



## The State-of-the-States Survey of Jury Improvement Efforts Executive Summary

The State-of-the-States Survey is the cornerstone of a much larger initiative by the NCSC Center for Jury Studies – the National Program to Increase Citizen Participation in Jury Service (National Jury Program). The National Jury Program provides information and technical assistance to state courts about best practices in jury system management and trial procedures. Its ultimate goals are to assist courts to summons and impanel more representative juries; to manage their jury systems in an effective, efficient, and informative manner; to facilitate informed decision-making by trial jurors; to increase public trust and confidence in the jury system and in courts; and to better inform citizens about the judicial branch of government. The State-of-the-States Survey was designed to document local practices and jury operations in the context of their respective state infrastructures and thus provide a baseline against which state court policymakers could assess their own systems vis-à-vis their peers and nationally recognized standards such as the *ABA Principles for Juries and Jury Trials*. For a full description of the National Jury Program, see the NCSC Center for Jury Studies Website at [http://www.ncsconline.org/D\\_Research/cjs/](http://www.ncsconline.org/D_Research/cjs/).

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Over the past two decades, the legal community, researchers, and the broader American public have become increasingly interested in the jury system. Studies show that the rate of civil and criminal jury trials has steadily declined in recent years, eclipsed by non-trial dispositions such as settlements, plea agreements, and summary judgments.<sup>1</sup> Yet trial by jury continues to play a critical role in the American justice system in protecting the rights of criminal defendants, in resolving intractable civil disputes, and in promoting public trust and confidence in the courts.

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<sup>1</sup> See Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. Empirical Leg. Stud. 459 (2004).

Beginning in the early 1990s, debates between supporters and detractors of the jury system prompted renewed efforts by judges, lawyers, and scholars to examine jury performance and to implement various improvement initiatives through changes to court rules and case law, and through judicial and legal education. While these policy changes are easy to track on a statewide level, the details about local practices vary from court to court. It is also difficult to determine what occurs during trials themselves, as most jury trial techniques are permitted “in the sound discretion of the trial court.” Until now, we have had little idea how often judges exercise that discretion.

This executive summary sets forth key findings derived from the first-ever State-of-the-States Survey of Jury Improvement Efforts. The full report provides a large baseline of information about how jury trials are managed and conducted in state courts. The State-of-the-States Survey consisted of three separate, but related, components. The first documented statewide jury improvement efforts and the state infrastructure governing jury system management and trial procedures. The second component was the Local Court Survey, which was distributed to the states’ general

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jurisdiction trial courts and focused on local jury operations. The final component was the Judge & Lawyer Survey in which

respondents were asked to describe jury practices employed in their most recent jury trial.



State-of-the-States Survey Components

Component	States Represented	Who Was Surveyed	Respondents	Survey Topics
Statewide Survey	50 states plus DC	Office of the Chief Justice or the Administrative Office of the Courts	51	Jury improvement efforts, infrastructure governing jury system management, and trial procedures.
Local Court Survey	49 states plus DC	State Trial Courts	1,396	Local jury operations.
Judge and Lawyer Survey	50 states plus DC and Puerto Rico	State and Federal Trial Court Judges and Lawyers	11,752 (10,395 - state 884 - federal)	Jury practices employed in their most recent jury trial.

National Jury Trial Rate

A perennial challenge for policymakers and researchers concerned with jury trial procedures and operations is the difficulty in obtaining basic statistics about the number of jury trials that take place in state courts each year. In part, this is due to the lack of a consensus among courts about the definition of a "jury trial" and because many automated systems are not programmed to capture these events.

The State-of-the-States Survey provided an opportunity to estimate the number of jury trials that take place in state courts. Annually, state courts conduct an estimated 148,558 jury trials. An additional 5,940 jury trials (estimated) are conducted annually in federal courts.<sup>2</sup> California has the largest volume of jury trials – approximately 16,000 per year. Vermont and Wyoming had the lowest volume (126 trials annually). Jury trial rates also varied substantially from a low of 15 per 100,000 population in Alabama to a high of 177 per 100,000 population in Alaska. The NCSC had previously estimated the number of jury trials conducted in general jurisdiction courts.<sup>3</sup> The State-of-the-States Survey indicates that a considerable proportion of jury trials – perhaps as much as 40 percent – are actually conducted by limited jurisdiction courts, which had been excluded from previous estimates.

