

Juries have a diversity problem. What's being done to address it in Washington state?

[By Alexis Krell](#)

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Jurors are supposed to reflect their communities.

But courts [across the country](#) struggle with an under-representation of racial and ethnic minorities in their jury pools.

Jury pools lacking diverse representation can deny a defendant access to constitutionally guaranteed protections. The right to an impartial jury means, in part, one selected from [a fair cross-section](#) of the community.

Researchers also have found diverse juries deliberate longer and come to fairer conclusions than homogeneous ones.

“We’re all biased, and the beauty of the jury system is it’s supposed to draw people from different experiences so that bias has less opportunity to drive a result,” said William S. Bailey, a professor at the University of Washington Law School who teaches trial practice techniques, which includes jury selection and jury behavior.

A Seattle University study that surveyed people who responded to jury duty across the state found people of color were underrepresented in Washington jury pools.

A Pierce County effort to map response rates to juror summons suggested more people were responding from less diverse communities.

“Studies show that racially diverse juries spend more time deliberating, make fewer errors, and result in fairer trials than non diverse juries,” Lila Silverstein, an attorney with the Washington Appellate Project, said at a [state Supreme Court jury diversity symposium in 2017](#). “Yet the [Equal Justice Initiative](#) has concluded that there is perhaps no arena of public life in which racial discrimination is more widespread, apparent and seemingly tolerated than in the selection of juries.”

She went on to explain: “The problem begins before the courthouse doors even open, when members of marginalized communities stay home with their children, or report to their job sites, instead of reporting for jury duty. For some it’s because they never even

received the summons. For others it's prohibitively expensive to forgo that day's wages or to pay for childcare. And for others it's a mistaken belief that a prior conviction precludes participation."

Understanding that jury diversity is vitally important to our system of justice, Washington courts and lawmakers have been working on various solutions.

In Lakewood this year court officials will ask residents directly about barriers that keep them from responding to jury duty.

The data

As the police chief of Normandy Park, Chris Gaddis used heat maps to figure out where to increase patrols. To identify hot spots for vehicle prowls, for instance.

As the Pierce County Superior Court administrator, he's using heat maps to try to figure out how closely juries reflect the community. He's been the administrator, overseeing the operation of the court, since 2016.

"I have always geeked out about this GIS (Geographic Information System) work, and so when I got here and I found out that I had a whole GIS department at my disposal, it was pretty exciting," he said.

He put the department to work mapping response rates to juror summons across the county, to see which areas had high response rates to those blue jury duty cards that come in the mail, and which areas had low response rates.

That'd be a start, he said, to seeing how closely the county's jurors reflect the demographics of the community.

"They are critically important to the work that we do, and we just want to make sure that we are pulling from a pool that is representative of the community," he said. "We need jurors, and we need them to come from every walk of life, every socioeconomic background, every race, ethnicity, gender."

That sort of demographic data is not collected in Washington. In fact, the only state court that does collect that data is New York, local officials said.

"One thing is just, it hasn't been a priority," said Bailey, the UW Law professor. "If something is a priority, we collect the information on it. And if it's less so, it just sort of languishes in the shadows.

"The jury system is just one reflection of that."

Bailey also said: "I think that collectively the legal system is aware that this is a problem and more attention is being focused on it all the time."

He noted that the court system is strapped for resources, and that there can be privacy concerns when it comes to the government gathering information.

“And when we’re talking about a group of citizens that haven’t had good experiences with the justice system generally, that raises a cautionary flag,” he said. “... There’s a way to set this up, but it comes down to who is going to do it, where is the funding going to come from for this, and who gets the information?”

Gaddis’ maps have identified Lakewood as a community with low response rates to jury summons. Along with the Washington State Administrative Office of the Courts, Pierce County plans to convene a virtual focus group later this year in Lakewood to ask residents what barriers have kept them from being able to report for jury duty.

