

Chapter 3

Gender and Barriers to Jury Service

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I. Summary

Diversity of a jury, or even the larger jury pool from which the jury is selected, impact jury decisions. Diverse juries have longer deliberations, discuss more case facts, make fewer inaccurate statements, and members are more likely to correct inaccurate statements. In short, jury and jury pool diversity impact the equity and justice of jury verdicts.

Black, Indigenous, and women of color¹ as well as Lesbian, Gay, Bisexual, Transgender, and Queer or Questioning (LGBTQ+) people, are underrepresented in Washington jury pools, the group of people from which juries are selected. Insufficient data exist to show whether these populations are underrepresented on Washington juries statewide. We also do not know whether these populations are disproportionately excused from jury service for hardship, for cause, or because of peremptory challenges,² though experts in the field strongly believe that racial and gender disproportionality exists at various stages of the jury selection process.

Experienced civil and criminal trial attorneys report that women are more often excused from jury service for hardship because they shoulder a disproportionate burden of child and family care responsibilities. There are also economic barriers to jury service, and evidence suggests those barriers disproportionately affect low-income women, including Black, Indigenous, and women of color; and LGBTQ+ people.

Recommendations include further study to fill identified gaps in data and strategies to reduce known barriers to jury service with emphasis on eliminating or mitigating economic barriers. Recommendations include increasing access to childcare for potential jurors and establishing pilot community and nontraditional courts to accommodate people with childcare and other family care responsibilities. Finally, recommendations include exploring ways to expand financial

¹ The 2021 Gender Justice Study uses the race and ethnicity terms used in the underlying sources when citing data in order to ensure we are presenting the data accurately and in alignment with the how the individuals self-identified. When talking more broadly about the body of literature we strive to use the most respectful terms. See Section V of the full report (“2021 Gender Justice Study Terminology, Methods, and Limitations”) for a more detailed explanation of terminology used throughout the report.

² A peremptory challenge in jury selection is a right for the attorney(s) on each side to reject a certain number of potential jurors without stating a reason.

compensation for jurors. Because of the inequalities of local court funding, the Washington State Legislature should consider statewide financial support for jury improvements.

II. Background on Jury Service

A. History of women's jury service in Washington

Both the United States Constitution and the Washington Constitution provide a right to a jury trial. Jury service is therefore one of the cornerstones of civic responsibility. Historically, white married women first served on juries in the Washington territorial courts in 1883, when these women also obtained the right to vote.³ But a woman's right to serve on a jury was eliminated in 1887 when the territorial Supreme Court declared women had neither the right to vote nor the right to sit on a jury.⁴ The court majority said, "The 'labor and responsibility which [jury duty] imposes [was] so onerous and burdensome, and so utterly unsuited to the physical [condition] of females that the legislature could not have intended to impose such an obligation.'"⁵ The Washington Constitution, adopted in 1889, included neither women's suffrage nor a right for women to serve on juries.

About twenty years later, in 1911, Washington made white women automatically eligible for jury service when the Legislature amended its jury service statute placing all electors, including white women, on the list of eligible jurors.⁶ This made Washington the first state to permanently allow certain women to serve on juries.⁷ Washington courts minimized application of the statute by either permitting this subset of women to be excused from jury service upon request and without

³ Aaron H. Caplan, *The History of Women's Jury Service in Washington*, 59 WASH. STATE BAR NEWS 3 (2005) at 1.

⁴ *Id.* at 4 (describing *Harland v. Territory*, 3 Wash. Terr. 131, 13 P. 453 (1887), *abrogated by Marston v. Humes*, 3 Wash. Terr. 267, 28 P. 520 (1891)).

⁵ *Id.* at 5 (quoting *Harland*, 3 Wash. Terr. at 140).

⁶ Caplan, *supra* note 3, at 7.

⁷ The Wyoming Territory allowed women to serve on juries in the early 1870s, but it later revoked this right. Kim Viner, *Women on the Jury: Wyoming Makes History Again*, WYOHISTORY.ORG (Jan. 23, 2020), <https://www.wyohistory.org/encyclopedia/women-jury-wyoming-makes-history-again>.

judicial inquiry, or requiring the prospective juror to opt-in to eligibility for jury service.⁸ It was not until 1967 that Washington eliminated an exception for jury service based solely on gender.⁹ Because eligibility for jury service is connected to the right to vote, and nonwhite women were denied the right to vote for far longer than white women, most Indigenous women and women of color were unable to serve on juries for longer than white women. For example, naturalized citizens of Asian descent could not vote until 1952.¹⁰ Nationwide, only in 1962 did all Indigenous people have the right to vote. Our state constitutional prohibition against votes for “Indians not taxed” remained until 1974.¹¹ Black people did not uniformly have a right to vote until 1965.¹² Because the right to serve on a jury is so intimately tied to the right to vote, these barriers to voting have also often been barriers to jury service.

B. Why equity in jury representation matters

Equity in jury representation creates higher public trust and confidence in the legal system.¹³ Inequity in jury representation raises serious questions about the legal system’s dedication to achieving and maintaining equity and justice in its verdicts.¹⁴

In mock juries, jury diversity has increased the rigor of case assessment and analyses. Diverse mock juries had longer deliberations, discussed more case facts, made fewer inaccurate statements, and were more likely to correct inaccurate statements.¹⁵ “Jurors tend to rely on their

⁸ Caplan, *supra* note 3, at 7.

⁹ *Id.* at 9.

¹⁰ Terry Ao Minnis & Mee Moua, *50 Years of the Voting Rights Act: An Asian American Perspective*, AAJC (Aug. 4, 2015), <https://www.advancingjustice-aaajc.org/report/50-years-voting-rights-act-asian-american-perspective>; Immigration and Nationality Act, Pub. L. No. 82-414, § 101, 66 Stat. 163, 167 (1952).

¹¹ WASH. CONST. art. 6, § 1 (1889). Barriers such as postal address requirements still hamper voting for people living on reservations in other states today. Patty Ferguson-Bohnee, *How the Native American Vote Continues to Be Suppressed*, 45 ABA HUM. RTS. MAG. (2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/how-the-native-american-vote-continues-to-be-suppressed/.

¹² Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437.

¹³ See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 145-46, 143, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994).

¹⁴ Ashish S. Joshi & Christina T. Kline, *Lack of Jury Diversity: A National Problem with Individual Consequences*, A.B.A. LITIG. SECTION, DIVERSITY & INCLUSION COMM. (Sept. 1, 2015), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2015/lack-of-jury-diversity-national-problem-individual-consequences/>.

