

3 GENDER BIAS IN JURY SELECTION

104	INTRODUCTION
106	SYNOPSIS OF FINDINGS
107	RESEARCH METHODOLOGY
114	PUBLIC HEARING TESTIMONY
116	BEST PRACTICES
120	RECOMMENDATIONS
122	ENDNOTES

INTRODUCTION

A hallmark of American constitutional democracy is the right to an impartial jury. The courts have generally interpreted this to mean that defendants are entitled to a jury of their peers, or to a jury that accurately represents a cross-section of the community. U.S. Supreme Court rulings over the past century have gradually expanded interpretation of this provision to mean that discrimination in jury selection against African Americans, Latinos, and women is impermissible. The Court's 1946 ruling in *Ballard v. United States*, 329 U.S. 187 (1946), prevented women from being excluded from jury service. Later, the Court, in its 1978 ruling in *Duren v. Missouri*, 439 U.S. 357 (1978), found that defendants could prove a violation of Sixth Amendment rights if they could show particular groups had been underrepresented on juries, whether or not the court had intentionally sought to exclude these groups. In short, the Court held that an unrepresentative jury is an unfair jury.

Some believe that the deliberate exclusion of distinct segments of the population from juries is, for the most part, a thing of the past. Others argue that American courts have not entirely dismantled barriers to jury participation that have the effect of excluding certain individuals or that impose an undue burden upon them. Moreover, sometimes actions that are perceived as supportive of women, such as excusing them from jury participation, can adversely impact the goal of representative participation. In its study of Gender Bias in Jury Selection, the Committee investigated the barriers faced by Pennsylvanians, particularly women, who are summoned to serve on juries.

There is an extensive body of research on jury selection and juror treatment that identifies a wide variation in the willingness and ability of women to serve on juries. Factors analyzed in the literature include race, age, education, and socioeconomic status of jurors.¹ While some of the questions asked by the Committee are similar to questions asked in the earlier research, the Committee did not seek to develop a comprehensive picture of the myriad groups affected by practices of jury selection and juror treatment. Most of the studies do not consider gender as a determinant of summons response or as a variable likely to affect either citizens' willingness to serve or their experiences as jurors; a notable exception is the Losh, Wasserman, and Wasserman article cited above in endnote 1, which finds no significant difference in the propensities of men and women to request excuses or deferrals or to disregard a call to jury service. Many of the studies, however, do connect an ability to serve with issues that appear to be gender-related. Most notable among these issues is a need for childcare.

Focus of Inquiry

The Committee identified three juror outcome factors that may be influenced by the respondent's gender. The three are summons response, jury selection, and experiences during trials and deliberations.

First, the Committee investigated summons response, asking whether women and men may have distinct scheduling needs or problems that influence their ability to serve. In this context, the Committee discussed issues that are often gender-related, such as childcare. In addition, the Committee considered variables such as economic hardship, employer compensation, and transportation needs that, while not specific to gender, may affect men and women differently, according to differences in socioeconomic status, occupation, and family roles.

Second, the Committee investigated jury selection, asking whether women and men tend to be struck from juries at different rates in particular types of cases: Do women and men tend to be asked different types of questions during *voir dire*? Are men and women treated differently in the selection process by attorneys or the court?

Third, the Committee examined whether women have different experiences during the trial itself and during deliberations: Are women, for instance, expected to consider evidence differently from men in certain types of cases, and during deliberations do women and men tend to play different roles? Under this final topic, the Committee's specific objectives were to consider the rate at which women and men are selected as presiding jurors (forepersons), to measure differences by gender in how active individuals are in deliberations, and to gather evidence about the treatment of jurors by other jurors.

Research Methodology

The Committee utilized a variety of research methods in gathering its data. In April 2001, two surveys were mailed to jury commissioners in each of the 67 counties in Pennsylvania, seeking information on gender-related issues in jury selection and jury service. Follow-up interviews were then conducted with selected jury commissioners in an effort to discuss court-sponsored childcare programs in more detail. The Committee also obtained anecdotal information from witnesses who testified during the public hearings. Finally, the Committee consulted with other states and selected counties in Pennsylvania to seek information about other court-sponsored programs that have been effective in promoting participation.

SYNOPSIS OF FINDINGS

The Committee's findings, elaborated in greater detail below, indicate that men and women do face different obstacles to jury service.