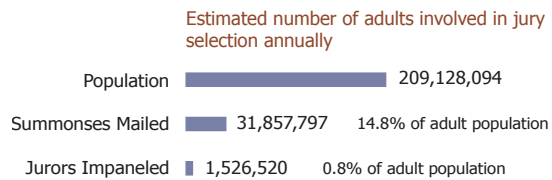
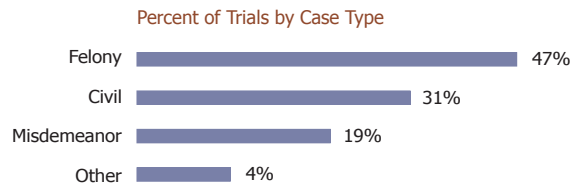
<sup>2</sup> Federal courts conducted an average of 5,943 trials from 2002-2006. Administrative Office of the U.S. Courts, *Judicial Business of the United States Courts* 2006, Table C-7.

<sup>3</sup> Brian J. Ostrom, Neal B. Kauder & Robert C. LaFountain, *Examining the Work of State Courts*, 2001, 102-03 (2001).



Estimated Number of Jury Trials in All U.S. State Courts

Estimated number of jury trials\* . . . . . 148,558  
 Trial rate per 100k population . . . . . 59



\* This estimate was extrapolated using survey results for 1,546 counties representing 70% of the U.S. population

To secure enough jurors to hear cases, state courts mail an estimated 31.8 million jury summonses annually to approximately 15 percent of the adult population. Despite the large quantity of summonses, only 1.5 million are impaneled for service each year, less than 1 percent of the adult American population. Although the probability of being impaneled in any given year is quite small, over the course of a lifetime, more than one-third

of all Americans (37.6%) are now likely to be impaneled as trial jurors. In spite of declining numbers of jury trials, a larger and larger proportion of American citizens have first-hand experience with jury service, due to policies designed to increase the inclusiveness of the jury pool and to make jury service more convenient and accessible for all citizens.

### Infrastructure for Jury Operations and Improvement Efforts

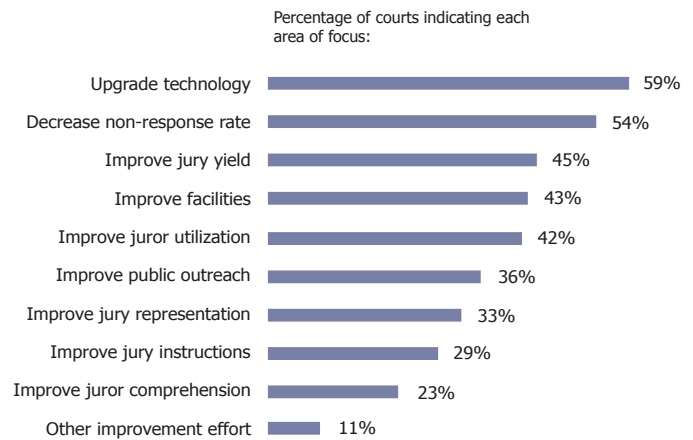
Jury trials are often perceived as local affairs, but they take place in an institutional framework established within each state. Indeed, each court system reflects its statewide institutional characteristics such as the degree of local court autonomy dictated through formal statutes, rulemaking procedures, and funding mechanisms. These institutional structures and norms, in turn, affect how each state chooses to undertake comprehensive improvement efforts.

The preferred approach for jury improvement efforts in most states has been a statewide commission or task force to examine issues related to jury operations and trial procedures. Three-quarters of the states (38) have appointed such an entity in the past 10 years, of which nearly one-third are still active. The vast majority of these commissions were established by the chief justice or under the authority of the court of last resort and involved making recommendations for legislative and rule changes related to jury operations and trial procedures. Education of judges and court staff were also reported as a frequent focus of activity. One-third of the states (17) reported that their commissions and task forces were engaged in program evaluations, pilot demonstrations, or survey research.

While state statutes and court rules can define the institutional structure in which jury operations take place, they do not always provide an accurate picture of how local jury systems actually operate. Nor does the existence of statewide jury improvement efforts, or lack thereof, necessarily indicate the extent of locally initiated improvement efforts. Just over half of the local courts report some jury improvement activity in the last five years. The single most popular focus of local jury improvements was upgrading jury automation. More substantive efforts captured the attention of many courts.



### What Are Local Courts Doing to Improve Juries?



Statewide leadership in the form of a centralized jury management office or a statewide task force/commission played a substantial role in motivating local court activity. This “trickle-down” effect of statewide leadership appeared to spur the existence of local court improvement efforts by doubling the number of efforts reported compared to courts in jurisdictions without a state-level task force.