¹⁵ *Id.*

lived experiences when participating in jury deliberations;” therefore, having more diverse perspectives “can yield a discussion that is more well-balanced.”¹⁶

Studies vary in their conclusions as to whether the gender of jurors makes a difference. One study indicates that gender can influence communication styles, how evidence is evaluated, and how controversies are resolved.¹⁷ If women are underrepresented on juries, studies suggest this will impact the accuracy and efficiency of deliberations.¹⁸ The gender of jurors may make a difference in cases involving sexual violence.¹⁹ But other studies concluded that gender alone is not enough to impact jury decisions.²⁰

However, research shows that juries with jurors of color were less punitive against Black and Latinx defendants than all-white juries.²¹ We were unable to find any research that looks at the intersection of gender and race, which would allow us to understand whether jury decisions varied among subpopulations (i.e., white women compared to white men; Black women compared to Black men; etc.).

The positive impact of racial and ethnic diversity occurred even when the jury *pools*, from which jurors are selected, were diverse, regardless of the diversity of the seated jury. Juries formed from all-white jury pools convicted Black defendants at a rate of 81% compared to 66% for white defendants, but the conviction gap was nearly eliminated when the jury *pool* had just one Black member.²²

¹⁶ Peter A. Collins & Brooke Miller Gialopsos, *Answering the Call: An Analysis of Jury Pool Representation in Washington State*, 22 CRIMINOLOGY, CRIM. JUST. L. & SOC’Y 6 (2021).

¹⁷ Isabella M. García Toro, *Gender Matters in Jury Duty: Male and Female Participation During the Deliberation Process*, REVISTA JURÍDICA UPR 61, 62, (2015).

¹⁸ Lucy Fowler, *Gender and Jury Deliberations: The Contributions of Social Science*, 12 WM. & MARY J. WOMEN & L. 1, 26-28, 47-48 (2005); García Toro, *supra* note 17, at 68-77; Nancy S. Marder, *Gender Dynamics and Jury Deliberations*, 96 YALE L. J. 593, 599-604 (1987).

¹⁹ Collins & Gialopsos, *supra* note 16, at 6; *see also*, Helen Eigenberg, Karen McGuffee, Gale D. Iles & Tammy S. Garland, *Doing Justice: Perceptions of Gender Neutrality in the Jury Selection Process*, 37 AM. J. CRIM. JUST. 258, 269-70, 272 (2012).

²⁰ Eigenberg, McGuffee, Iles & Garland, *supra* note 19, at 261, 269-70, 272.

²¹ Samuel R. Sommers, *Determinants and Consequences of Jury Racial Diversity: Empirical Finding, Implications, and Directions for Future Research*, 2 SOC. ISSUES & POL’Y REV. 65, 83-84 (2008).

²² Shamera Anwar, Patrick Bayer & Randi Hjalmarsson, *The Impact of Jury Race in Criminal Trials*, 127 Q. J. ECON. 1017, 1032 (2012). “However, as the number of blacks in the pool increases, this differential goes away; in fact, with at least one black member of the jury pool, conviction rates are almost identical (71% for blacks and 73% for whites).” *Id.*

In sum, these conclusions suggest that diverse representation of various communities in jury pools and juries has measurable impact on the criminal justice system and reduces inequitable incarceration.

III. Washington Laws Governing Jury Qualifications and Selection

The United States Constitution and the Washington Constitution provide a right to a jury trial.²³ Washington laws concerning qualifications for jury service are facially gender-neutral, race-neutral, and neutral to participation by LGBTQ+ people. To serve as a juror a person must (1) be at least eighteen years old; (2) be a United States citizen; (3) reside in the county where they were summoned; (4) be able to communicate in English; and (5) have no felony convictions without a corresponding restoration of civil rights.²⁴

All qualified citizens have a right to be considered for jury service and an obligation to appear for jury service once they are summoned.²⁵ If a potential juror meets the statutory requirements, they cannot be excluded from a jury because of their race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, gender identity, or any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.²⁶ Accommodations must be made for people with disabilities.

Potential jurors are selected from a master jury list made up of all registered voters, licensed drivers, and identicard holders who live in that county.²⁷ Jurors must be randomly selected from a fair cross section of the population in the area served by the court.²⁸ The court must ensure

²³ WASH. CONST. art. 1, § 21.

²⁴ RCW 2.36.070.

²⁵ RCW 2.36.080(1); *see also Powers v. Ohio*, 499 U.S. 400, 409, 111 S. Ct. 1364, 113 L. Ed. 2d. 411 (1991) (venireperson's equal protection right to serve as juror); *State v. Burch*, 65 Wn. App 828, 834, 830 P.2d 357 (1992).

²⁶ RCW 2.36.080(3); RCW 49.60.030; *Batson v. Kentucky*, 476 U.S. 79, 84, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 128-29, 143, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994); *City of Seattle v. Erickson*, 188 Wn.2d 721, 732, 398 P.3d 1124 (2017).

²⁷ GR 18(b); RCW 2.36.054.

²⁸ RCW 2.36.080(1); WASH. CONST. art. 1, § 22.

random selection of jurors from the master list, though no uniform method of selection is required throughout the state.²⁹

Jurors receive a written juror summons by mail.³⁰ Once summoned, the potential jurors receive a written or electronic declaration where they state whether they meet the statutory juror qualifications.³¹ Failure to appear for jury service is a misdemeanor.³²

A qualified potential juror may not be excused from jury service unless they establish an undue hardship, extreme inconvenience, public necessity, or another reason accepted by the court.³³ If a juror is unfit due to bias, prejudice, indifference, inattention, or another reason listed in statute, the judge must excuse them from service.³⁴ General Rule 37, discussed in more detail below, also provides protections against racially motivated peremptory challenges.

IV. Women of Color, Indigenous Women, and LGBTQ+ People are Underrepresented in Jury Pools, but There are Significant Gaps in Data About Representation at Other Stages

In 2016 and 2017, the Washington State Supreme Court Minority and Justice Commission conducted a yearlong, statewide juror demographic survey through 33 participating courts.³⁵ The survey showed that Black, Indigenous, and people of color were underrepresented in the pool of jurors responding to jury summonses in *all* of the participating courts in Washington.³⁶ A recent analysis of this data showed that Black, Indigenous, and women of color were also underrepresented in all of the participating courts.³⁷ And LGBTQ+ people were underrepresented in King County, the only county with population data sufficient to analyze this question.³⁸

²⁹ RCW 2.36.065.