“We want to know why people aren’t coming in the door” and how to change that, said Cynthia Delostrinos, manager of the Supreme Court Commissions with the Administrative Office of the Courts. “... It’s a constitutional guarantee that people are judged by a jury of their peers.”

“We want to know exactly what are the barriers, the personal barriers as well as the policy barriers ... that we need to come up with solutions to,” said Ruddy J. Salas, a University of Washington Tacoma graduate who is working on the project as part of an internship, and plans to attend Seattle University Law School.

The “no response” rate to jury summons in Lakewood was 31.8 percent in 2016, Gaddis said while presenting the findings of the Pierce County study at the 2017 [state Supreme Court symposium](#).

Just over 18 percent of the summons couldn’t be delivered. Just more than 12 percent of people receiving a summons completed their jury service. Others were excused or not qualified. A small number actually ended up being seated on a jury for a case.

In the Springbrook area of Lakewood, along Interstate 5 next to Joint Base Lewis-McChord, those numbers were higher. The “no response” rate was 41.4 percent, and 32.1 percent were undeliverable. Only 6.8 percent completed their jury service.

Census numbers for 2010 showed Lakewood’s population was 59 percent white, 15 percent Hispanic/Latino and 12 percent African American. Data from the census tract that includes Springbrook showed the population was 42 percent white, 39 percent Hispanic and 13 percent African American.

This map shows areas in Lakewood with increased concentrations of jury summons with no response in 2016.

In University Place, the no-response rate for jury service was 22.1 percent in 2016, and 12.2 percent were undeliverable, with 17.7 percent completing their service. The

population of University Place was 71 percent white, 8.5 percent African American and 6.7 percent Hispanic/Latino.

In Fircrest, where 79 percent of the population was white, 7 percent African American and 4.6 percent Hispanic/Latino, the “no response” rate was 23.5 percent.

Only 7.6 percent of summons were undeliverable, with 17.6 percent completing their service.

“We’re getting more people responding from a less diverse community,” Gaddis said during his presentation.

He noted that fewer renters live in University Place and Fircrest than in Lakewood, and that many residents in Springbrook in particular live in apartment complexes. When someone moves and their address isn’t updated on the jury source list, their summons becomes undeliverable. Jury source lists for courts across the state come from the lists of registered voters, driver’s license holders and ID card holders in each county.

“They’re not even getting the summons in the first place,” Gaddis said at the symposium.

He questioned whether there’s an alternative to relying on addresses, such as using cellphone numbers, as a way to summon jurors.

Asked how Pierce County is doing with this work compared to other places, Gaddis said staff availability to review data is the biggest problem.

“We’re lucky in Pierce County that we collect this data as much as we do and are able to review it,” Gaddis told The News Tribune. “But understand that right now we have two jury employees. ... It’s me doing this type of work on nights and weekends.”

It’s harder still, he said, for jurisdictions where the staff is even smaller.

“They do not have the time to do this kind of deep dive on their data,” he said. “... It’s not that they’re holding out hope that everything is going right, it’s that their focus has to be on what’s in front of them.”

He hopes their study can lead to some best practices for the state.

“There are things we just can’t know without studies,” he said. “We don’t know what the race data of our jurors is, from the entire pool down to people who come in the door.”

The best information available about juror diversity in Washington, Delostrinos and others said, is from a [Seattle University study](#), which surveyed jurors across the state.

“Our courts aren’t collecting race data for jurors, and we wanted to get kind of a snapshot of what that looks like,” she said. “Anecdotally, the judges and others were noticing the lack of diversity.”

As part of the study, for a year in 2016 and 2017 courts across the state provided people who responded to jury duty with surveys to collect demographic data.

One new report analyzing that data for the Washington State Gender and Justice Commission was under review at an academic journal as of earlier this year.

It says in part: “To summarize, these findings indicate that people of color, especially Black, Native, and Asian Americans, as well as Hispanic/Latinx Americans, are underrepresented in nearly all Washington jury pools. As illustrated in the findings above, the level of underrepresentation does vary by court or court jurisdiction, however, all but one court system (Clark County) showed underrepresentation.”

