



# Trends in State Courts 2013

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# TARGETING NONCOMPLIANT JURORS: Findings from a Comprehensive Enforcement Program

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Courts around the country have experimented with enforcement programs targeting noncompliant prospective jurors. One jury commissioner stated, “The main purpose of the proceedings is to secure a service date . . . be a deterrent, and . . . reduce the burden on the thousands of dedicated citizens who willingly perform their civic duty.” Officials at another court indicated that they were seeking to “encourage voluntary participation in jury service throughout the county and actively discourage people from discarding their summonses or refusing to serve.” While the literature shows mixed results for enforcement proceedings, the results have not been particularly encouraging for high-volume courts in urban districts.

This study assessed the efficacy of a comprehensive enforcement program (CEP) that targeted noncompliant persons summoned for jury duty in Polinoe County Court (a pseudonym), an urban court summoning approximately 180,000 jurors annually and handling more than 320 criminal and civil jury trials and an estimated 24 grand-jury panels. In light of the significant number of prospective jurors who fail to respond (FTR) and fail to appear (FTA) for jury duty, the county jury management office piloted a CEP to assess the problem more accurately and establish a policy and procedure to compel constituents to respond and appear for service when summoned.

During the past several years, FTR and FTA jurors have comprised a considerable fraction of the county’s jury pool. Data collected during a six-month period before establishing the CEP demonstrated that more than 10 percent of the expected jurors failed to appear on their scheduled service date. This particular trend required jury management to overcall daily venues by approximately the same percentage to ensure that the juror supply met the demand.

The extraordinary rate of nonresponse is not specific to Polinoe County. In a survey of 100 state and federal courts, nonrespondents comprised an average of 11 percent of the federal courts’ pools and more than 20 percent of the state courts’ pools. The problem was attributed to the system’s inability to follow-up with nonrespondents given available resources and workload

## TREND

This article describes the findings of a comprehensive enforcement program targeting noncompliant jurors in a large, urban county. Recommendations as to the feasibility of using enforcement hearings to compel compliance are provided, taking into account the program’s practical outcomes and the jury system’s overarching objectives.



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to pursue recalcitrant citizens. The most common reasons given for failing to respond and appear included “employment issues” and “travel commitments.” Court administrators noted that “follow-up and enforcement, limiting report dates, and increasing compensation” were the most successful approaches in abating the nonresponse problem.

Jury management literature has generally found that individuals do not respond or appear for jury service for two reasons. The first involves financial constraints, particularly for those who are self-employed or paid hourly. These individuals are less likely to respond than those who are paid in whole or in part by their employers. Other financial disincentives include child-care issues and grossly inadequate compensation (ranging between \$5 and \$40 per day) that courts provide for travel and other expenses, such as parking and lunch, which seldom matches what it costs the average person to serve.

The second reason involves individuals who fear serving because of what has been conveyed through various media outlets. Apprehensions are grounded on concerns that a term of service will have all the makings of an O.J. Simpson trial lasting several weeks, perhaps even months; that the experience will be too stressful to bear; that they will be sequestered; or that they will be subjected to reprisals from parties who were dissatisfied with the jury’s decision. Survey findings, however, revealed that nonrespondents were just as informed as respondents about the nature of jury duty, including the length of service and the unlikelihood of being sequestered. The data showed that nonrespondents were simply not as informed as respondents about the process of requesting an excuse or deferral and suggested that their lack of familiarity is purposeful because they believe that the court would not accept their reasons for unavailability; therefore, they make no effort. Unsurprisingly, these efforts are not prompted by a fear of punitive action insofar as noncompliant individuals were less likely than respondents to believe that a nonresponse would result in any serious consequence. The most common reason, however, for not responding was that they never received the summons.

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The literature generally holds a three-prong position in support of decreasing the rate of nonrespondents. First, by increasing representation, the jury pool will more closely characterize the general population; therefore, decisions will more closely reflect the conscience of the community. Second, jury service is an integral part of an enduring democracy, and this obligates

citizens to accept this civic responsibility despite the financial hardships and misperceptions that may exist about serving. Third, most citizens will only come into contact with the judiciary through their jury service, which provides courts with the unique opportunity to showcase the important function they play in government and in the community.

## METHODOLOGY

The study was guided by the empirical findings of relevant literature and data outcomes generated from the local jury automated system. During a three-year time study, FTR data showed that 20 percent of prospective jurors failed to return the questionnaire. The CEP was piloted for 12 months, using the automated system to monitor responses and attendance. Noncompliant juror cases were presented before a select county superior court judge. Before piloting the program, a policy and procedure for the CEP, FTR jurors, and FTA jurors were developed and implemented so that instructions to staff in processing noncompliant jurors were unambiguous and consistent. Order-to-show-cause (OTSC) hearings were scheduled before the court in accordance to trial activity during a given week. A hearing was estimated to last 15 minutes; therefore, several cases were typically scheduled and presented during the morning hours on a designated date.