³⁰ RCW 2.36.095(1).

³¹ RCW 2.36.072(1).

³² RCW 2.36.170.

³³ RCW 2.36.100(1).

³⁴ RCW 2.36.110.

³⁵ Collins & Gialopsos, *Answering the Call: An Analysis of Jury Pool Representation in Washington State*, *supra* note 16, at 2.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

A 2021 Minority and Justice Commission survey of people responding to jury summons in King, Pierce, and Snohomish Counties during the COVID-19 pandemic showed that just over 51% of people initially responding in those counties were women.³⁹ Respondents in these counties during this time period tended to be college educated and almost half reported a combined household income of over \$100,000.⁴⁰ The average age of respondents was about 50 years old, and more than half of respondents were married.⁴¹ This 2021 study replicated the findings from the data collected in 2016 and 2017, again showing that non-white respondents overall were underrepresented and white respondents were overrepresented in King County jury pools.⁴² This report analyzed the data using a white/non-white binary, and did not present data on the intersection of gender and race. So, if the data allows, there are opportunities to conduct future analysis of this data to understand representation among specific subpopulations (e.g., Black or Indigenous populations), and to better understand how race and gender interact.

The 2016-2017 data showed that Black, Indigenous, and women of color are underrepresented in jury pools,⁴³ suggesting they likely face more barriers to jury service than white women, and people who experience multiple oppressions often face multiple hurdles. In response to the 2021 survey in King, Pierce, and Snohomish Counties during the pandemic, more than 35% of respondents reported caregiving responsibilities, including a need for childcare, as a barrier to jury service.⁴⁴ More than half of respondents reported work-related issues as a barrier to service while more than 20% reported financial barriers, including an inability to afford being away from work.⁴⁵ This report presented the data on barriers for all genders and races combined, so if the data allows, there are opportunities to conduct future analysis of this data to better understand how barriers impact specific subpopulations such as Black, Indigenous, and women of color.

Otherwise, there are significant gaps in demographic data about potential jurors and jurors at each stage of the jury selection process. Of Washington trial courts who responded to a 2021

³⁹ PETER A. COLLINS & BROOKE MILLER GIALOPSOS, AN EXPLORATION OF BARRIERS TO RESPONDING TO JURY SUMMONS 3 (2021) (draft technical report on file with the authors and with the Gender and Justice Commission).

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 3, 19.

⁴² *Id.* at 19.

⁴³ Collins & Gialopsos, *Answering the Call: An Analysis of Jury Pool Representation in Washington State*, *supra* note 16, at 4.

⁴⁴ COLLINS & GIALOPSOS, AN EXPLORATION OF BARRIERS TO RESPONDING TO JURY SUMMONS, *supra* note 39, at 27.

⁴⁵ *Id.* at 27, 37.

survey of Washington courts, only 26% collect any demographic data at all about jurors or potential jurors.⁴⁶ And only five court respondents statewide reported their court collects demographic data at every stage of the jury selection process.⁴⁷ Courts reported that they lacked resources to collect robust data about jurors and potential jurors.⁴⁸ Some reported that they do not collect juror demographic data because they are not required to do so.⁴⁹

In 2021, the Washington State Legislature provided a budget proviso to the Administrative Office of the Courts to implement an electronic demographic survey for all jurors who begin a jury term in Washington State. All courts will be invited and encouraged to provide the survey to jurors who show up for jury duty. The survey will collect data on each juror's race, ethnicity, age, gender, sexual orientation, employment status, educational attainment, income, and other relevant factors. The Administrative Office of the Courts will be responsible for providing a report on the demographic data to the Governor and Legislature by June 20, 2023.⁵⁰

V. Barriers to Jury Service and Laws or Programs Attempting to Mitigate Barriers

A. Economic barriers

Research suggests that the primary barrier to jury service is socioeconomic: people with low incomes are less likely to receive and respond to a jury summons.⁵¹ People with low incomes face the greatest barriers to receiving a jury summons in large part due to the master lists and jury summons processes. Low-income people are less likely to be registered to vote, have higher rates of renting, and are more likely to be mobile, rendering state-compiled address lists quickly out-

⁴⁶ RHAELYNN GIVENS & EMILIE MADDISON, JURY DIVERSITY: A SURVEY OF WASHINGTON STATE TRIAL COURTS ANALYSIS OF COURT DEMOGRAPHIC DATA COLLECTION AND JUROR ACCOMMODATIONS 5 (2021).

⁴⁷ *Id.* at 6.

⁴⁸ *Id.* at 8.

⁴⁹ *Id.*

⁵⁰ ENGROSSED SUBSTITUTE S.B. 5092, 67th Leg., Reg. Sess. (Wash. 2021).

⁵¹ GIVENS & MADDISON, *supra* note 46, at 8; Paula Hannaford-Agor, *Systemic Negligence in Jury Operations: Why the Definition of Systemic Exclusion in Fair Cross Section Claims Must Be Expanded*, 59 DRAKE L. REV. 761, 773-74 (2011).

of-date.⁵² Some people, many who live on reservations for example, do not have physical mailing addresses, which presents a barrier to receiving and responding to a juror summons.⁵³

Exclusions are likely exacerbated for people who are experiencing homelessness or frequent moves that may be associated with poverty. Because jurors are summoned by mail, a person who does not have a mailing address or whose address changes frequently, may not reliably receive a jury summons. Similarly, to the extent people experiencing homelessness are less likely to have a driver's license or identicard or be registered to vote, they are likely to be underrepresented on the jury master lists, which would likely make them also underrepresented on juries. Homelessness disproportionately affects transgender people, as well as people who are members of some racial and ethnic groups, for example.⁵⁴ We are not aware of any studies in Washington of jury service among people experiencing homelessness.

Research across the United States indicates that people who work hourly positions are most likely to fail to respond to a jury summons.⁵⁵ For adults earning less than \$35,000 a year (94.8% above the Washington State poverty line for a single adult), the possibility of lost wages and work-related barriers are significant causes of jury summons noncompliance.⁵⁶ And in the 2008 Jury Research Project conducted by the Washington State Center for Court Research, Hispanic or Latino prospective jurors were more likely to respond to jury summons if their employer fully compensated for lost wages versus if they did not: 65%, compared to 14%, respectively.⁵⁷

Significantly for purposes of this analysis, socioeconomic factors are correlated with other societal disparities: In Washington, 21% of Native American people, 16.3% of the Black population, and 16% of Latinos live below the poverty line, compared to 8.2% of white and 7.9% of Asian American populations.⁵⁸ Additionally, 10.9% of working-age women (defined as women

⁵² *Id.*; Robert C. Walters, Michael D. Marin & Mark Curriden, *Jury of Our Peers: An Unfulfilled Constitutional Promise*, 58 SMU L. REV. 319, 329, 350 (2005).