The authors, associate professor Peter A. Collins and assistant professor Brooke Gialopsos, also wrote:

“There are clear patterns across all courts included in the present study that indicate that marginalized groups, in particular women of color, experience significant hurdles to participate in the jury process. Populations who experience multiple oppressions, such as those who identify as LGBTQ+, gender, and persons of color experience even more obstacles to participate.”

Of the 64,752 survey responses, 7,246 were from Pierce County.

Those surveys showed 20.5 percent of jurors who responded in Pierce County were non-white. To reflect the makeup of the county, it should have been 24.2 percent, according to census voting age population data.

The surveys from all the state courts showed 19.4 percent of respondents were non-white jurors. To reflect the state’s population, it should have been 22.8 percent.

Among the Pierce County respondents:

- 0.6 percent were American Indian/Alaska Native. To reflect the community it should have been 1.1 percent, according to census voting age population data.
- 1.9 percent were Asian. To reflect the community it should have been 5.1 percent.
- 5.1 percent were Black/African American. To reflect the community it should have been 6.8 percent.
- 2.5 percent were Hawaiian/Pacific Islander. To reflect the community it should have been 1.2 percent.

- 79.5 percent were white. To reflect the community it should have been 75.8 percent.
- 5.7 percent selected more than one race on the survey. To reflect the community it should have been 4.1 percent.
- 4.7 percent were Hispanic or Latinx. To reflect the community it should have been 5.9 percent.

“To me jury service, it is literally where the people have a voice, and so I think it’s really imperative that we not only educate people about the importance of answering the call, so to speak, but increasing the accessibility for all of our community members I think is a really, really important thing,” Collins said.

‘Could not believe it’

During his decades practicing law, Lem Howell said, it seemed he did not have many people of color on his jury panels and that they were rarely seated as jurors to hear his cases.

He started practicing law in the 1960s and retired in recent years.

“As a lawyer, his landmark lawsuits in Washington have made him a legend and arguably one of the best civil rights attorneys in the United States,” [his biography](#) as a former president of the Loren Miller Bar Association says on the organization’s website.

“You want a cross-section and you want them from all walks of life,” Howell said. “... You talk about a jury of your peers. That means a jury from a cross section of the community.”

Howell remembers being astounded, he said, when two Black jurors heard one of his cases in 2006 in northern California. That never happened in Washington.

“I thought I was in heaven,” he said. “... Couldn’t believe it. Could not believe it. I looked up in amazement.”

Imperfect as it might be, he said, he always wanted a jury for his clients, as opposed to waiving a jury trial and having a judge hear the case.

“I want a jury of 12 every time,” he said. “... I want discussion among people.”

Howell said he thinks getting more people in the door is “absolutely” part of the answer to making juries more diverse.

He also talked about juror pay — generally \$10 a day in Washington — which he said is a barrier for many people.

“They should pay proper compensation for jurors,” he said. “I know it will dent the budget, but I think they’ve got to find a method for increasing the compensation for prospective jurors.”

Bailey also described compensation as a barrier.

“A lot of people just don’t show up because they can’t afford it,” he said.

Mary Moss, president of the nonprofit [Lakewood Multicultural Coalition](#), said courts have noticed that their jury pools don’t “reflect the rich diversity of our community, and they’re committed to doing what they can,” to address that.

Moss said the Coalition hosts, co-hosts and participates “in activities to celebrate diversity. ... We provide a safe place for people to let their voices be heard.”

Moss said while the question of how to diversify jury pools is not something the Coalition has focused on: “We are open to finding out ways that we can support that. ... Justice demands that jurors reflect their diverse communities.”

Asked if jury diversity is something she thinks people talk about outside the legal community, she said yes.

