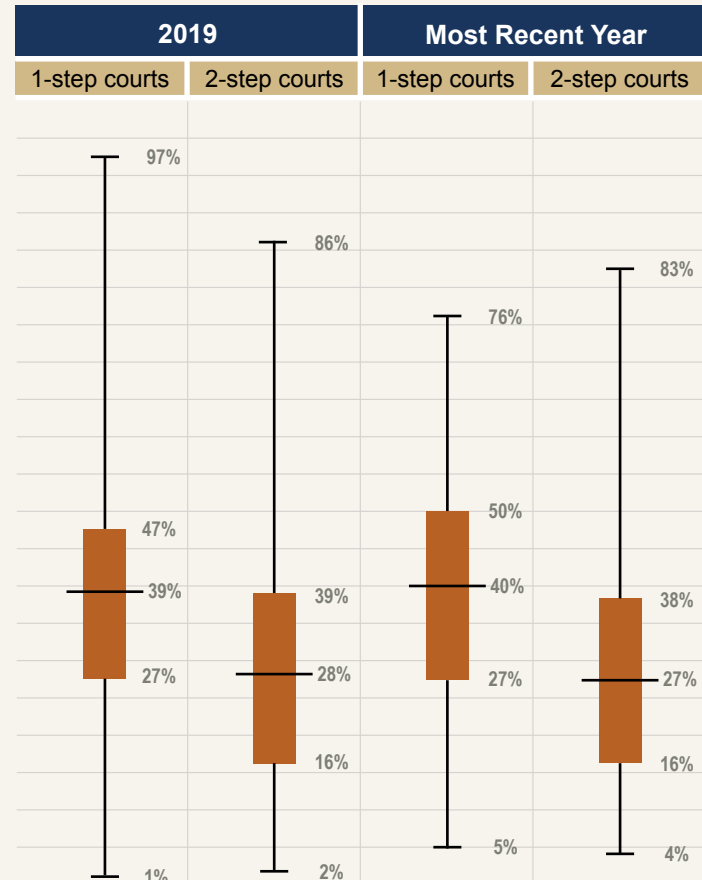
	One-Step Jury Systems			Two-Step Jury Systems		
	2007	2019	Most Recent Year Available	2007	2019	Most Recent Year Available
Qualification						
% Undeliverable	n/a			15%	12%	11%
% Nonresponse				9%	17%	22%
% Disqualified				8%	12%	11%
% Exempt				7%	8%	8%
% Qualified				61%	50%	48%
Summoning						
% Undeliverable	15%	12%	11%	9%	8%	6%
% Nonresponse/FTA	9%	14%	16%	6%	6%	8%
% Disqualified	8%	11%	10%	8%	6%	6%
% Exempt	7%	10%	9%	5%	6%	5%
% Excused	9%	9%	8%	6%	8%	8%
% Deferred	n/a	7%	7%	n/a	9%	11%
% Qualified & Available	52%	44%	45%	66%	66%	67%
Overall Jury Yield	52%	44%	45%	40%	33%	32%

Some of the difference in jury yield between one-step and two-step courts is due to the time lag between the qualification and summoning process in two-step courts. Jurors who were once qualified are no longer available for jury service when summoned because they have moved out of the jurisdiction, they have become eligible to claim an exemption from jury service, or they simply fail to appear even though they previously responded to the qualification questionnaire. In 2019, the added loss of qualified jurors at the summoning stage increased the functional undeliverable rate to 17%, the nonresponse/FTA rate to 21%, the disqualification rate to 16%, and the exemption rate to 12% in two-step courts. In addition, many two-step courts do not consistently enforce the requirement that prospective jurors respond to the initial qualification questionnaire. Those individuals are never confirmed as qualified and added to the qualified juror list and, thus, are never summoned for jury service. Left unchecked, nonresponse rates tend to increase over time, further decreasing jury yield and often undermining the demographic diversity of the jury pool.

While one-step courts on average outperform two-step courts on jury yield, there is substantial variation from court to court. Figure 1 shows the minimum, maximum, and interquartile range of jury yields for 1-step and 2-step courts in 2019 and the most recent year. The endpoints are the minimum and maximum values reported by courts in the 2023 SOS Survey. The bottom and top of the brown rectangle are the 25th and 75th percentiles, respectively.