⁵³ See Ferguson-Bohnee, *supra* note 11.

⁵⁴ COLLINS & GIALOPSOS, AN EXPLORATION OF BARRIERS TO RESPONDING TO JURY SUMMONS, *supra* note 39, at 4.

⁵⁵ *Id.* at 331.

⁵⁶ *Id.*

⁵⁷ JENNI CHRISTOPHER, CARL MCCURLEY, EDWARD VALACHOVICH, TOM GEORGE & JULIA APPEL, WASH. STATE CTR. FOR CT. RSCH., ADMIN. OFF. OF THE CTS., JUROR RESEARCH PROJECT REPORT TO THE WASHINGTON STATE LEGISLATURE (2008), <https://www.courts.wa.gov/subsite/wscrc/docs/Juror%20Research%20Report%20Final.pdf>.

⁵⁸ *Washington 2020*, TALK POVERTY (2021), <https://talkpoverty.org/state-year-report/washington-2020-report/>.

between the ages of 18 and 64) live in poverty, compared to 8.9% of working-age men.⁵⁹ And the race and gender wage gap severely disadvantages women of color. Nationally, for every dollar employers pay white men, they pay Asian women \$0.90, white women \$0.79, Black women \$0.62, Indigenous women \$0.57, and Latinas \$0.54.⁶⁰ It is important to note that when data combines diverse populations of people into one category (such as combining all Asian and Native Hawaiian and Pacific Islander populations) disparities within these groups are masked.

Poverty is further exacerbated by transgender identity and gay or lesbian sexual orientation. Fourteen percent of transgender people in Washington report being unemployed, and 28% live in poverty.⁶¹ Women in same sex marriages are more likely to live in poverty than opposite-sex married couples despite higher rates of employment and educational attainment.⁶²

Finally, in a recent survey of jury and court administrators and Superior Court Clerks, one of the top two barriers to jury service that these experts reported was financial burdens such as lost income.⁶³ Similarly, 20% of people responding to the 2021 survey in King, Pierce, and Snohomish Counties reported financial barriers to their jury service, like an inability to afford missing work.⁶⁴ In sum, socioeconomic barriers to jury service primarily impact those who are most likely to be low-income: women of color, people who are transgender, women in same-sex marriages, and people of all genders who are Indigenous, Black, and/or Latinx. See “Chapter 1: Gender and Financial Barriers to Accessing the Courts,” for a detailed analysis of income and pay disparities.

1. Juror compensation

Washington law provides for some minimal compensation to mitigate the cost of jury service. For each day’s attendance, jurors are compensated for mileage and they receive between \$10

⁵⁹ *Id.*

⁶⁰ Robin Bleiweis, *Quick Facts About the Gender Wage Gap*, CTR. FOR AM. PROGRESS (Mar. 24, 2020), <https://cdn.americanprogress.org/content/uploads/2020/03/23133916/Gender-Wage-Gap-pdf>. Data from the United States Census Bureau 2018. Note that not disaggregating Asian American race may hide further disparities.

⁶¹ NAT’L CTR. FOR TRANSGENDER EQUALITY, 2015 U.S. TRANSGENDER SURVEY, WASHINGTON STATE REPORT (2017), <http://www.transequality.org/sites/default/files/docs/usts/USTS-WA-State-Report.pdf>.

⁶² Alyssa Schneebaum & MV Lee Badgett, *Poverty in US Lesbian and Gay Couple Households*, 25 FEMINIST ECON. 1, 3 (2019).

⁶³ GIVENS & MADDISON, *supra* note 46, at 12. Survey respondents were asked about barriers specific to “women, women of color, parents, or other underrepresented groups.”

⁶⁴ See COLLINS & GIALOPSOS, AN EXPLORATION OF BARRIERS TO RESPONDING TO JURY SUMMONS, *supra* note 39, at 27.

and \$25.⁶⁵ Each jurisdiction is responsible for determining the daily amount within that range they wish to pay jurors for service.⁶⁶ The majority of Washington courts whose administrators or clerks responded to a recent survey reported paying the \$10 minimum amount.⁶⁷ Some courts also reported providing money for jurors to buy lunch.⁶⁸

The 2008 Washington Juror Research Project conducted by the Washington State Center for Court Research studied whether increasing compensation from \$10 per day to \$60 per day would impact jury participation. The project found that providing increased compensation to a select group had no impact.⁶⁹ However, a follow-up analysis (also by researchers at Washington State Center for Court Research) found that the study was limited in scope, with 88% of the study sample being white and 51% having a household income of more than \$50,000 per year.⁷⁰ No analysis was conducted to determine whether the increased jury compensation was sufficient to compensate for lost wages and associated costs (i.e., travel, parking, childcare). The increased compensation component of the study was also inadequately advertised for the participants. The telephone survey showed that out of the group of individuals who received a jury summons but who did not appear for jury service, only one out of every twelve was even aware they would have received an increased amount of pay as part of the study.⁷¹ More recently, in the 2021 survey of people responding to jury summons in King, Pierce, and Snohomish Counties, 21% of respondents recommended increasing juror compensation by paying an amount equivalent to a living wage, the equivalent of a juror's current wage, or some other significant increase in juror compensation.⁷²

Other states have increased juror compensation to improve jury summons compliance. For example, in the mid-1990s, New York Court of Appeals Chief Judge Judith Kaye and the New York

⁶⁵ RCW 2.36.150.

⁶⁶ *Id.*

⁶⁷ GIVENS & MADDISON, *supra* note 46, at 12.

⁶⁸ *Id.*

⁶⁹ CHRISTOPHER, MCCURLEY, VALACHOVICH, GEORGE & APPEL, *supra* note 57, at 7-8.

⁷⁰ Andrew J. Bloeser, Carl McCurley & Jeffery J. Mondak, *Jury Service as Civic Engagement: Determinants of Jury Summons Compliance*, 40 AM. POL. RES. 179, 190, 193-94, 199-200 (2011).

⁷¹ CHRISTOPHER, MCCURLEY, VALACHOVICH, GEORGE & APPEL, *supra* note 57, at 4.

⁷² COLLINS & GIALOPSOS, AN EXPLORATION OF BARRIERS TO RESPONDING TO JURY SUMMONS, *supra* note 39, at 29.