- First, the Committee found that responsibility for childcare falls predominantly upon women, as does the responsibility for elder care. Several Pennsylvania courts have developed childcare programs or childcare reimbursement programs, and the Commonwealth has taken steps to enable courts to provide such programs.
- Second, the Committee found that travel to and from the courthouse is generally more difficult for women than for men. While recommending further research into this discrepancy, the Committee suggests that courts look at ways to facilitate jurors' access to the courthouse via public transportation wherever it is available.
- Third, the Committee found that jury service presents an economic hardship for both men and women. Given the predominance of either men or women in certain occupations, it behooves the courts to investigate juror compensation by employers in those workforce sectors that tend to employ one gender or the other. Based on the findings, the courts might consider increasing compensation for jurors.
- And fourth, the Committee found some evidence that the interpersonal dynamics within the jury room can operate to the detriment of the female jurors. While the research clearly shows that women in Pennsylvania are less likely than men to be chosen as presiding jurors, the scope of the study did not permit a consideration of differences in the ways that women and men regard deliberations. There is abundant psychological research on gender differences in handling conflict and in processing information, yet little of this research has been brought to bear on jury decision-making. It may be helpful for the courts to issue instructions emphasizing the importance of gender equality in the selection of the jury foreperson and encouraging sensitivity in juror deliberations. Courts may also benefit from training their employees to recognize patterns of male and female behavior and to be vigilant in identifying potential coercion or conflict among jurors based upon gender.

RESEARCH METHODOLOGY

JURY COMMISSIONER SURVEY

Summary

The Committee sent a survey to jury commissioners in each of the 67 counties in the Commonwealth in order to determine, anecdotally, if gender influences willingness to serve on juries, participation in jury deliberations, and juror treatment. A copy of the survey is included in Appendix Vol. I. Responses to the survey were submitted by 49 jury commissioners (73 percent), including two court systems each comprising two counties.

The results of the jury commissioner survey identified three primary factors that impede jury service for women: the need for childcare, the need for elder care, and transportation problems. While ameliorating the problems will likely increase the participation of women on juries, according to the survey, the changes are also likely to benefit many men. And while the survey generally did not find a gender-related component in juror treatment policies, the fact that women are less likely than men to serve as jury forepersons may indicate that women play a less significant role in leading jury deliberations.

The Survey Instrument and Method

The Jury Commissioner Survey contained eight questions concerning jury commissioners' perceptions of how male and female jurors felt about various aspects of jury service. Questions were grouped into two categories: Whether gender is related to willingness to serve and jury selection; and whether jurors' gender has an effect on juror treatment and jury deliberations.

First, respondents were asked about how frequently jury summons respondents cited various issues as impediments to jury service. The issues included childcare, elder care, economic hardship, transportation, lack of appropriate wardrobe, length of trial, length of trial day, inability to render a fair decision, and lack of confidence that one's opinions will count. Respondents were also asked about whether, in their opinion, peremptory challenges are used more often to strike men or women. Finally, respondents were asked whether men or women invoke jury service excuses or deferrals more frequently, and whether those failing to appear for jury service appear to be disproportionately male or disproportionately female.

Second, respondents were asked a series of questions about concerns raised by empaneled jurors regarding the adequacy of physical facilities and the civility of the judge, attorneys, court personnel, and other jurors.

In this latter series of questions, respondents were asked whether such concerns tend to be raised more by men or by women, and whether, in their opinion, men and women might have the concerns even if they do not raise them with the jury commissioner. Respondents were also asked to estimate the ratio of male and female jury forepersons chosen by the jury panels. An additional survey question sought to identify courts in which the first juror selected is automatically made the presiding juror.

Survey questions about peremptory strikes, deferral requests, excuse requests, and summons non-respondents had three answer categories—“more frequently women,” “more frequently men,” or “no difference.” All other questions, which addressed the frequency with which the various concerns were raised, had four scalable categories for responses—“never or rarely,” “sometimes, but not frequently,” “frequently,” and “very frequently or always.” The scaling of responses, from one to four in order of frequency, enabled the calculation of averages.

Jury Selection Findings

Respondents were asked about nine factors that might serve as impediments to jury service. In each case, the survey asked how frequently each of the nine factors was cited by all jurors, by male jurors and by female jurors. Only three of the nine—childcare, elder care, and economic hardship—were cited with any frequency, which, in this case, meant a mean response greater than two, between “sometimes, but not frequently” and “frequently.” Four other factors—transportation, the length of trials, the length of the trial day, and the inability or reluctance to render a fair decision—were noted by at least 10 respondents as a concern of jurors at least some of the time. The two remaining factors—lack of appropriate wardrobe and lack of confidence that one’s opinions would count—were judged by virtually all respondents as negligible factors in terms of willingness to serve on a jury.