The horizontal line through the brown rectangle is the median (50th percentile). At the 25th percentile, jury yield for one-step courts was 27% and 16% for two-step courts in both 2019 and the most recent year. At the 75th percentile, however, jury yield for one-step courts was 47% and 50%, respectively, in 2019 and the most recent year, but 39% and 38%, respectively, for two-step courts.

FIGURE 1 | Interquartile Range for Jury Yield



Given the disruptive impact of COVID-19, it is somewhat surprising that jury yield stayed largely unchanged in both one-step and two-step courts between 2019 and the most recent year reported. One-step courts reported a 1 percentage point increase from 44% to 45% while two-step courts reported a 1 percentage point decrease. Even more surprising is the substantial decrease in jury yields that took place between 2007 and 2019. Average jury yields in one-step courts decreased from 52% to 44%, mostly due to increased nonresponse/FTA and disqualification rates. Two-step courts had a similar decrease from 40% to 33%, due also to increased nonresponse and disqualification rates at the qualification stage. Undeliverable rates decreased during this time, however. While these somewhat offset increases in other components of jury yield, it is likely that some portion of the nonresponse/FTA rate is undeliverable qualification questionnaires and summonses that were not returned to the court.¹

While one-step courts on average outperform two-step courts on jury yield, there is substantial variation from court to court, especially related to the size of the population served by the

court. **Table 2** shows jury yield for one-step and two-courts serving populations less than 25,000 (rural), 25,000 to 99,999 (small suburban), 100,000 to 499,999 (large suburban), and more than 500,000 (urban).

In the 2007 SOS Local Court Survey, jury yield was lowest in urban areas (population greater than 500,000) and highest in rural areas (population less than 25,000). In one-step courts, for example, jury yield was 38% in courts serving populations greater than 500,000, 41% in courts serving populations from 100,000 to 499,999, 45% in court serving populations 25,000 to 99,999, and 50% in courts serving populations less than 25,000. Corresponding yields in two-step courts were 23%, 32%, 34%, and 40%. As shown in Table 2, the differential in jury yields between urban and rural areas has largely disappeared in 2019 and in the most recent year available. In one-step courts, jury yields varied by four percentage points or less across population sizes, and not in a consistent direction. In two-step courts, the variation in overall jury yield was greater (6 percentage-point range in 2019, 7 percentage-point range in the most recent year available), but also not in a consistent direction.

¹ See Paula Hannaford-Agor & Morgan Moffett, *Why Won't They Come: A Study of Juror Nonresponse and Failure-to-Appear in Harris County, Texas: Report and Recommendations to the Harris County District Clerk* (December 2023); Robert Boatright, *Improving Citizen Response to Jury Service: A Report with Recommendations* (1998).

TABLE 2

Jury Yield, by Population Served by the Court

	2019				Most Recent Year Available			
	Population served by the Court				Population served by the Court			
1-Step Courts: Summoning	<25,000	25,000 to 99,999	100,000 to 499,999	>500,000	<25,000	25,000 to 99,999	100,000 to 499,999	>500,000
% Undeliverable	11%	14%	12%	13%	11%	13%	9%	13%
% Nonresponse/FTA	15%	13%	14%	14%	15%	17%	19%	15%
% Disqualified	11%	10%	11%	12%	11%	9%	10%	10%
% Exempt	9%	10%	12%	8%	9%	10%	8%	6%
% Excused	11%	11%	6%	8%	8%	8%	8%	10%
% Deferred	5%	7%	8%	9%	4%	6%	10%	10%
% Qualified & Available	43%	45%	44%	44%	46%	43%	47%	45%
2-Step Courts: Qualification	<25,000	25,000 to 99,999	100,000 to 499,999	>500,000	<25,000	25,000 to 99,999	100,000 to 499,999	>500,000
% Undeliverable	14%	10%	14%	11%	14%	9%	12%	11%
% Nonresponse	13%	17%	18%	22%	15%	24%	22%	30%
% Disqualified	13%	12%	12%	11%	13%	11%	10%	10%
% Exempt	10%	8%	7%	9%	9%	8%	6%	7%
% Qualified	50%	52%	50%	46%	49%	48%	50%	43%
2-Step Courts: Summoning								
% Undeliverable	11%	7%	6%	7%	10%	5%	4%	10%
% Nonresponse/FTA	6%	6%	7%	7%	8%	7%	7%	11%
% Disqualified	7%	5%	6%	6%	7%	5%	8%	7%
% Exempt	9%	4%	7%	5%	8%	4%	6%	4%
% Excused	7%	9%	9%	6%	6%	8%	10%	8%
% Deferred	5%	9%	12%	10%	5%	12%	13%	13%
% Qualified & Available	59%	70%	66%	69%	61%	71%	55%	46%
2-Step Courts: Overall Yield	30%	36%	33%	32%	30%	34%	27%	20%