Interestingly, the degree of state restrictiveness over jury operations has no significant relationship to the number of jury improvement efforts underway in those states. This suggests that jury reform has not followed an exclusively top-down or bottom-up approach, or even one dictated by exigencies associated with the volume or frequency of jury trials. Rather, the various approaches derive from unique institutional and political cultures in each jurisdiction.

### Term of Service

The degree to which jury operations are directed by state law varies tremendously by jurisdiction with respect to maximum term of service, juror fees, and source lists to compile the master jury list. For example, just over half of the states (27) give discretion to local courts to establish maximum terms of service. Of the 24 state-mandated jurisdictions, 10 (28.6% of the U.S. population) set the maximum term of service at one day or one trial. Overall, more than one-third of local courts employ a

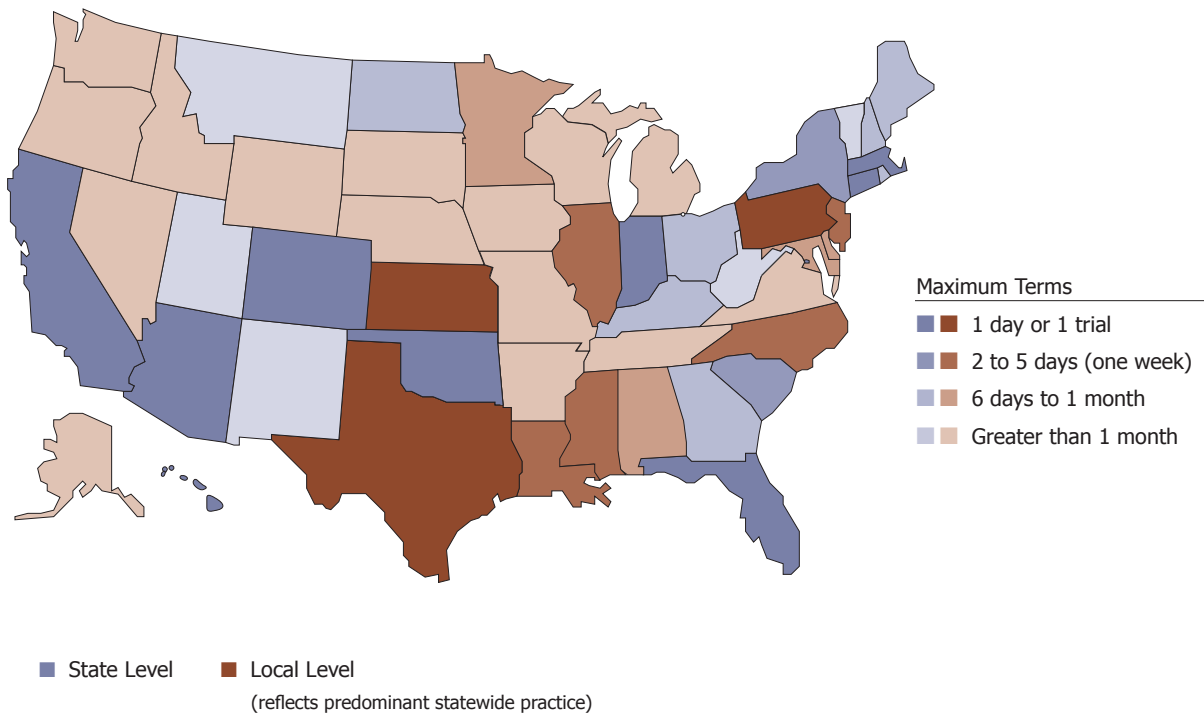


one day/ one trial (OD/OT) term of service and these encompass 63 percent of the U.S. population. The median number of jury trials for those courts with terms of service longer than

OD/OT was 12 per year. This suggests that many of these courts are in reality functioning with a OD/OT term of service, or could be with little or no administrative effort.



#### Maximum Term of Jury Service



#### Juror Compensation

All fifty states and the District of Columbia provide compensation to jurors as reimbursement for out-of-pocket expenses as well as token monetary recognition of the value of their service. Traditionally, the juror fee was a flat per diem with a supplemental mileage reimbursement. Recently, states have begun to recognize the relationship between the amount of juror fees, the proportion of citizens who are excused for financial hardship, and minority representation in the jury pool. As a result, a number of states have increased juror fees, but in doing so, have changed the structure of the payment system from a flat daily rate (national average \$22) to

a graduated rate in which jurors receive a reduced fee, or no fee, for the first day(s) of service with an increased fee (national average \$32) if impaneled as a trial juror or required to report for additional days.