TABLE 1
Impediments to Jury Service for all Jurors and by Gender

Factor	All Jurors	Men	Women
Economic hardship *	2.84	2.88	2.61
Childcare *	2.27	1.31	2.65
Elder care *	2.14	1.55	2.31
Length of trial	1.80	1.80	1.76
Transportation *	1.61	1.33	1.63
Inability to reach a fair decision	1.61	1.53	1.65
Length of trial day	1.35	1.27	1.39
Confidence that one's opinions will count	1.20	1.14	1.14
Appropriate wardrobe	1.04	1.02	1.02
N	49	49	49

* $p < .05$ for H_0 : mean response for men = mean response for women.

* Figures shown are the mean estimate of respondents on a scale of one to four where one indicates the factor is never mentioned by jurors and four indicates that the factor is very frequently or always mentioned by jurors.

* Male and female means are responses to separate questions. The male and female means should not necessarily average out to the mean for all jurors.

Table 1 presents the mean response for each of these questions for all jurors, and separately for male and female jurors. Questions on which differences in responses for men and women reached conventional standards of statistical significance ($p < .05$) are marked with an asterisk. As the table shows, four factors—childcare, elder care, economic hardship and transportation—produce different results based on the juror's gender. Men are more likely than women to cite economic hardship as a factor, while women are more likely than men to cite childcare, elder care, and transportation problems as factors. The reasons for each of these differences seem likely to be related to workforce participation—more women than men are responsible for the care of children or parents, and men seem more likely to be the primary breadwinners. In the case of transportation, it may be that in families with a single car, men are more likely than women to rely upon that car to get to work.

Respondents were also asked whether men or women were more likely to request a deferral, request an excuse, or fail to show up. In all three cases, most respondents responded that there was no difference between men and women.

Jury Service Findings

Fewer variances according to gender were found in responses to the battery of questions on jury service circulated by the Committee. The questions related to jury service used the same four-point scale used in the survey questions regarding jury selection, asking respondents to rate the frequency of complaints from jurors regarding court facilities and the civility of judges, court personnel, attorneys, and other jurors. Respondents were also asked their opinions about whether any such complaints were justified. In all categories but one—the adequacy of court facilities—at least 90 percent answered “four,” the most favorable response. Seventeen jury commissioners, or 35 percent of the respondents, commented on the quality of court facilities, including the jury waiting room, the food available for jurors, and the rest rooms. There was no variation according to gender in the frequency of complaints about the facilities.

The survey question about jury forepersons was the only one to show a pronounced variation of responses according to gender. The mean percentage of male forepersons reported in the survey, when averaged across participating jurisdictions, was 58.9 percent, while the mean percentage of female forepersons was 38.9 percent. (The figures did not add up to 100 percent because respondents reported these figures in separate questions.) Approximately 20 percent of respondents claimed no knowledge of the gender of forepersons, and two respondents noted that the first juror selected is always the presiding juror.

Courts, of course, have little control over the selection of presiding jurors. It is unclear what the courts might do to exert more influence in this regard, aside from requiring that the first juror selected is to be the presiding juror—a technique that may have other drawbacks unrelated to gender. The finding about the disproportionate number of male forepersons does merit further study, however.

In conclusion, it is evident from these data that childcare, elder care, and transportation are the primary issues that affect women’s participation on juries. Subsequent sections of this chapter present information on the attempts Pennsylvania courts have made to confront these issues and to develop solutions to these problems.

FOLLOW-UP SURVEY AND INTERVIEWS

To reach a clearer understanding of Pennsylvania courts' accommodations for jurors who are the primary caretakers of their children, the Committee sent a second survey to each jury commissioner to request information about the courts' childcare practices. Nearly 88 percent of the commissioners responded (57 of 65). A copy of the second survey is included in Appendix Vol. I.

The survey asked whether the court has its own childcare facilities, whether it provides compensation to jurors for childcare, and what policy it follows for granting excuses or deferrals on the basis of childcare needs. In an attempt to discover information the courts may already have collected from jurors, the second jury commissioner survey asked the courts to pass along copies of any exit surveys of jurors they may have conducted. In several cases, the Committee went on to discuss childcare with courts that sponsor programs.