“I hear it,” she said. “I hear it. How can a jury make a decision when they don’t know the facts or they don’t know the demographic, they don’t know the culture.”

Asked if she thought the plans for the virtual focus group would work in Lakewood to help understand the barriers residents face to jury service, she said: “When we pull together and work together there are great results that come from those things. ... That’s a great idea.”

Jury handout Pierce County Superior Court

Ramifications

Someone facing a criminal trial has constitutional rights when it comes to how the jury is chosen.

A 1986 United States Supreme Court decision in [Batson v. Kentucky](#) said using so-called peremptory challenges to strike potential jurors based on race violates a defendant’s constitutional rights. The prosecution in the case used peremptory challenges to strike four Black jurors.

“The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community,” Justice Lewis F.

Powell Jr. wrote. "Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice."

Washington's test for racial bias in jury selection changed in recent years [following a Pierce County case](#).

The state Supreme Court said a man convicted of attempted murder deserved a new trial because race might have been a factor in the dismissal of a juror from his case.

Tyree Jefferson was in a fight in 2013 in Lakewood over a pair of designer sunglasses, and the dispute ended with another man being shot, according to court records.

Jefferson argued race was a factor when the state decided to remove the only remaining African American juror in his case — Juror 10.

At the time the test for racial bias was for a judge to decide whether it had been proven that the state was purposefully discriminatory in striking the juror.

The Supreme Court revised the test to ask whether "an objective observer could view race or ethnicity as a factor in the use of the peremptory challenge," and, if the answer is yes, the strike must be denied.

Following the high court's ruling, Jefferson pleaded guilty to attempted first-degree assault and unlawful gun possession, and was sentenced to 17 years and three months in prison. His original sentence had been more than 28 years.

"We need to do better to achieve the objectives of protecting litigants' rights to equal protection of the laws and jurors' rights to participate in jury service free from racial discrimination," Justice Sheryl Gordon McCloud wrote for the majority.

Delostrinos also noted State Court [General Rule 37](#). Its purpose is to "eliminate the unfair exclusion of potential jurors based on race or ethnicity," during jury selection, once someone responds for jury duty.

"Other states are looking at us because no other state has a rule like that," she said.

[In a press release](#) about the rule when it was adopted in 2018, the American Civil Liberties Union said: "The rule will expand the prohibition against using race based peremptory challenges during jury selection. Not only is intentional race discrimination outlawed, but also challenges based on 'implicit, institutional, and unconscious' race and ethnic biases will now be rejected."

[The St. Louis Post-Dispatch reported](#) an assistant U.S. attorney asked a judge for a new jury after an all-white jury was recently chosen for the trial of three white St. Louis police officers accused of attacking an undercover Black colleague during protests in 2017.

The attorney argued the defense lawyers struck three of four prospective Black jurors to make sure the jury was white, and the judge restored one, the newspaper reported.

In the end the jury of 12 was still all-white, and two of the four alternates were Black.

The judge denied the motion to select a new jury.

Later one juror was replaced by a Black alternate.

[The trial ended](#) with a mixed verdict, but no guilty verdicts, the Post-Dispatch reported.

Jury handout Pierce County Superior Court

Solutions

Following the Supreme Court jury diversity symposium, [a 2019 report](#) from the state's Minority and Justice Commission Jury Diversity Task Force made recommendations about data collection, expanding source lists beyond driver's license and voter registration data, adequately compensating jurors, providing juror child care, and streamlining juror summoning.

When it comes to juror pay, the report said: "The Task Force recognized that juror compensation in Washington is inadequate. Data shows that financial hardship is the second highest reason to excuse a potential juror, behind undeliverable summonses. The Task Force believes that lower income and minority populations are disproportionately affected by the financial hardships of jury service. ... the Task Force recommended pursuing a statewide juror pay increase, as well as exploring the feasibility of tax credits or deductions for jury service."