#### Jury Source Lists

Another area of jury operations in which states can either retain control or delegate authority to local courts is the choice of source list(s) which can be used to compile the master jury list. The total number of unique names derived from all source list defines the total population from which

prospective jurors may be qualified and summonsed. Thus, the choice of source lists is an important policy decision for state courts insofar that it establishes the inclusiveness and the initial demographic characteristics of the jury pool.

Thirty states mandate that courts within the jurisdiction use only the designated source lists, while 15 states and the District of Columbia permit their courts to supplement the required lists with additional lists. For those states that mandate which source lists to use, the ones that occur most frequently are the voter registration list (38 states) and the licensed driver list (35 states) or both (19 states). Twenty-one states permit courts to supplement the mandated lists with additional source lists including income or property tax rolls, unemployment compensation recipient lists, public welfare recipient lists, and state identification card holders.

### Jury Yield

The term “jury yield” refers to the number of citizens who are found to be *qualified* and *available* for jury service expressed as a percentage of the total number of qualification questionnaires or summonses mailed. It is a critical concept in jury system management as it provides a standard measure of efficiency for jury operations – in essence, how much up-

front administrative effort and cost the court undertakes to secure an adequate pool of prospective jurors for jury selection.<sup>4</sup> The national average yield is 46 percent. Typically, urban courts experience lower jury yields (38%) than smaller, rural courts (50%).

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<sup>4</sup> For instructions on how to calculate jury yield, see *CourTools Measure 8: Effective Use of Jurors* at: [www.courttools.org](http://www.courttools.org).

A number of factors affect jury yield. Some factors are related to the court’s jury operations and procedures and others are related to local community conditions (e.g., mobility rates, U.S. citizenship rates). The number of exemption categories decreases qualified rates and courts with one-day / one-trial term of service report lower rates of excusals than those with longer terms of service. And similarly, juror fees that exceed the national average decrease excusal rates.

Courts across the country have been increasingly challenged by citizens who fail to return a questionnaire or fail to appear (FTA) for jury service. Twenty percent of courts reported non-response/FTA rates of 15 percent or higher. To address these problems, 80 percent of local courts reported some type of follow-up program to track down non-responders and FTAs. The most common and effective approach was to send a second qualification questionnaire or summons. Order to Show Cause hearings and fines had no effect, possibly due to the infrequency with which they are typically imposed. Courts that had no follow-up program had significantly higher non-response/FTA rates.

All of these preliminary operational matters obviously have substantial implications for the efficiency and cost-effectiveness of each court’s jury system. More sophisticated technologies can reduce staff time and associated costs as well as provide better management information to court administrators to assess performance and focus on problem areas. Improved jury yields essentially translate as reduced administrative costs per juror summonsed for service.

### Juror Privacy

As in other areas of contemporary life, courts have begun to recognize the need to respect jurors’ legitimate expectations of privacy. Unlike judges and other public officials, jurors do not deliberately seek out this particular form of public service. They do not, therefore, automatically surrender expectations of privacy. In particular, they have a right to expect that personal information will be disclosed only to those individuals with a legitimate need for it. To meet those expectations, courts have increasingly placed restrictions on the information that prospective jurors are required to disclose and to whom that information may be subsequently released.

Parties have the greatest legitimate interest in access to juror information. However, there is sharp disagreement in many states about whether their attorneys should have access to information before the beginning of voir dire. More than one-third of courts reported that they do not provided attorneys with a full street address. More than one-quarter (26.7%) of courts reported that they provide no address information whatsoever on prospective jurors.



## Judge & Lawyer Survey

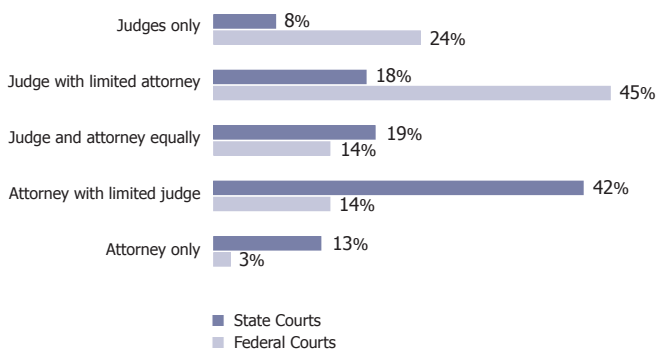
Just as local court operations can vary from court to court within states, in-court practices and procedures can vary from judge to judge, even within local courts. To some extent, in-court practices are affected by court rules and case law proscribing acceptable and unacceptable procedures, but the majority of states leave a great deal of discretion in the hands of the trial judge.