In *Jury System Management* (1996), Munsterman suggested tracking a small pool of nonresponders to uncover why individuals do not respond. In so doing, the court can make an informed decision as to whether it is time- and cost-effective to follow-up and prosecute or fine nonrespondents. His research showed that nonresponders tended not to be defiant jurors, but rather were individuals who would otherwise be disqualified from serving because they no longer resided at the address in the source file, were unavailable to serve, or were not fluent in English to the extent that they could understand the summons.

For the CEP conducted in Polinoe County, two service dates (one in the winter and another in the spring) were randomly selected and monitored. Nonrespondents who failed to communicate their status with the court following the second reminder postcard were ordered to appear before the court for an OTSC hearing. FTA jurors were allowed (without their knowledge) to miss two of their reporting dates before being ordered to appear before the court. Frequencies were tabulated as percentage distributions to summarize the findings of the CEP. Charts were used to show the differences in FTR rates among summoned jurors between the time the summons was printed and the scheduled service date.

## FINDINGS

### FTR Jurors

More than two-thirds of summoned FTR jurors were forwarded a reminder postcard. Following the initial reminder, nonrespondents comprised almost two-fifths of the total pool. The second reminder ostensibly improved the response rate as well. The number of nonrespondents decreased by another 18 percent, and the reminder may have affected the response rate further based on the number of individuals who appeared on the date of service without first responding.

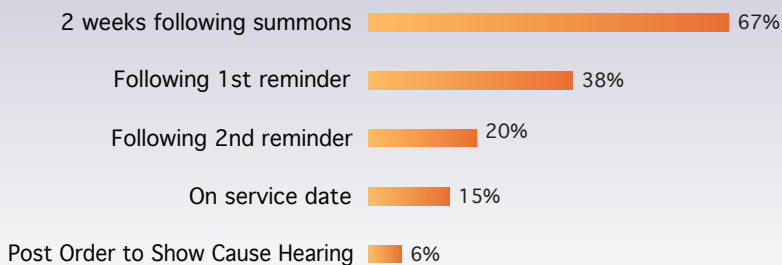
Almost 60 percent of nonrespondents were eventually appropriated as either disqualified or undeliverable. Many of the disqualified candidates were either not citizens or unable to read and

understand the English language.

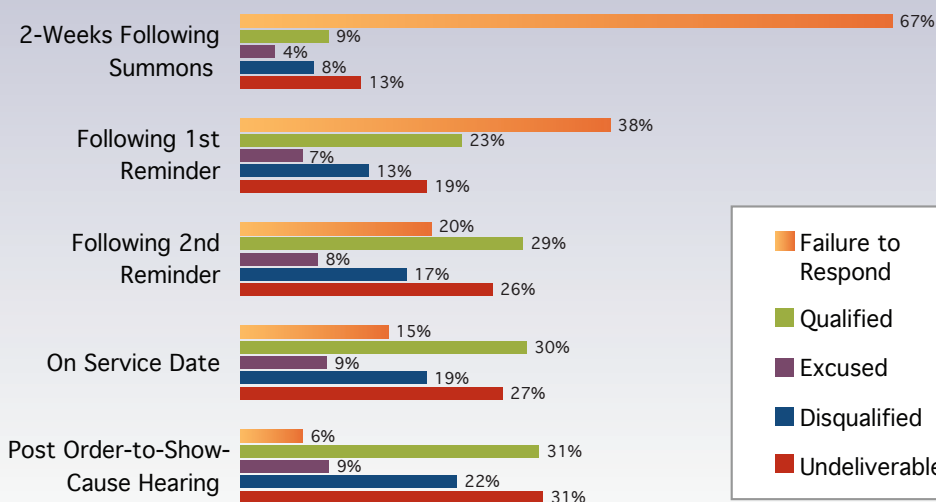
The significant number of undeliverables suggests that further inquiry into the accuracy of addresses is warranted.

A total of 183 jurors were ordered to appear for OTSC hearings before the court. More than half of the jurors failed to appear for the hearing. Only one juror was determined to be noncompliant to the extent that the court imposed a fine. More than a third of the jurors who were initially scheduled for a hearing were withdrawn for reasons that no longer required them to appear.