Legislature reformed the jury process, in part by increasing jury pay. Officials reported increased participation of hourly wage earners as a result.⁷³

The Washington State Supreme Court recently addressed sufficiency of juror compensation.⁷⁴ The Court held that under the governing statute, jurors are not employees for purposes of Washington's minimum wage laws, so they are not entitled to minimum wage for jury service.⁷⁵ In RCW 2.36.080(3), the Legislature provided that jurors should not be excluded because of their economic status, but it did not create a cause of action that would allow low-income jurors to demand increased juror compensation.⁷⁶

In sum, we know that jurisdictions pay jurors between \$10 and \$25 per day plus mileage, but the majority of jurisdictions responding to a recent survey reported paying at the low end of the juror pay range. One survey of people responding to jury summons in Washington has suggested increasing juror pay would increase participation, and New York appears to have had some success increasing participation from hourly wage earners. The Legislature should consider funding a study to determine at what level increased juror pay would likely yield greater participation. Any future funding increase of juror pay should be funded by the Legislature, rather than on a county-by county basis.

2. Employment protections

Employers must provide employees with sufficient leave of absence,⁷⁷ but they are not required to pay employees for their time during jury service. Employers cannot threaten, coerce, or harass an employee for serving as a juror nor can they deny promotional opportunities.⁷⁸ Intentional violations of the statute constitute a misdemeanor.⁷⁹

⁷³ Walters, Marin & Curriden, *supra* note 52, at 351-52.

⁷⁴ *Rocha v. King County*, 195 Wn.2d 412, 460 P.3d 624 (2020).

⁷⁵ *Id.* at 424.

⁷⁶ *Id.* at 430-31 (“We find no legislative intent to support an implied cause of action allowing jurors to seek a remedy for damages or requiring increased pay.”).

⁷⁷ RCW 2.36.165(1).

⁷⁸ RCW 2.36.165(2).

⁷⁹ RCW 2.36.165(4).

Importantly, the 2021 survey of people responding to a juror summons in King, Pierce, and Snohomish Counties showed that a significant number of respondents said that lost wages were a barrier to jury service.⁸⁰ The 2008 Juror Research Project referenced above found that employer compensation for lost wages was the greatest contributor to participants' willingness to respond to a jury summons.⁸¹ Thus, workplace compensation protections may be more significant in achieving equitable jury summons compliance than direct juror compensation.

Some union contracts in Washington contain clauses that require employers to pay workers when they are on jury duty.⁸² The state of New York has responded more broadly by adopting regulations requiring companies with over 20 employees to pay workers for hours missed due to jury service, and establishing an independent ombuds officer to represent juror interests in related disputes.⁸³

Washington should consider adopting a requirement that employers pay workers for hours missed due to jury service. If laws are changed to provide for employer pay for jury service, care should be taken to be sure that the definition of included employer is designed to be inclusive of low-wage workers.

B. Childcare and family responsibilities

An additional significant barrier to jury service is the need to provide care for children or other family members. Washington juror and court administrators and Superior Court Clerks responding to the recent survey most frequently reported childcare as the most common barrier to jury service.⁸⁴ And more than 35% of people responding to the 2021 survey in King, Pierce,

⁸⁰ COLLINS & GIALOPSOS, AN EXPLORATION OF BARRIERS TO RESPONDING TO JURY SUMMONS, *supra* note 39.

⁸¹ CHRISTOPHER, MCCURLEY, VALACHOVICH, GEORGE & APPEL, *supra* note 57, at 12.

⁸² For example, union contracts often include jury duty clauses for employees to receive full pay for jury duty service. See Dena G. Weiss & Ernestine M. Moore, *Paid Jury Leave in Major Union Contracts, 1961*, 85 MONTHLY LAB. REV. 405, 405 (1962) (noting that by 1961, over half of major union contracts provided full or partial pay for jury duty service); see also SECTION 17.4: JURY DUTY, COLLECTIVE BARGAINING AGREEMENT BETWEEN THE STATE OF WASHINGTON & WASHINGTON FEDERATION OF STATE EMPLOYEES 2021-2023 63 (2021), https://www.wfse.org/system/files/wfse_gg_contract_0.pdf (indicating that employees of the Washington Federation of State Employees union will receive paid leave for jury duty service).

⁸³ Walters, Marin & Curriden, *supra* note 52, at 352, 354.

⁸⁴ GIVENS & MADDISON, *supra* note 46, at 12.

and Snohomish Counties reported caregiving responsibilities as a barrier to jury service.⁸⁵ Only four courts responding to the survey of trial courts reported providing childcare or making accommodations for jurors with childcare needs.⁸⁶

Caregiving responsibilities disproportionately fall on women.⁸⁷ Experienced attorneys with significant jury trial experience in Washington have observed that women have been disproportionately excused from jury service because of childcare obligations. One attorney reported that in her four years serving in one urban Washington court, she cannot recall a single Latina serving on a jury.

Another experienced attorney reported that school closures disproportionately affect the representation of women on juries. Another attorney reported that in her trials, pregnant women have been excused based on stereotypical assumptions regarding their limitations. A lack of breastfeeding accommodations may also be a barrier. Courts responding to a survey reported various accommodations for pregnant or breastfeeding jurors like frequent breaks, lactation rooms, and refrigeration space. However only 56% of respondents report making accommodations for pregnant jurors and only 49% report making accommodations for breastfeeding jurors.⁸⁸ Several responses also emphasized excusing jury service or postponing it based on caregiving needs, pregnancy, or breastfeeding status.⁸⁹

Where schools have transitioned to at-home, remote learning as a result of the COVID-19 pandemic, family care and parental responsibilities have increased, and they continued to fall disproportionately on women.⁹⁰ For example, one experienced attorney reported participating in a trial during the COVID-19 pandemic where the court was willing to automatically excuse individuals with COVID-related concerns, including caring for someone in a high-risk population and needing to provide childcare related to remote learners. Given the data regarding the

⁸⁵ COLLINS & GIALOPSOS, AN EXPLORATION OF BARRIERS TO RESPONDING TO JURY SUMMONS, *supra* note 39, at 26–27.

⁸⁶ GIVENS & MADDISON, *supra* note 46, at 9.

⁸⁷ Kim Parker, *Women More Than Men Adjust Their Careers for Family Life*, PEW RSCH. CTR. (Oct. 1, 2015), <https://www.pewresearch.org/fact-tank/2015/10/01/women-more-than-men-adjust-their-careers-for-family-life/>.

⁸⁸ GIVENS & MADDISON, *supra* note 46, at 9.