Juror Utilization

Juror utilization, the other primary performance measure for jury operations, focuses on how effectively the court uses the jurors that it has summoned and qualified at three distinct phases in the jury selection process:

1. When prospective jurors are told to report for jury service;
2. When prospective jurors are sent to a courtroom for jury service; and
3. When prospective jurors are questioned during voir dire.

The court should have enough prospective jurors available at each phase to satisfy demand without “wasting” excess numbers of prospective jurors who were not needed to select juries. Unused jurors are those who were not questioned during

voir dire because the judge and attorneys were able to select a jury before reaching all jurors who were sent to the courtroom for voir dire; those who were not sent to a courtroom because the trial was cancelled due to settlement, plea agreement, or continuance on the day of trial; and those who were told not to report because trials scheduled for the reporting date had been cancelled. Ideally, the court should make an allowance of 10% of prospective jurors to remain “unused” at each phase to meet unanticipated demands, but not more. The benchmark for overall juror utilization, therefore, is 72% — this is, 90% x 90% x 90%².

Due to concerns that few courts kept accurate data on juror utilization, the 2007 SOS Survey did not collect data on this performance measure. Since 2007, courts have become more conscientious about data integrity. In the 2023 SOS Survey,

JUROR UTILIZATION FORMULA

Percent of qualified and available jurors who are told to report

X

Percent of reporting jurors who are sent to a courtroom for jury selection

X

Percent of jurors sent to a courtroom who are questioned and either sworn as a trial juror or alternate, removed for cause or hardship, or removed by peremptory challenge

=

Juror Utilization

2 CourTools Measure 8 (Effective Use of Jurors) at www.courttools.org.

more than half the respondents were able to provide data for one or more juror utilization components. Table 3 shows average juror utilization for all courts and for courts serving different population sizes. What is immediately apparent is that most courts fall woefully short of NCSC recommended standards. One-third of jurors who were summoned and qualified were waived off without ever reporting for jury service. Nearly one-quarter of jurors who reported to a courthouse never made it

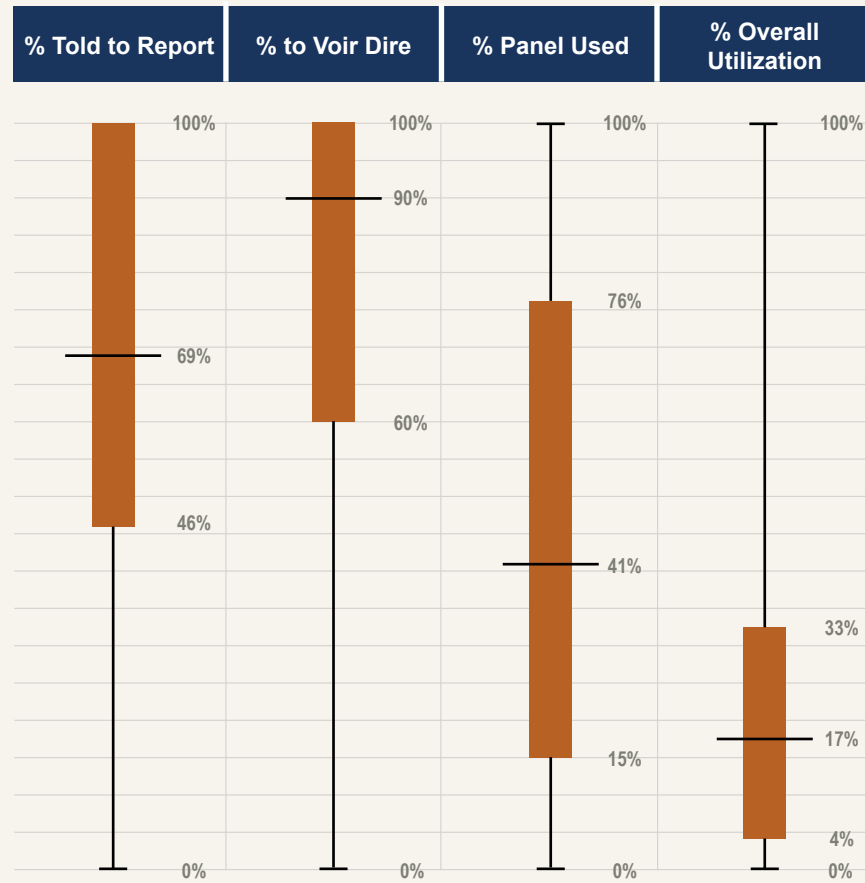
to a courtroom for jury selection. Jury panels were more than twice as large as necessary to impanel juries. Rural courts performed better than suburban and urban courts with overall juror utilization of 31%. Urban courts, however, had substantially lower utilization, especially for percent to voir dire and percent told to report, making their overall utilization almost half that of rural courts.