### Voir Dire

Jury selection practices vary from state to state across a number of characteristics. For example, all courts agree that the purpose of voir dire is to identify and remove prospective jurors who are unable to serve fairly and impartially. But not all states recognize the exercise of peremptory challenges as a legitimate purpose of voir dire.



#### Who Questioned Jurors During Voir Dire



Voir dire practices varied greatly among state courts and between state and federal courts. Lawyer-conducted voir dire was the most prevalent practice in state courts while judge-conducted voir dire was the norm in federal courts. The vast majority of judges and attorneys (86%) reported that in their most recent jury trial, at least some questions were posed to the full panel, usually with instructions to answer by a show of hands. Another common approach is to question each juror individually in the jury box. Judges and attorneys have gradually become more aware of jurors' reluctance to disclose sensitive or embarrassing information in the presence of the entire jury panel and courtroom observers. Jurors were given the opportunity to disclose information privately at sidebar or in chambers in 31% of trials.

The length of time to select a jury was typically two hours, although judges and attorneys spent longer in capital felony trials (median of 6 hours in state courts and 7 in federal). A significant amount of variation was reported from state to state. For example, Connecticut consistently reported the longest median voir dire time – 10 hours in felony and 16 hours in civil trials. Other states, such as South Carolina, report regularly impaneling a jury in only 30 minutes.

Not surprisingly, a number of trial characteristics, in addition to case type, can affect the length of jury selection including the number of jurors to be impaneled, the number of peremptory challenges, and the relative level of evidentiary and legal complexity that jurors are likely to encounter. As the issues to be decided at trial become increasingly serious, judges and attorneys spend greater amounts of time examining jurors. Thus, felony voir dire on average is about an hour longer than civil trials, and 13 hours longer in capital trials. Increasing levels of trial complexity also contribute to longer voir dire, although evidentiary complexity has a stronger impact than legal complexity. As a general rule, judge-conducted voir dire takes less time than attorney-conducted voir dire. Oral questions posed to the entire panel take substantially less time, while individual voir dire at sidebar and the use of case-specific questionnaires tends to increase the length of voir dire.

### Trial Practices

Once the jury has been impaneled, the evidentiary portion of the trial begins. This aspect of trial practice has perhaps undergone the most dramatic changes in recent years. In particular, a change has occurred in the way judges and attorneys view the jury's role during trial. The traditional view is that jurors are passive receptacles of evidence and law who are capable of suspending judgment about the evidence until final deliberations, of remembering all of the evidence presented at trial, and of considering the evidence without reference to preexisting experiences or attitudes. This view has rapidly given way to a contemporary understanding of how adults process information, which posits that jurors actively filter evidence according to preexisting attitudes, making preliminary judgments throughout the trial. This view of juror decision-making has spurred a great deal of support for trial procedures designed to provide jurors with common-sense tools to facilitate juror

<sup>6</sup> G. Thomas Munsterman, Paula L. Hannaford-Agor & G. Marc Whitehead, *Jury Trial Innovations* (2d ed. 2006); American Bar Association, *Principles for Juries and Jury Trials* (2005); B. Michael Dann, "Learning Lessons" and "Speaking Rights": *Creating Educated and Democratic Juries*, 68 *Ind. L. J.* 1229 (1993).

recall and comprehension of evidence.<sup>6</sup> The Judge and Lawyer Survey asked trial practitioners to report their experiences with these types of techniques in their most recent trial.


Permitting jurors to take notes is a widely accepted practice in most states. Judges in more than two-thirds of trials in both state and federal courts permitted juror note taking. Other practices, such as providing at least one written copy of instructions and providing guidance on conducting deliberations, are also common in state courts.