⁸⁹ *Id.*

⁹⁰ See generally Kate Power, *The COVID-19 Pandemic Has Increased the Care Burden of Women and Families*, 16 SUSTAINABILITY: SCI., PRAC. & POL'Y 67 (2020).

disproportionate burden of family care described above, women probably have been disproportionately excused from jury service during this time. See “Chapter 4: The Impact of Gender and Race in the Courtroom and in the Legal Community” for more information on how caregiving responsibility fall disproportionately on women and how that has been exacerbated as are result of COVID-19.

Data collected from parent surveys about Washington’s two free courthouse childcare centers indicates that jurors are not using these services.⁹¹ Our recommendations include seeking funding opportunities to increase access to the justice system for parents. To the extent that this includes prospective jurors with childcare responsibilities, any free childcare available at courthouses should be made available to prospective jurors, and information about the availability of free childcare should be included in the juror summons. Almost 17% of respondents in the 2021 survey of people responding to jury summons in King, Pierce, and Snohomish Counties recommended reimbursement for childcare as a solution.⁹² Courts should consider whether they can accommodate parenting schedules for jurors who need to pick up children after school or from their childcare. Courts should support additional services like reimbursing parents for the cost of childcare during jury service and increasing respite care options for childcare and elder care to facilitate jury service. Notice of such services should appear in the jury summons.

C. Bias in jury selection

During the jury selection process, parties may exercise general or particular challenges “for cause.”⁹³ General for-cause challenges apply when a juror is disqualified from serving on any jury.⁹⁴ Particular for-cause challenges are objections to a juror serving as a juror in the particular case on trial.⁹⁵ Particular challenges can be based on a juror’s implied bias, actual bias, or an

⁹¹ KALIA HOBBS ET AL., UNIV. OF WASH. SCH. OF PUB. HEALTH, EVALUATION REPORT: ON-SITE CHILDCARE PROGRAMS IN COUNTY COURTHOUSES & THEIR EFFECT ON ACCESS TO THE JUSTICE SYSTEM 7–8 (2020).

⁹² COLLINS & GIALOPSOS, AN EXPLORATION OF BARRIERS TO RESPONDING TO JURY SUMMONS, *supra* note 39, at 30.

⁹³ RCW 4.44.150.

⁹⁴ RCW 4.44.150(1).

⁹⁵ RCW 4.44.150(2).

inability to perform the juror’s duties.⁹⁶ Implied bias means the juror has certain conditions or relationships that may create a bias for or against a party in the case.⁹⁷ Actual bias exists when the juror has a state of mind that prevents them from acting fairly and impartially in the case.⁹⁸

Each party may also exercise peremptory challenges during the selection process, which allow a party to excuse a juror without stating a reason.⁹⁹ Peremptory challenges based solely on a potential juror’s gender are barred by Washington’s Equal Rights Amendment.¹⁰⁰

In *Batson v. Kentucky*, the United States Supreme Court held that the Equal Protection Clause of the United States Constitution bars the State from excusing a potential juror with a peremptory challenge based on race in a criminal case.¹⁰¹ The Court further held that to contest such a challenge, the defendant must first establish a prima facie showing that “raises an inference of purposeful discrimination,” then the burden shifts to the State to provide a race-neutral explanation, and the trial court must analyze the State’s reason to determine if there was purposeful discrimination.¹⁰² The United States Supreme Court later applied *Batson* to hold that, in a civil case, the State could not excuse a juror with a peremptory challenge based on their gender.¹⁰³ And the Ninth Circuit has similarly applied the *Batson* analysis to evaluate the removal of a potential juror based on the person’s sexual orientation.¹⁰⁴

Then, in *City of Seattle v. Erickson*, the Washington Supreme Court held that a trial court must recognize a prima facie case of purposeful discrimination when the peremptory challenge is exercised against the only member of a racially cognizable group.¹⁰⁵

Around this same time, a coalition of stakeholders sought to increase protections against racially motivated peremptory challenges.¹⁰⁶ The Washington State Supreme Court adopted General

⁹⁶ RCW 4.44.170.

⁹⁷ RCW 4.44.180.

⁹⁸ RCW 4.44.190.

⁹⁹ RCW 4.44.130, .140.

¹⁰⁰ *Burch*, 65 Wn. App at 837.

¹⁰¹ 476 U.S. at 97.

¹⁰² *Id.* at 94.

¹⁰³ *J.E.B.*, 511 U.S. at 143.

¹⁰⁴ *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 476-84 (9th Cir. 2014).

¹⁰⁵ 188 Wn.2d at 736.

¹⁰⁶ See *Proposed New Rule GR 37 – Jury Selection*, WASH. CTS. (2017), http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=537.

Rule 37 in 2018.¹⁰⁷ Under the rule, a party or the court may object to a peremptory challenge if they think the challenge is based on improper racial bias.¹⁰⁸ If an objective observer could view race or ethnicity as a factor in the peremptory challenge, the court must deny the peremptory challenge, allowing the potential juror to remain.¹⁰⁹ An objective observer is someone who recognizes that implicit, institutional, and unconscious biases, along with purposeful discrimination, have led to the unfair exclusion of prospective jurors.¹¹⁰

When reviewing a peremptory challenge for bias, the court must consider a number of factors, such as the number and type of questions posed to the potential juror, whether that juror's answers were similar to other jurors' answers, and whether those other jurors were also challenged.¹¹¹ Certain reasons are presumed to be invalid due to a history of association with "improper discrimination in jury selection," such as prior contact with law enforcement, residing in a high crime area, and a close relationship with someone who has been stopped, arrested, or convicted of a crime.¹¹² Additionally, if a party wishes to justify their peremptory challenge based on the potential juror's behavior, the judge or opposing counsel must also have observed the behavior in question.¹¹³

Some stakeholders, including the Washington Association of Prosecuting Attorneys, advocated for GR 37 to incorporate gender as well as race and ethnicity. Legal Voice also advocated that discrimination based on gender identity and sexual orientation should be included in the rule.¹¹⁴ The Washington State Supreme Court did not adopt these proposals. Proponents of incorporating gender argued that there were anecdotal "reports that women have been excluded from juries in trials involving domestic violence," and that gender-motivated exclusions should

¹⁰⁷ Order in the Matter of the Proposed New Rule General Rule 37—Jury Selection, No. 25700-A-1221 (Order re GR 37) (Wash. Apr. 5, 2018).

¹⁰⁸ GR 37(c), (d).

¹⁰⁹ GR 37(e).