The report also made recommendations about clarifying that people with felony convictions can serve on juries if their right to vote has been restored. The law says someone who had their "civil rights restored" is eligible, which caused confusion on juror questionnaires. [A bill that took effect in 2019](#) now defines "civil rights restored," as meaning "a person's right to vote has been provisionally or permanently restored prior to reporting for jury service."

When it comes to collecting demographic data, the Task Force was unanimous in recommending that a permanent, statewide system be implemented.

"The Task Force also believes that tracking the demographics of each juror at each phase of jury selection (sent to courtrooms for voir dire, excusals for hardships, challenges for cause, and peremptory challenges) will provide never before seen transparency in the demographics of how jurors are empaneled," the report said.

It went on to say: “Race based discrepancies in challenges for cause, hardship, and peremptory challenges are well documented and should be tracked. Such transparency may increase minority juror participation due to a renewed belief that the justice system is fair.”

The report noted that: “The Task Force is aware of only one state, [New York](#), that currently collects juror demographic information.”

Delostrinos, with the Administrative Office of the Courts, said she doesn’t know of others.

“I haven’t heard of any other states who are collecting demographic data,” she said. “... I know that other states are looking at Washington and the work that we are doing here as guidance as to how to address this issue.”

She said she thinks King and Pierce County in particular “are really trying to tackle this juror diversity issue and really trying to find solutions. I think the most passionate people are Chris, and then Judge Steve Rosen. ... even just a couple people who care so much about the issue can change it.”

King County Superior Court Judge Steve Rosen said courts across the state have been trying different solutions. One might add childcare, for instance, while another might make changes to how their summons is worded, and another might try free parking.

Without monitoring the impact those changes are having, he said: “We’ll never know what’s working and what’s not working. ... We need to measure that change so that we can recreate success.”

King County, for example, offers a daycare for families.

“We’ve tried a number of things and we just have to keep trying until we find something that works,” he said. “... It’s very, very difficult. It’s not as if anybody who has looked at this has been able to come up with a silver bullet.”

He and Collins said they hope to do more surveys later this year.

“We hope to survey jurors in King, Snohomish and Pierce County for six months,” Rosen said. “... We’ve made a number of changes because of the pandemic and we want to measure how that’s affecting things.”

Rep. Steve Bergquist (D-Renton), said an episode of [Last Week Tonight](#) that comedian John Oliver did about jury diversity last year piqued his interest in data collection. Oliver talked about the systemic ways in which people of color are excluded from jury service in the United States, and Bergquist noted that part of the episode addressed the lack of access to jury data.

“I started just kind of digging into where our jury status was,” Bergquist said.

He learned that the state does not collect demographic data of its jurors, and spoke with his seatmate, Rep. David Hackney (D-Tukwila), who is a lawyer, about possible legislation.

“For me, it’s really a cornerstone of who we are as a community, right?” said Bergquist, who has a background teaching high school social studies. “If we don’t have people that look like whoever is on the stand in the courtroom or in the jury, we’re not getting a fair shake. And it’s really all about making sure that our process is seen as valid, and all about making sure that our communities have representation, and that we all have a voice.”

He said he thinks having the data about those disparities may bolster the argument for higher jury compensation and expanding how jury lists are sourced.

“They’re all great things, but I think having the data first helps the arguments for doing more,” he said.

Hackney proposed a budget proviso to House budget writers that would appropriate \$300,000 in order for all courts to have an electronic demographic survey for jurors, to collect data that the Administrative Office of the Courts can publish in a report online by June 30, 2023.