Findings

The Committee identified two Pennsylvania counties that provide childcare for jurors and a third—Monroe County in Northeastern Pennsylvania—that provides a childcare reimbursement. The two counties with childcare are Pike County, a small county of 28,000 people in Northeastern Pennsylvania along the New York and New Jersey borders, and Montgomery County, an area of 680,000 people that comprises many of the Northern Philadelphia suburbs. Pike County did not provide details of its program. Montgomery County, however, explained that the Montgomery County Court Care Program was initiated in 1996 and is funded through the county by means of a fee collected by the prothonotary or clerk of courts. The program serves approximately 10 children per day and is licensed by the Pennsylvania Department of Public Welfare. There is no charge for the service and it is available to all families who have court business. Prospective jurors receive information about the childcare when they receive the jury summons, in a telephone message one day prior to jury service, and in postings on the jury board in the marshaling room area.

In the follow-up survey, 55 of 57 respondents noted that they grant prospective jurors a deferral for childcare reasons; the deferral is either automatic or on a case-by-case basis, as determined by court personnel or the judge. The survey also discovered that 43 of the 57 courts grant excuses for childcare—again, either automatically or on a case-by-case

basis. Each court, however, is different, and in some cases it was difficult to distinguish between an excuse and a deferral. Flexibility in childcare arrangements would seem to facilitate jury service for parents of young children—a disproportionately female group according to the survey.

Still, some courts have had difficulty with this concept. Court reformers in New York discovered during the 1990s that mothers of young children were not only excused, but removed from the jury rolls; the women did not receive summonses even when their children were older.² Several Pennsylvania counties seem to be aware of such potential problems. Philadelphia County, for instance, excuses such parents for three years. Allegheny County excuses parents for two years if they have pre-school age children and for two to four months, upon request, if they have elementary school children. Lebanon County excuses parents of young children for one year, and along with Lehigh and Dauphin counties, allows a parent caring for a disabled or special needs child to be excused for a longer period of time. Several respondents also noted other circumstances in which the courts seek to accommodate parents of young children by excusing or deferring jury service. In Bucks County, for instance, parents who are called to serve on a jury during the summer may defer their service until their children have returned to school.

Exit Surveys

Finally, in an attempt to solicit further data on the relationship between gender and jury service, the Committee asked the jury commissioners about juror exit surveys. In response, 14 of the 57 respondents forwarded copies of their exit surveys and two other respondents noted that their courts were in the process of developing exit surveys. Nine of the 14 counties collect information on the exit survey respondent's gender. Montgomery, Chester, Bucks, Dauphin, Blair, and Warren/Forest counties use the same standardized survey. This survey collects demographic information on the gender, age, and occupation of the jurors, and it asks them how they felt about jury service in general; about the amenities of the court and the surrounding area; and about the one-day/one-trial system. Respondents are also asked if they lost income due to jury service, whether they had served before, and, if so, how the latest service compared with the previous service. And, if they had not served before, whether the experience met their expectations. Elsewhere, the group found that Carbon and Franklin/Fulton Counties use their own exit surveys, with similar questions. Lancaster County has an exit survey that asks jurors three questions related to childcare: First, whether they had to find and pay for childcare in order

to serve; second, if so, whether they would use court-provided childcare if they were to serve again; and third, whether they would be willing to donate their jury pay and mileage reimbursement to the court if it were to use the funds to establish a childcare program.

By systematically collecting and tabulating the data from these surveys, the courts could explore many issues through jurors' eyes—issues that include the economics of jury service, concerns about juror treatment, and concerns about gender. But in follow-up interviews with the counties that conduct juror exit surveys, the Committee found that most court systems retain the data for only a short time, and none for longer than one year. Further, the courts do not systematically record the information in a database, which could then be analyzed. The juror exit survey is nonetheless a valuable tool for obtaining information with gender implications. With this in mind, the Committee recommends that all counties distribute a standardized juror exit survey and collect and retain the data for regular analysis.

CAPITAL JURY PROJECT DATA

In addition to conducting surveys and personal interviews, the Committee also obtained data from the Capital Jury Project, a 14-state study of the jury deliberation process in death penalty cases sponsored by the National Science Foundation and coordinated by William Bowers, principal research scientist, College of Criminal Justice at Northeastern University. The data for the study was obtained from in-depth interviews with 1,155 jurors in death penalty cases around the country. The Pennsylvania research in this study was conducted by Wanda Foglia, J.D., Ph.D., associate professor of law and justice studies at Rowan University, along with John Lamberth, Ph.D., associate professor of psychology at Temple University. Most of Foglia's work related to the role played by race in the jury deliberation process and in the outcomes of capital murder cases. At the request of the Committee, Foglia reviewed her data from Pennsylvania, focusing on the experience of female jurors in capital murder cases. While the study was not aimed at detecting gender bias, she found a small amount of evidence suggesting that female jurors were more dissatisfied than males with their jury experience. In particular, female jurors were more likely to say that the jury decided guilt and punishment at the same time and that the jurors had become too emotionally involved in the case. In reviewing the narrative accounts from female jurors, she found complaints that men had pressured them during the decision-making process. While these findings are not statistically significant, Foglia concluded that the suggestion of gender bias in the jury room may warrant further study.