¹¹⁰ GR 37(f).

¹¹¹ GR 37(g).

¹¹² GR 37(h).

¹¹³ *Id.* In *State v. Jefferson*, 192 Wn.2d 225, 429 P.3d 467 (2018), the Washington State Supreme Court recognized that the *Batson* procedures had not proven strong enough to prevent racial discrimination in jury selection. 192 Wn.2d at 229. Specifically, the court explained that the *Batson* test makes it difficult for defendants to prove purposeful discrimination and fails to address peremptory strikes due to implicit or unconscious bias. *Id.* at 242. Prior to *Jefferson*, GR 37 was adopted to address those issues. *Id.* at 234.

¹¹⁴ Sara L. Ainsworth, Legal Voice, Comments to proposed GR 37 (Mar. 7, 2017).

be prevented by court rule.¹¹⁵ The Washington ACLU and the Washington Association of Prosecuting Attorneys provided alternative drafts of the rule that incorporated gender.¹¹⁶

Opponents of applying GR 37 more broadly argued that bias against people based on race and ethnicity is a uniquely difficult problem that warranted the approach taken in GR 37, while discrimination based on gender was not of the same character, and they did not want to dilute the focus of the rule. In addition, they recognized that peremptory challenges are also used as a tool to eliminate bias on a jury, and they did not want to expand the application of GR 37 so far that it did more harm than good.

Anecdotally, Washington litigators have reported disproportionate exclusion of women through peremptory challenges in cases involving domestic violence and in civil, gender and pregnancy discrimination cases. A former prosecutor recalled trials in which the defense attorney asked all women in the jury pools about their prior experience with sexual harassment and domestic violence. In one trial where the jury pool was expanded to allow for an alternate, all women were excused by the defense through peremptory strikes and strikes for cause, or because of childcare issues. Ultimately, the jury panel was comprised entirely of men. Despite this anecdotal evidence, very few jurisdictions collect demographic data, including about gender, of people who are ultimately selected to sit on juries.¹¹⁷

Further, LGBTQ+ people may also suffer discrimination in jury selection, though current data is unavailable to determine if such discrimination exists. LGBTQ+ people may also avoid participation in jury service if they fear discrimination or public mistreatment. For example, transgender, gender nonbinary, and gender queer people in Washington have reported unequal treatment, harassment, and even physical assault in public facilities, including government offices.¹¹⁸ Only 14% of respondents to the U.S. Transgender Survey in Washington State reported

¹¹⁵ *Id.*; see also, e.g., Geoffrey Reville, Access to Justice Board, Comments to proposed GR 37 (Mar. 13, 2017) and Rebecca Glasgow, Washington Women Lawyers, Comments to proposed GR 37 (Apr. 23, 2017).

¹¹⁶ Salvador Mungia and La Rond Baker, American Civil Liberties Union, Comments to proposed GR 37 (Feb. 24, 2017) (providing an alternative draft but taking no position on whether it should be adopted); Letter from Rich Weyrich to Supreme Court Clerk Carlson about Proposed Rule GR 37 (Jan. 4, 2017) (providing alternative rule language incorporating gender and arguing for that version's adoption).

¹¹⁷ GIVENS & MADDISON, *supra* note 46, at 5.

¹¹⁸ NAT'L CTR. FOR TRANSGENDER EQUALITY, *supra* note 61.

that they had their chosen name on all legal documents; and being misidentified in a public setting is a source of anxiety.¹¹⁹ And 61% avoided public restrooms in order to avoid confrontation.¹²⁰ One member of the community who works with queer youth said “Queer and Trans folks are worn out by the justice system.”¹²¹

Yet in the survey of Washington jury and court administrators and Superior Court Clerks, only one court reported asking potential jurors about their preferred pronoun when they appeared and only eight described using gender neutral language on juror forms.¹²² Only 22 courts statewide reported offering single stall or gender neutral bathrooms.¹²³ As a result, courts with policies that are aware of these issues may be able to encourage a higher level of jury participation from people in these communities. Education of judges and court personnel on these issues should be a priority.

D. Felony convictions

The Washington Constitution prohibits people who have been convicted of “infamous crimes” from voting unless their civil rights have been restored.¹²⁴ “Infamous crimes” is defined in state law to mean a crime punishable by death or imprisonment in a state or federal correctional facility.¹²⁵ Infamous crimes do not include an adjudication in juvenile court or a conviction for a misdemeanor or gross misdemeanor.¹²⁶

After a felony conviction, a person’s civil rights are automatically restored in Washington, making them eligible to serve on a jury, when they are no longer serving a term of total confinement.¹²⁷ A person does not need to take steps to restore their right to sit on a jury, but they do need to have a driver’s license, identicard, or be registered to vote in order to be on the master list from

¹¹⁹ *Id.*; Judge Lisa Mansfield’s interview with Matthew Wilson, Executive Director of the Oasis Center for Queer Youth.

¹²⁰ NAT’L CTR. FOR TRANSGENDER EQUALITY, *supra* note 61.

¹²¹ Judge Lisa Mansfield’s interview with Matthew Wilson, Executive Director of the Oasis Center for Queer Youth.

¹²² GIVENS & MADDISON, *supra* note 46, at 10.

¹²³ *Id.*

¹²⁴ WASH. CONST. art. 6, § 3.

¹²⁵ RCW 29A.04.079.

¹²⁶ *Id.*

¹²⁷ RCW 2.36.010(13); RCW 29A.08.520.

which people are selected to appear for jury duty. And a person must re-register to vote after their right to vote is restored.¹²⁸

Prior to a person's release from confinement, the Department of Corrections must provide them with a voter registration form and instructions on the various ways they can register to vote.¹²⁹ The Department of Corrections provides assistance with obtaining a Washington identicard in preparation for release from confinement and the fee is often waived.¹³⁰

Felony convictions have nevertheless been a barrier to jury service. While no study has specifically assessed the impact of felon exclusions in Washington, research in other states shows clear systemic disparities in jury service due to racial trends in mass incarceration. For example, in one study in Georgia, where the Black to white ratio of incarceration is 3.2 to 1, felon jury exclusion was found to reduce the pool of eligible Black people statewide by nearly one-third.¹³¹

In Washington, the rate of incarceration per 100,000 people is more than five times higher for Black people than for white people; and 3.56% of the Black population are disenfranchised, compared to 0.87% of the general population.¹³² These disparities exist across genders, with Black boys and men being more likely to face incarceration than white boys and men,¹³³ and Black girls and women being more likely to face incarceration than white girls and women.¹³⁴ Similarly, American Indian/Alaska Native people in Washington are overrepresented in the prison system, constituting 5% of the incarcerated population despite comprising only 2% of the state population.¹³⁵ American Indian/Alaska Native populations are imprisoned at rates nearly five times that of the white population.¹³⁶ See "Chapter 11, Incarcerated Women in Washington," for

¹²⁸ RCW 10.64.140(d); RCW 29A.08.520.