### Percentage of Prospective Jurors Who Fail to Respond Each Stage of the Comprehensive Enforcement Program (n=1,200)



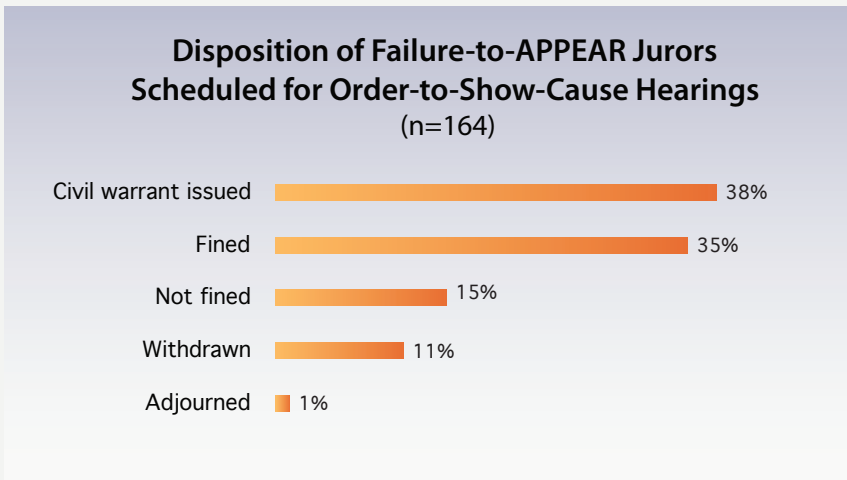
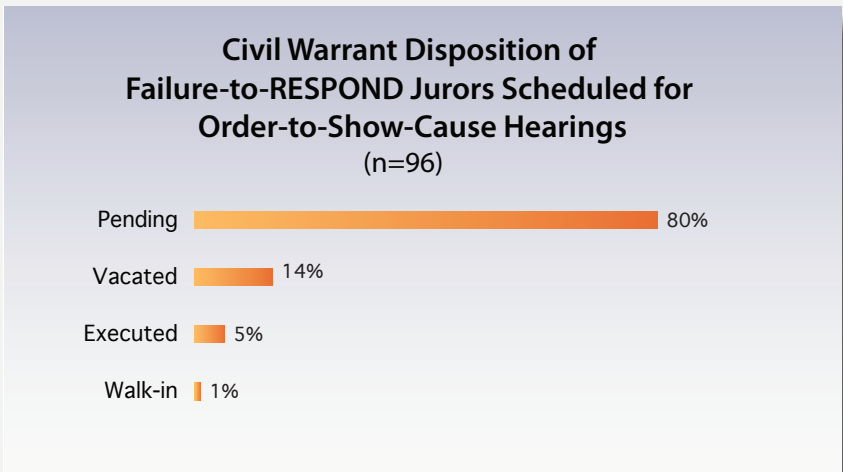
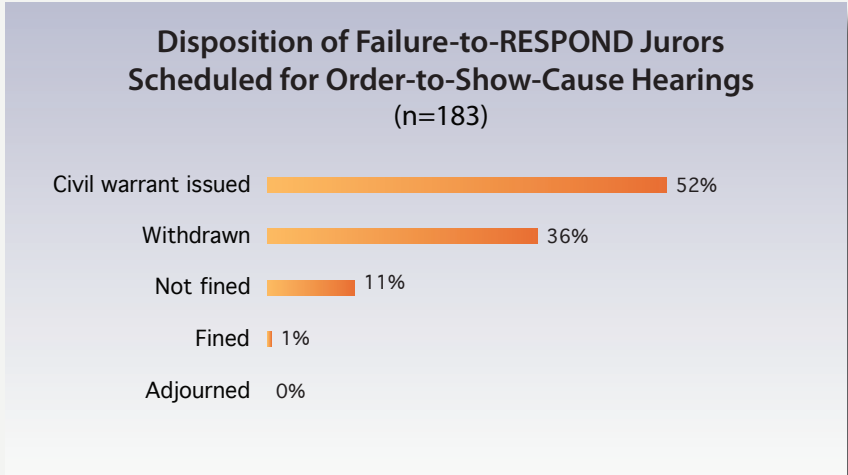
### Status of Prospective Jurors During Comprehensive Enforcement Program - Percent of Total (n=1,200)



Ninety-six jurors were determined to be in violation of the OTSC order, and civil warrants were issued for them. At the time of this study, four-fifths of the jurors continued to be in nonresponse status. The remaining warrants were executed or vacated; in one instance, an individual was a walk-in. After appearing before the judge, many of these prospective jurors were determined unqualified to serve. In other instances, the summons was deemed undeliverable.