PUBLIC HEARING TESTIMONY

Public hearings held by the Committee yielded several statements from witnesses on the issue of gender bias within the jury selection process, as well as statements about impediments faced by women in serving as jurors.

The Committee heard evidence of systemic discrimination against women in the jury selection process in capital cases from Robert Dunham, director of training for the Capital Habeas Corpus Unit in the Federal Defender's Office in Philadelphia. Dunham described a case involving a prosecutor who, during jury selection for a capital murder case, exercised a much greater percentage of peremptory strikes against female prospective jurors on the basis of a "stereotypical view that, because someone was a woman, she would not be able to make the choice as to whether someone should live or die."³ In that case, the prosecutor had struck nine women and one man from the jury panel. During *voir dire*, he directed only to female prospective jurors a question about difficulty they might have in making a decision between life and death for a defendant. After the court precluded the prosecutor's improper questioning, he accelerated his rate of directly striking women from the panel.

During the same public hearing, the Committee also heard testimony from David Baldus, professor of law at the University of Iowa and the author of a large-scale study on the impact of race on the use of peremptory challenges and sentencing decisions in capital murder cases in Philadelphia County. Baldus testified that his data indicated that the United States Supreme Court decision in *J.E.B. v Alabama*, 511 U.S. 127 (1994), prohibiting gender discrimination in the jury selection process, has had little, if any, impact on the use of peremptory challenges by prosecutors and defense counsel in Philadelphia.⁴ He stated that in Philadelphia between 1981 and 1997, "over 2,100 venire members were excluded from jury service because of their race and over 800 were excluded because of their gender."⁵

Baldus found the principal targets of peremptory challenges by prosecutors in capital murder cases were young, middle-aged and older African American women and young African American men. As evidence, he cited advice provided by former prosecutor Jack McMahan of the Philadelphia District Attorney's office on a training tape for newly hired prosecutors between 1986 and 1988. On the tape, McMahan criticizes prosecutors who "treat blacks all the same."⁶ He ranks "the young ones" as the most dangerous potential jurors in capital murder cases, followed by middle-

aged and older African American women, the so-called “black moms” who might be expected to exhibit a “maternal instinct” for a defendant.⁷ He advises young prosecutors to use their peremptory challenges to strike African American potential jurors in that order.

The principal targets of peremptory challenges by prosecutors in capital murder cases were young, middle-aged and older African American women and young African American men.

—Professor David Baldus

Other witnesses before the Committee identified specific impediments that tend to reduce the numbers of women serving as jurors. The jury commissioners from York County and Lackawanna County both testified they heard a significant number of people requesting to be excused from jury duty, based upon their lack of child or elder care. Robert Chuk, the York County jury commissioner, stated that prospective jurors’ lack of childcare was a problem for a “large number of people.”⁸ He added that he places requests for an excuse based on lack of childcare “fairly high on the list” and indicated that the court routinely grants excuses from jury service for that reason.⁹ Chuk also observed that of prospective jurors requesting an excuse because of a lack of childcare, the “vast majority are women.”¹⁰

The Committee identified economic hardship as a second impediment to juror service, affecting both males and females. Chuk testified that a high percentage of excuses from jury service are granted on the basis that the prospective juror’s employer will not pay him or her for the dates of jury duty.¹¹ James Minella, jury commissioner of Lackawanna County, testified that “economic reasons” for an excuse from jury duty were common.¹² He cited the hypothetical example of a construction worker who has not worked in six months, has a large family, and cannot afford to lose a day’s pay to perform jury service. Minella indicated that such an individual would be excused from service.¹³

Prospective jurors’ lack of childcare was a problem for a “large number of people...Of prospective jurors requesting an excuse because of a lack of childcare, the “vast majority are women.”

—Jury Commissioner Robert Chuk

BEST PRACTICES

CHILDCARE

Pennsylvania

The Pennsylvania Legislature enacted legislation in 2000 that provides for the start-up and daily operating costs of childcare facilities in jurisdictions across the Commonwealth.

.....
116

After childcare was identified in the first jury commissioner survey as one of the three main impediments to women serving as jurors, the Committee sought to identify courts in Pennsylvania with functioning childcare programs.