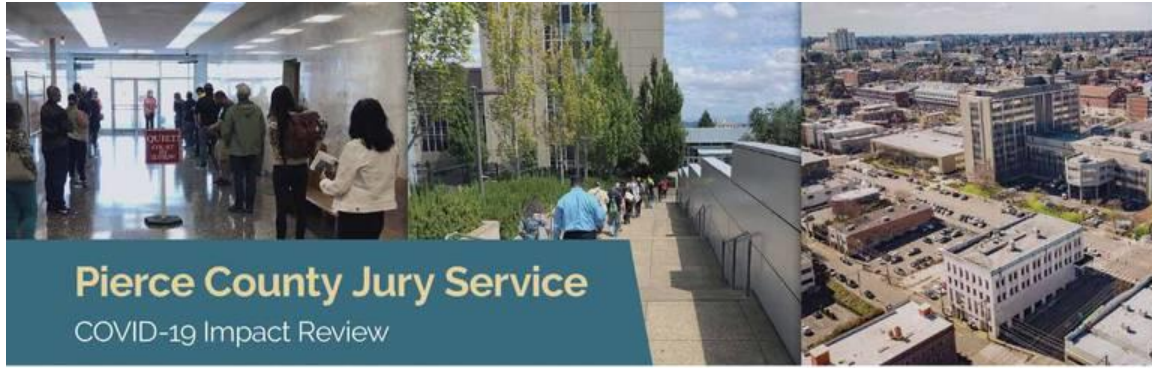
“The survey must collect data on each juror’s race, ethnicity, age, sex, employment status, educational attainment, and income, as well as any other data approved by order of the chief justice of the Washington state supreme court,” the proviso said. “This electronic data gathering must be conducted and reported in a manner that preserves juror anonymity.”

It was included in the [House Democrats’ budget plan](#) this year.

Another proviso from Hackney was to give the Administrative Office of the Courts \$250,000 for a juror fee pilot project, to see how higher payment affects juror demographics. The chief justice of the state Supreme Court would choose a superior court for the project, which would pay jurors \$120 a day. The court would advertise the increase, and would report juror demographics from the program.

It was not included in the budget plan.

“Studies show that diverse juries make better decisions and consider more data than homogeneous juries,” Hackney said in a statement about his provisos. “This funding will help us identify racial disparities across juries in Washington and test methods to remove barriers to access for underrepresented communities.”



Pierce County Jury Service

COVID-19 Impact Review

In mid-March of 2020, Pierce County Superior Court suspended all jury trials due to the COVID-19 pandemic. Based on orders from the Washington State Supreme Court, it was determined that criminal jury trials could not begin until at least July 6th, 2020. Superior Court ordered civil trials suspended until September 1 for 6-person and November 1 for 12-person trials. Superior Court was able to hit all of the reopening benchmarks with assistance of Pierce County Facilities Management and our justice system stakeholders. Once trials resumed it was determined that a statistical review of juror data would be conducted. One of the main questions posed was, "what is the makeup of our jury pool and has this changed dramatically in the COVID era."



DATES

Comparison first looked at July 8, 2019/July 6, 2019, and then at Sept. 2019/Sept. 2020



SUMMONED

July 8, 2019 - 1,879
 July 6, 2020 - 2,524
 September 2019 - 9,686
 September 2020 - 10,011