¹²⁹ RCW 72.09.275.

¹³⁰ Department of Corrections Policy 380.550; RCW 46.20.117.

¹³¹ Darren Wheelock, *A Jury of One's "Peers": The Racial Impact of Felon Jury Exclusion in Georgia*, 32 JUST. SYS. J. 335, 347 (2011).

¹³² *State-by-State Data*, THE SENT'G PROJECT (2020), <https://www.sentencingproject.org/the-facts/#map?dataset-option=SIR>. See also "Chapter 11: Incarcerated Women in Washington."

¹³³ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (New Press 2012).

¹³⁴ THE SENT'G PROJECT, *INCARCERATED WOMEN AND GIRLS 2*, 5 (2020),

<https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

¹³⁵ *Washington State Profile*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/profiles/WA.html> (last visited July 7, 2021).

¹³⁶ Thomas Bonczar & Joseph Mulako-Wangota, *Corrections Statistical Analysis Tool (CSAT) – Parole*, BUREAU OF JUST. STAT., <https://www.bjs.gov/parole/> (count of year-end probation population by sex, race/Hispanic origin,

a more detailed analysis of gender, racial, and ethnic disparities in incarceration. As noted in that chapter, there is a notable lack of research focusing on Indigenous, Asian, and Native Hawaiian or Other Pacific Islander populations; significant data issues for Latinx populations; and substantial missing race and ethnicity data for some datasets.

Peremptory exclusions may also result in disproportionate exclusions of people with felony convictions from juries. According to GR 37, some lived experiences such as interactions with and distrust of the police, living in high crime neighborhoods, or having a close relationship with people who have interacted with the jail or prison system are presumptively invalid reasons for a peremptory challenge.¹³⁷ This portion of the rule does not include having previously been convicted of a crime. Thus, there is still reason to question whether, in communities that are disproportionately policed and incarcerated, exclusions for potential jurors are also disproportional.

VI. Jury Service Summary of Findings

LGBTQ+ people and Black, Indigenous, and women of color have been found to be underrepresented in Washington *jury pools*. Only five courts statewide report collecting demographic data about jurors and potential jurors at every stage or nearly every stage of the process. Insufficient data exist to show whether women (in particular Black, Indigenous, and women of color), or LGBTQ+ people are underrepresented on Washington juries. However, attorneys report that they believe women are more often excused for hardship because of the disproportionate burden they bear with regard to child and family care responsibilities. And to the extent there are economic barriers to jury service, evidence suggests that those barriers would disproportionately affect low-income women; Black, Indigenous, and women of color; and LGBTQ+ people. We do not know whether there is gender bias in jury selection through the use

generated using the Corrections Statistical Analysis Tool); E. ANN CARSON, BUREAU OF JUST. STAT., PRISONERS IN 2016 (2018), https://www.bjs.gov/content/pub/pdf/p16_old.pdf; DANIELLE KAEBLE, PROBATION AND PAROLE IN THE UNITED STATES, 2016 (2018); U.S. Census Bureau American Communities Survey (2016) (for the U.S. and Washington population counts for rates calculations).

¹³⁷ GR 37(h)(i)-(iv). See also *State v. Saintcalle*, 178 Wn.2d 34, 75-114, 309 P.3d 326 (2013) (González, C.J., concurring), *abrogated by City of Seattle v. Erickson*, 188 Wn.2d 721, 398 P.3d 1124 (2017).

of peremptory challenges, but attorneys also report that women are disproportionately challenged in certain types of cases.

VII. Recommendations

- In order to determine whether women (including Black, Indigenous, women of color, and women in poverty) and LGBTQ+ people are disproportionately underrepresented in the jury selection process and why, by the end of 2021, stakeholders, such as the Washington State Supreme Court Minority and Justice Commission and the Washington Pattern Jury Instructions Committee, should convene a jury diversity workgroup to build on prior data collected by the Minority and Justice Commission by studying the following:
 - By the end of 2022, the workgroup, with assistance from AOC, should determine how best to mandate and fund collection of demographic data at every stage of the jury selection process in every Washington jurisdiction.
 - By the end of 2023, the workgroup, with assistance from WSCCR, should collect and study court data to determine whether Black, Indigenous, and women of color or LGBTQ+ people are disproportionately excused from jury service for hardship, for cause, or based on peremptory challenges, and whether different subpopulations are affected differently.
- Recent data shows that significant numbers of potential jurors in Washington lack the resources to participate in jury service. The Washington State Legislature should consider funding research to identify the level of juror compensation that would most effectively increase participation by low-income people.
- In order to enhance jury participation by Black, Indigenous, women of color, women in poverty, and LGBTQ+ people, by the end of 2023, the jury diversity workgroup should encourage courts to consider creative alternatives that accommodate jurors with caregiving responsibilities. Courts should consider whether they can accommodate parenting schedules for jurors who need to pick up children after school or childcare. The workgroup and Supreme Court Commissions should seek funding with court partners to develop creative pilot projects

and measure their success. The workgroup should develop best practices for judges to account for the effects on jury diversity when evaluating juror hardship, and train judges on these best practices.

- Apply the remote practices recommendation described in “Chapter 1: Gender and Financial Barriers to Accessing the Courts” for voir dire (jury selection).
- Apply the childcare access recommendation described in “Chapter 1: Gender and Financial Barriers to Accessing the Courts” to jurors.
- Apply the flexible hours recommendation described in “Chapter 1: Gender and Financial Barriers to Accessing the Courts” to jurors.
- By the end of 2022, the jury diversity workgroup should develop best practices for courts to account for the barriers to service for LGBTQ+ jurors, including adding nonbinary gender choices to all forms and referring to jurors by their correct pronouns and chosen names. Train judges and court staff on these best practices.
- Recent data shows that significant numbers of potential jurors in Washington cannot afford to participate in jury service.
 - In order to reduce or eliminate financial barriers to jury service, the workgroup should, by the end of 2023, explore how best to require or incentivize employers to provide paid time off for jury service, following models in other states.
 - The legislature should consider adopting a statewide juror compensation increase sufficient to meaningfully increase juror attendance.