The Pennsylvania Legislature enacted legislation in 2000 that provides for the start-up and daily operating costs of childcare facilities in jurisdictions across the Commonwealth. The statute, set forth in Title 42 Pa. Cons. Stat. Ann. § 3721, enables a county judicial center or courthouse to provide “a childcare facility for use by children whose parents or guardians are present at the county judicial center or courthouse, for a court appearance or other matter related to any civil or criminal action where the person’s presence has been requested or is necessary.” The facility must either be located within the county judicial center or courthouse or must be readily accessible to it, and the facility must be licensed and operated pursuant to the regulations of the Pennsylvania Department of Public Welfare. The statute also authorizes funding for start-up and operational costs of court-sponsored childcare facilities through the collection of a \$5 filing fee for civil or criminal proceedings.

Montgomery County

The Committee’s research showed that Montgomery County has the only court system in the Commonwealth that provides childcare in any meaningful way, although other counties have indicated an interest in establishing a similar program. Montgomery County created its Court Care Center in 1995 as the Commonwealth’s first drop-in courthouse childcare center to operate with a full-time professional childcare staff fully licensed by the Pennsylvania Department of Public Welfare. According to the staff, one factor behind creation of the center was a recognition of the

disproportionate number of women who are unable to participate in the jury system due to lack of childcare.

Other States

According to the Center for the Study of Social Policy in Washington, D.C., there are more than 30 courthouse childcare centers across the country. The trend is detailed in the center's report, *Children in the Halls of Justice*, which was funded by the Department of Justice to help make the courts more accessible to the public.

Orange County, Florida, has been providing childcare services for five years at A Place for Children, serving people who have been summoned for jury duty. The center is located in the courthouse and operated by the Children's Home Society of Florida, a non-profit social services agency, with support from the Citizen's Commission for Children, a department of the Orange County Health and Community Services Division. The Orange County Bar Association and the Ninth Judicial Circuit also provide assistance to the center.

Massachusetts, New York, and California have all passed legislation to encourage the establishment of courthouse childcare centers, either by appropriating construction funds or by requiring all new courthouses to include space for such services. Other states, including Minnesota and Colorado, provide a \$50 stipend for childcare for jurors.

In New York, at least 10 childcare facilities now link parents with court business to services such as Head Start. The centers were created with the help of New York's Permanent Judicial Commission on Justice for Children, which is co-chaired by Chief Judge Judith S. Kaye, State of New York Court of Appeals. Other states, such as Florida, Arizona, and Illinois, also boast childcare programs in some jurisdictions. Although the programs differ in function and funding, they share a goal of providing a safe place for children while their parents or caregivers have official business with the court.

JUROR COMPENSATION

Pennsylvania

Economic hardship was identified both by Committee surveys and hearings as a serious impediment to jury service for both men and women in the Commonwealth. Pennsylvania law authorizes courts to compensate jurors with a nominal fee of \$9 per day for the first three days of service, increasing to \$25 for each additional day.¹⁴ The statute also provides for jurors to receive a travel allowance of 17 cents per mile, except within Philadelphia County. Additionally, state law prohibits Pennsylvania employers from penalizing an employee for responding to a jury summons or serving as a juror, although the law does not require an employer to compensate an employee for time lost due to jury service. The law exempts from these provisions any retail or service industry employers with fewer than 15 employees and manufacturing employers with fewer than 40 employees.

Other States

Lacking the resources to conduct large-scale research into juror compensation in Pennsylvania, the Committee reviewed the practices of other states as a means of seeking a basis for revisions in current compensation provisions.¹⁵ In addition, the Committee identified several states where legislation was enacted in an effort to increase juror participation by increasing compensation. Highlights of that research include the following:

New York

The state recently increased compensation from \$15 per day to \$40 per day.

Massachusetts

In 1979, Massachusetts adopted a new compensation plan which required employers to pay employees their salaries for their first three days of service, after which the state would pay \$50 per day.

Arizona

Currently, Arizona pays jurors \$12 a day, a payment set in 1970. A committee recommended an increase to \$50 a day with employers paying the first three days. The additional cost would be partly offset by eliminating mileage compensation for jurors who travel less than 50 miles roundtrip.

California

Currently, California does not compensate its jurors for the first day and pays \$15 a day thereafter. California's Blue Ribbon Commission on the issue recommended an increase in juror pay to \$40 per day for the first 30 days of service and \$50 per day afterwards. Under the recommended program, unemployed jurors would be eligible to collect an employment disability payment in the same amount.