COMPLETED

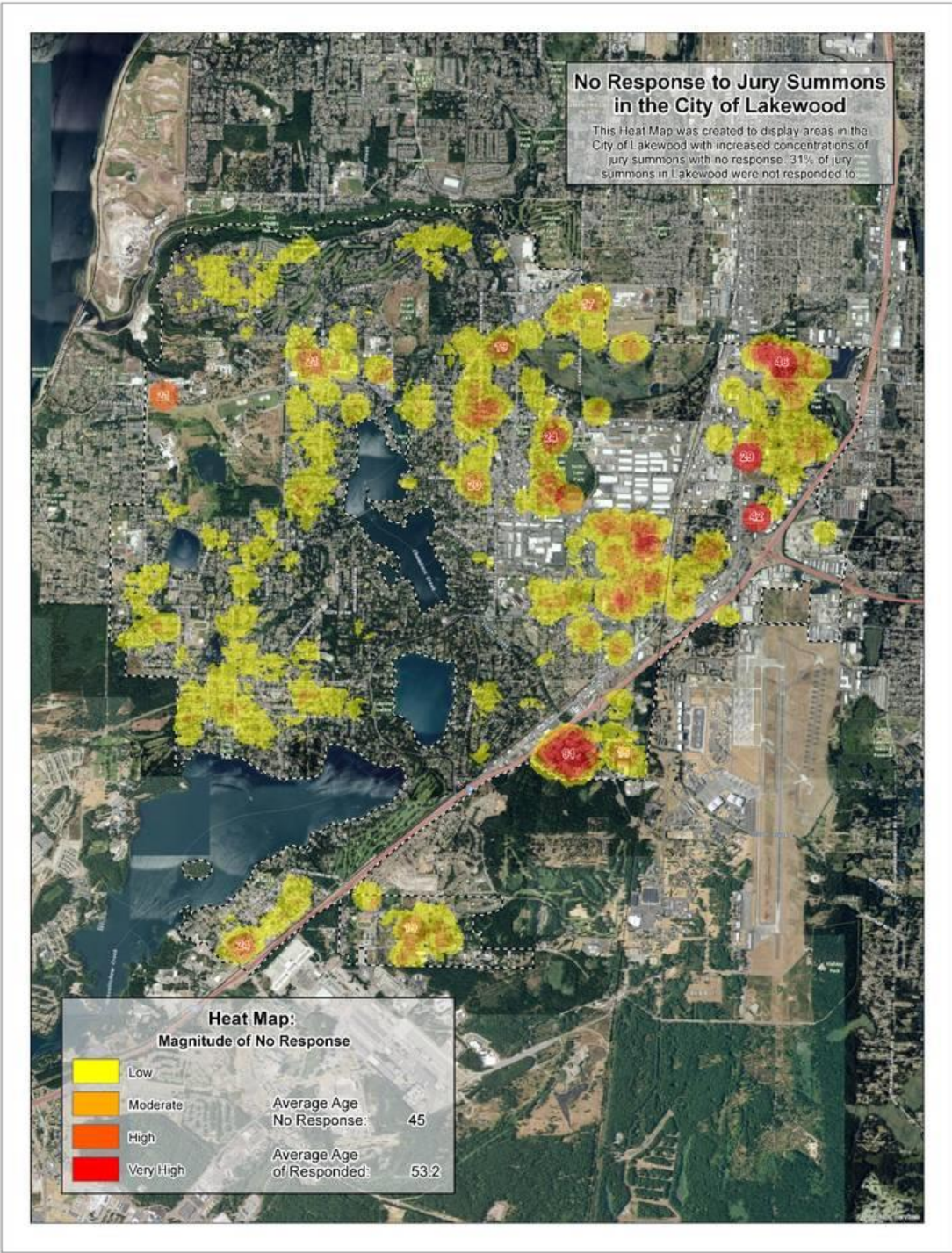
July 8, 2019 - 307
 July 6, 2020 - 184
 September 2019 - 729
 September 2020 - 635



- 0%
- 1%
- 2 -3%
- 4 - 5%
- 6 - 9%

The two maps represent the percentage of total jury summons completed in Pierce County for July 8, 2019 (left) and July 6, 2020 (right). The numbers listed on the zip code represent the number of summons sent to the zip code, while the color coding represents the percentage of jurors who completed their service on that day. For example, 98499 (Lakewood) was sent 59 summons for July 8, 2019. Their % of the 307 who completed service that day was 3.3%. On July 6, 2020, 98499 was sent 92 summons and they completed 4.3% of the 184 jurors who came in our doors. There were several zip codes in the central portion of Pierce County (which happen to be our most diverse) which improved their completion percentage from 2019 to 2020.







[Alexis Krell](#)

[253-597-8268](tel:253-597-8268)

Alexis Krell covers local, state and federal court cases that affect Pierce County. She started covering courts in 2016. Before that she wrote about crime and breaking news for almost four years as The News Tribune's night reporter.

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