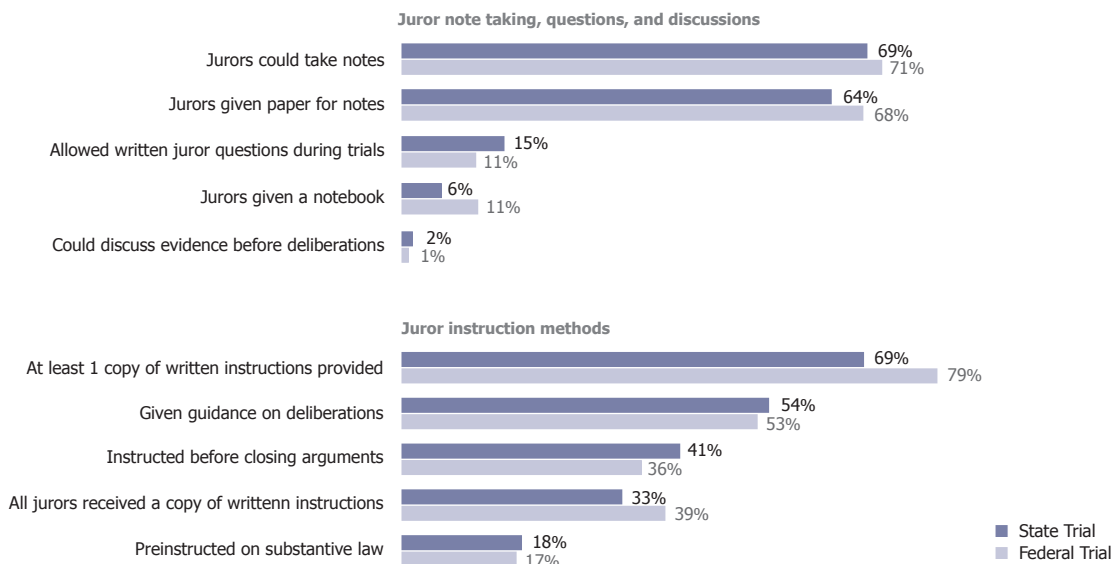
that jurors were allowed to submit written questions in 15.1 percent of all trials.

Again, states vary to the extent that these types of trial practices are encouraged or discouraged through state statutes, court rules, and case law. There was a surprising degree of judicial non-compliance with established rules on trial practices, especially where those rules prohibited innovative techniques. For example, Pennsylvania and South Carolina prohibit jurors to take notes in criminal trials, yet more than one-fourth of juries were permitted to do so in those states and, in most instances, jurors were even given writing materials with which to do so! Non-compliance with other rules governing jury trial practices was widespread, although generally not to the extent of non-compliance with prohibitions on juror note taking.

A more controversial technique involves permitting jurors to submit written questions to witnesses. A substantial and growing body of empirical research has found that this practice, if properly controlled by the trial judge, improves juror comprehension without prejudicing litigants' rights to a fair trial. The crux of the controversy stems from philosophical arguments about the role of the jury in the context of an adversarial system of justice. Given the ongoing controversy in many jurisdictions, what is most surprising from the data is

To gauge the extent to which statewide initiatives had an effect on judges' willingness to use jury innovations, we constructed an index of key jury techniques consisting of juror note taking, juror questions, juror discussions, pre-instructions, instructions before closing arguments, and written instructions. We then measured the impact of various statewide initiatives to determine which, if any, resulted in increased use of these techniques. We found that educational efforts and efforts to test and evaluate these techniques resulted in increased use of innovative techniques.

 Jury Trial Innovations: Percent of Trial Practitioners reporting . . .





## Conclusions

In spite of statewide efforts to regulate jury operations in some jurisdictions, most jury operations and practices are still governed on a local, and even individual judge, basis. The extent of continued local autonomy not only makes it difficult to collect data, but also makes it difficult to define terms and to compare data across jurisdictions. It also indicates the inherent challenge – and the likelihood of substantial local resistance – that states face in attempting to implement statewide changes in jury procedures.

It is heartening to see how prominent jury operations and practices are in statewide and local court improvement efforts. To some extent, local court efforts are affected by statewide initiatives. But the level of local court activity, even in jurisdictions that had not undertaken a statewide jury improvement initiative, is considerable. A number of factors may be driving local court efforts, including the need to reduce the cost of jury operations, to improve the efficiency and effectiveness of jury operations, and to be more responsive to local community demands on juror time and resources. Similarly, judges and lawyers are adjusting their trial practices to improve juror comprehension and performance.

So how should state and local courts use these results? Hopefully the comparative information and analysis will encourage courts that do not routinely collect and review data on jury operations and practices to begin doing so. This type of information is invaluable for identifying areas of relative strength and weakness, setting improvement priorities, and formulating effective strategies for addressing weaknesses. With data from the State-of-the-States Survey, judges, attorneys, and court administrators can now evaluate their own practices relative to those of their peers within their respective states and across the country.



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