New Hampshire

New Hampshire pays jurors \$20 per day and \$10 for a half day. A commission also recommended increasing juror pay to \$50 per day.

Washington

The state's range of juror pay varies from \$10 to \$25 a day. A committee recommended that the juror fee be increased to \$10 per day for the first day of service and \$45 for each day thereafter.

The Committee also identified a large-scale study on the juror fee issue, which the National Center for State Courts conducted for the state of Arizona. The study could serve as a model for a similar effort in Pennsylvania. Topics covered by the study include the extent to which jury service presents a financial hardship for prospective jurors in Arizona, jurors' opinions on several alternative fee structures, and the estimated costs of those alternative fee structures.

It would appear prudent for Pennsylvania to conduct a similar type of analysis, given the responses to Committee surveys indicating that jury service does indeed pose an economic hardship for men and women in the Commonwealth, thereby reducing their participation rate. The analysis could be performed with the assistance of the National Center for State Courts and could serve the purpose of increasing jury participation by all citizens of Pennsylvania. In particular, such an analysis could lead to greater jury participation by women and minorities—the people most disproportionately represented in the lower-income population. It is upon women and minorities that jury service imposes the greatest financial hardship.

RECOMMENDATIONS

TO THE SUPREME COURT OF PENNSYLVANIA

The Committee recommends that the Court:

1. Direct the AOPC to develop a standard jury service survey, or identify one from among surveys that are already utilized in Pennsylvania or other jurisdictions. The survey should be used across the Commonwealth on a regular basis to afford the collection of pertinent data about the composition of the jury, the process of jury selection, the jurors' experiences, and other relevant information about them and their service.
2. Require training of court administrators to understand better how procedures by which prospective jurors are disqualified, exempted, and excused may adversely affect the composition of the jury pool, and to identify ways to address these inequities.
3. Encourage court administrators to take advantage of recently enacted state legislation, Title 42 Pa.Cons.Stat.Ann. § 3721, which provides for funding for the start-up and daily operating costs of licensed childcare facilities in courthouses across the Commonwealth.
4. Direct the drafting and implementation of a standard jury instruction to state that the jury deliberation process be conducted in a manner that provides all jurors, regardless of gender, the opportunity to speak and be heard.
5. Require training of court personnel regarding interactions with jurors to ensure gender neutrality.
6. Study gender dynamics within the jury room to determine whether special instructions from the court or other measures are needed to ensure full participation by females in the jury deliberation process.

TO THE LEGISLATURE

The Committee recommends that the Legislature:

1. Require employers with a certain minimum number of employees to develop a paid leave policy for employees so that employees will receive their regular pay while serving on a jury. Employers should receive a state tax credit reflecting their payments to active jurors.
2. Conduct a study of juror compensation provided by employers and the courts for jury service. Following completion of the study, enact legislation to increase juror pay if supported by the results of the study.¹⁶
3. Conduct a study of transportation problems that impede citizens' abilities to serve as jurors, and develop solutions supported by the study.

ENDNOTES

-
- 1 See generally Alker, Hosticka, and Mitchell, *Jury Selection as a Biased Social Process*, 11 *Law and Society Review* 9 (1976); Alker and Barnard, *Procedural and Social Biases in the Jury Selection Process*, 2 *Justice Systems Journal* 246 (1978); Boatright, *Improving Citizen Response to Jury Summonses*, American Judicature Society (Chicago: 1998); Boatright, *Generational Differences in Attitudes Towards Jury Service*, 19 *Behavioral Sciences and the Law* 235 (2001); Fukurai and Butler, *Organization, Labor Force, and Jury Representation*, 32 *Jurimetrics Journal* 49 (1991); Fukurai, Butler, and Krooth, *Where did Black Jurors Go? A Theoretical Synthesis of Racial Disenfranchisement in the Jury System and Jury Selection*, 22 *Journal of Black Studies* 196 (1991); Losh, Wasserman, and Wasserman, *Reluctant Jurors: What Summons Response Reveals about Jury Duty Attitudes*, 83 *Judicature* 304 (2000); Munsterman, Lynch, and Penrod, National Center for State Courts, *The Relationship of Juror Fees and Terms of Service to Jury System Performance* (1991); Richert, *Jurors' Attitudes Towards Jury Service*, 2 *Justice Systems Journal* 233 (1977); Seltzer, *The Vanishing Juror: Why are there not Enough Jurors?*, 20 *Justice Systems Journal* 214 (1999).
- 2 See Unified Court System of New York State, *The Jury Project: Report to the Chief Judge of New York*, pp. 6–8, and pp. 3034 (New York: 1994).
- 3 Testimony of Robert Dunham, Philadelphia Public Hearing Transcript, pp. 177178.
- 4 Testimony of David Baldus, Philadelphia Public Hearing Transcript, p. 69.
- 5 *Id.* at 7071.
- 6 *Id.* at 85.
- 7 *Id.*
- 8 Testimony of Robert Chuk, Harrisburg Public Hearing Transcript, pp. 9495
- 9 *Id.* at 95
- 10 *Id.* at 96
- 11 *Id.*
- 12 Testimony of James Minella, Wilkes-Barre Public Hearing Transcript, p. 131.
- 13 *Id.*
- 14 42 Pa. Cons. Stat. Ann. § 4561.
- 15 See Table below.
- 16 The study should include consideration of a pay rate that will increase public participation in jury service in general, and will facilitate efforts to create more representative juries; an increase in the rate of travel reimbursement for jurors; special provisions for jurors who are compensated on an hourly basis and provisions requiring employers with a prescribed minimum number of employees to pay for the first three days of an employee's juror service.