TABLE 3 | Juror Utilization

	Percent told to report	Percent to voir dire	Percent of panel used	Overall juror utilization
Courts serving populations...				
Less than 25,000	70%	83%	50%	31%
25,000 to 99,999	65%	79%	42%	23%
100,000 to 499,999	63%	72%	45%	24%
500,000 and over	60%	56%	49%	16%
Average all courts	66%	76%	45%	25%

As with jury yield, there was a wide range between high-performing and low-performing courts with respect to juror utilization. At the 25th percentile, courts used only 15% of jury panels, sent only 60% of reporting jurors to courtrooms for jury selection, and told less than half (46%) of qualified jurors to report for service; overall juror utilization in these courts was less than 4%. Some courts performed well on individual components of juror utilization, including 76% panel utilization, 100% percent to voir dire, and 100% told to report. However, it was rare for even high-performing courts to do well on all three components. At the 75th percentile, overall juror utilization was still only 33% — less than half the recommended standard of 72%. Achieving effective panel utilization appears to be an especially difficult standard to meet.

FIGURE 2 | Interquartile Range for Juror Utilization



Conclusions

Jury yield and juror utilization have been key performance measures for jury operations for nearly half a century. They provide an easily understandable framework for assessing how well courts achieve two of the four key objectives of jury system management — vis, securing an adequate number of prospective jurors from which to select juries and managing the jury system in a reasonably efficient manner. But they also indirectly shed light on how well courts ensure that the jury pool reflects a fair cross section of the community and

whether it treats jurors with appropriate dignity and respect. Poor jury yield often signals that the court is struggling to secure a diverse jury pool. Likewise, wasting jurors' valuable time through over-summoning, cancelling trials after jurors have reported for service, or sending a grossly excessive jury panel to the courtroom for jury selection is the very definition of disrespectful and undignified treatment of citizens. The 2023 SOS Survey provides new benchmarks for courts to evaluate their performance and make improvements.

Acknowledgements and Disclaimers

NCSC is grateful to the judges, lawyers, law professionals, jury managers, and court clerks that graciously agreed to participate in this study. We are also specifically grateful to the Chief Justices, State Court Administrators, and our Strengthening the Sixth project partners who assisted with the nationwide survey distribution process. Finally, we owe a debt to our Strengthening the Sixth colleagues, Bonnie Hoffman, Monica Milton, Venita Embry, and Beth Husted, and to our NCSC colleagues Chris Wu, Patti Snell, Breanne Harris and Melissa Woods for editorial oversight, advice on user-friendly design, and steadfast support and patience bringing this project to completion.

This project is supported by Grant No. 2019-YA-BX-K001 awarded by the Bureau of Justice Assistance (BJA). BJA is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of crimes, and the SMART Office. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice or the National Center for State Courts.



ISBN: 978-0-89656-332-2

© 2024 National Center for State Courts

[ncsc.org](https://www.ncsc.org)