### FTA Jurors

During the 12 months of the pilot program, 164 jurors were in violation of the FTA policy and ordered to appear before the court for an OTSC hearing. An important distinction is that those classified as an FTA juror differ from those placed in FTR status in that they have been qualified to serve pursuant to the appropriate statute. Consequently, the court determined that a greater number of FTA jurors than FTR jurors had knowingly disregarded their call to serve; more than a third of the jurors scheduled for the hearing were fined. An effective CEP program should ostensibly mitigate the number of FTA jurors over time. There was a total of \$7,600 adjudicated, averaging \$131 (maximum penalty is \$500) for every juror that had thus far been sanctioned. At the conclusion of this study, only 25 percent of the balance (\$1,900) remained to be collected.



## CONCLUSIONS

This study showed the viability of using the CEP as a management policy and procedure to compel prospective jurors to comply with the jury summons. The preparation and follow-up required to process FTR and FTA jurors placed an extraordinary demand on the court's staff and resources, but nonetheless seems warranted given what is recommended in the literature and corroborated by the program piloted in the county.

The data from the two pools suggest that forwarding two reminder postcards mitigates the number of nonrespondents. The strain on resources that the second postcard could pose if applied to all pools, however, makes it impractical when considering actual outcomes. One alternative is for courts to issue only one reminder postcard, but to experiment with the time frame of mailing, which may affect the response yield.

These findings demonstrate that in light of the resources and staffing that OTSC hearings demand to process FTR jurors, they should only be conducted semiannually. The pools should be randomly selected, and the media should be invited to attend the hearings, which can show the larger community the importance of jury service, the seriousness of the court, and the consequences for failing to respond to the summons. Even though a large proportion of nonresponders are ultimately excused for hardships, increasing the response rate should be an important priority, if for no other reason so that the court can update its source file.

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These research findings support the variety of outreach strategies cited in the literature to engage the public in learning about jury service, including press conferences during Jury Appreciation Week, public-service announcements and targeted media programs to broadcast the important role of jurors, guest speaker programs, and educational videos. Among other benefits, programs and initiatives such as these establish an expectation for jury service, which can assuage some of the concerns and ambiguities about the court system and the role citizens serve. Although evaluating the effects of outreach programming can

prove difficult, citizens can be surveyed to examine the nexus between their attitudes about jury service and their willingness to respond to the summons and report for service.



Petit Jury Reception Area

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The results offer other recommendations, including developing a relationship with the local department of motor vehicles, voter registration office, and libraries, where pamphlets and other informational brochures about jury service can be distributed. These agencies can serve as a conduit for the courts to introduce jury service to constituents who are unfamiliar with or apprehensive about jury duty. The pilot program also demonstrated the impact that judges and staff can have in juror satisfaction, which ultimately affects participation rates. One county judge, for instance, would link juror service to trial-date certainty, explaining to them that when a voir dire is imminent, the parties involved become more driven to either move to trial or settle the matter. Sometimes when the latter occurs, jurors awaiting selection may never reach the courtroom and leave feeling that the experience was a waste of time. This small, yet important piece of “inside information” should be shared with jurors so that they can appreciate being the catalyst that brought the matter to resolution. The staff assigned to conduct the orientation is equally important because the message is sometimes not as critical as the messenger, who should be knowledgeable, professional, and courteous and should have a positive attitude. The individual conducting the orientation will invariably set the tone for the rest of the day, which after spending considerable time waiting in line to be checked in can either help ease the process for jurors or make it more onerous.

The conclusions drawn from this preliminary enforcement program substantiated many of the recommendations highlighted in Boatright’s *Improving Citizen Response to Jury Summonses* (1988). The relevant suggestions included: 1) courts should enforce summonses; 2) citizens should know how to defer or be excused from jury service; 3) court outreach should be directed at the real concerns of citizens; 4) jury summonses should be clear and nonthreatening; 5) source lists should be as accurate as possible; 6) the courthouse itself (and its neighborhood) should be juror friendly; and 7) jury reforms should be implemented as a package. Courts that seek to implement this important aspect of jury management on a long-term basis should conflate these findings with the specific problem areas of their local jurisdictions. The consequences of ignoring the problem are far-reaching and can have an impact on access and the credibility of the court.

**REFERENCES:** Boatright, R. G. (1998). *Improving Citizen Response to Jury Summonses: A Report with Recommendations*. Chicago: American Judicature Society.  
Munsterman, G. T. (1996). *Jury System Management*. Williamsburg, VA: National Center for State Courts.

# 25 YEARS AGO

## Beginnings of Jury System Technology

Twenty-five years ago, G. Thomas Munsterman, the director of NCSC’s Center for Jury Studies, wrote “Micro-computer Applications for Jury Systems Supports.” In it, he describes the benefits of using computers to assist in jury management. However, Munsterman also states, “Often, the system developed is easily lost if the implementing user loses interest or leaves the position from which the program was developed. . . . [B]ecause these programs are not professionally developed, they may be difficult to understand and modify.”