JUROR COMPENSATION TABLE

	Employer Pays	Jury Fees (per day)
Alabama	Yes	\$10
Alaska	No	\$25
Arizona	No	\$12
Arkansas	No	\$20
California	No	\$5 (a)
Colorado	Yes	\$0 for 3 days, then \$50 (b)
Connecticut	Yes, first 5 days only	\$0 for 5 days, then \$50 (c)
Delaware	No	\$20
District of Columbia	Yes, up to 5 days	\$30 (d)
Florida	No	\$15 for first 3 days, \$30 after
Georgia	Yes	\$5–\$35 (e)
Hawaii	No	\$30
Idaho	No	\$10 for half day
Illinois	No	\$4–\$15.50, varies among counties
Indiana	No	\$7.50 if not selected—\$17.50 if selected
Iowa	No	\$10
Kansas	No	\$10
Kentucky	No	\$12.50
Louisiana	No	N/A
Maine	No	\$10
Maryland	No	\$10–\$20 varies among counties
Massachusetts	Yes, first 3 days	Employer pays first 3 days, then state pays \$50 a day (f)
Michigan	No	\$15 minimum
Minnesota	No	Rate set by Supreme Court
Mississippi	No	\$25
Missouri	No	\$6
Montana	No	\$25
Nebraska	No	\$35
Nevada	No	\$15 for first 5 days, then \$30
New Hampshire	No	\$10 for half day
New Jersey	Employer pays salary minus jury fees	\$5
New Mexico	No	State Minimum Wage
New York	Partial	\$40 (g)
North Carolina	No	\$12 for first 5 days, then \$30
North Dakota	No	\$25
Ohio	No	Varies among Counties

Oklahoma	No	\$20
Oregon	No	\$10
Pennsylvania	No	\$9 first 3 days, then \$25
Puerto Rico	No	\$20 minimum per day
Rhode Island	No	\$15
South Carolina	No	\$2–\$12
South Dakota	No	\$40
Tennessee	No	\$10 minimum; may be supplemented by local body
Texas	No	\$6–\$50
Utah	No	Day 1—\$18.50; subsequent days—\$49
Vermont	No	\$30
Virginia	No	\$30
Washington	No	\$10–\$25 varies among counties
West Virginia	No	\$15
Wisconsin	No	\$16 minimum per day
Wyoming	No	\$30 for first 5 days, then \$50 at discretion of the court
Federal courts	No	\$40 (h)

- a) California: Minimum unless county stipulates higher fee;
- b) Colorado: Fees include expenses to unemployed jurors;
- c) Connecticut: Employer pays full-time employed jurors regular wages for first five days. Part-time employed jurors and unemployed jurors are reimbursed for out-of-pocket expenses;
- d) District of Columbia: For second day and thereafter;
- e) Georgia: By opinion of the Attorney General;
- f) Massachusetts: Fees include expenses to unemployed jurors. Such expenses may be paid from first day of service;
- g) New York: Employers with more than 10 employees pay \$40 for the first three days; thereafter, the state pays. If the employer pays the entire salary, then state pays nothing. Jurors who work for employers with 10 or fewer employees (who do not pay regular wages while on jury duty) or jurors who are not employed received \$40 per day from the state;
- h) Federal courts: A juror required to attend for more than 30 days may be paid, at the discretion of the trial judge, an additional fee not to exceed \$10 per day.