

# JURY MANAGEMENT BEST PRACTICES MANUAL

Version 1.0 (2019)



State Court Administrative Office





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March 12, 2019

Re: Jury Management Best Practices Manual

Dear Colleague:

I am pleased to share with you these recommended jury management best practices for Michigan trial courts based upon national standards and principles developed by the American Bar Association (ABA) and the National Center for State Courts (NCSC). This practical information will help you identify and implement practices that will improve your court's service to the public, reduce costs and inconvenience to citizens, and enhance public trust and confidence in the judiciary.

This manual contains 19 best practices in the following areas:

- Juror Qualification, Selection, and Orientation
- Jury Trial Scheduling, Panel Sizes, and Terms of Service
- Juror Exemptions, Excusals, and Deferrals
- Juror Accountability, Privacy, Education, and Stress

We recognize Michigan's trial courts are very diverse and have different needs and understand that a one-size-fits-all approach will not be effective. Therefore, implementation of such best practices should be tailored to your court's resources, needs, and customer base.

Chief Justice Bridget McCormack has highlighted our judiciary's commitment to be independent, accessible, engaged, and efficient. This manual will help your court accomplish those important objectives.

We hope our efforts to provide practical suggestions and solid resources to complement and improve your court's jury management system are a success. Your feedback is important, so please discuss your ideas and any other input with your regional administrator.

Thank you for your assistance in this regard.

Sincerely,

A handwritten signature in cursive script, appearing to read "Milton L. Mack, Jr.", written in black ink.

Milton L. Mack, Jr.

## Executive Summary

Management of the jury system includes every aspect of selecting jurors and using their services. The jury system used by each trial court should:

- minimize inconvenience to citizens serving as jurors,
- broaden citizen participation in the jury system,
- distribute the responsibility for participation in the jury system among the people in as fair a manner as possible,
- increase the efficiency and effectiveness of court activity
- minimize the term of service of a juror,
- minimize the number of trials on which an individual juror serves during the juror's term.<sup>1</sup>

The Trial Court Performance Measures Committee adopted Jury Management as a statewide performance measure in 2016 and the jury statistics report is due from trial courts by March 31 each year. The data collected produces the quantitative measures of both juror yield and utilization, and the courts can use the results to identify areas for improvement and develop strategies to reach the qualitative goals of a good jury management system.

The purpose of this manual is to assist courts in adopting best practices for jury management to improve their service to the public, reduce costs and inconvenience to citizens, and enhance public trust and confidence in the judiciary. The 19 best practices contained within serve as a road map to assist courts in improving their efficiency in jury management, as well as reduce the risk of jury verdicts being overturned for improper jury management techniques.

Much of the information in this manual is adapted from jury management principles developed by the American Bar Association in their *Principles of Juries and Jury Trials*, as well as many helpful articles produced by the National Center for States Court's (NCSC) Center for Jury Studies.

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<sup>1</sup> See MCL [600.1301b](#).

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## Jury Management Introduction

Management of the jury system includes every aspect of selecting jurors and using their services. It includes such things as managing the jury board's work, devising accurate techniques for forecasting the number of jurors that will be needed, automating the jury records, and providing for the comfort and convenience of jurors during their term of service. Effective jury management reduces the costs and inconvenience to the public while generating a sufficient pool of jurors.<sup>2</sup>

The jury system used by each trial court should:

- minimize inconvenience to citizens serving as jurors,
- broaden citizen participation in the jury system,
- distribute the responsibility for participation in the jury system among the people in as fair a manner as possible,
- increase the efficiency and effectiveness of court activity
- minimize the term of service of a juror,
- minimize the number of trials on which an individual juror serves during the juror's term.<sup>3</sup>

According to the National Center for State Courts (NCSC), "a well-run jury system is one that achieves four key objectives:

1. Secures an adequate number of prospective jurors from which to select juries;
2. Ensures that the jury pool reflects a fair cross section of the community;
3. Manages court resources, including jurors' time and talents efficiently; and
4. Treats jurors with dignity and respect."<sup>4</sup>

A well-run jury system founded on the principles outlined in this document will minimize cost and reduce the impact of jury service on citizens, while meeting the court's needs and reducing the risk of jury verdicts being overturned by appellate courts for improper jury management.

## Jury Management Roles and Responsibilities

[Chapter 13 of the Revised Judicature Act](#) (RJA) governs the management of petit juries (non-grand juries) in Michigan and sets forth the roles and responsibilities of each of the participants in the process.

As with other aspects of court management, the chief judge of each trial court has the responsibility to manage the jury system. However, Chapter 13 of the RJA gives much of the authority and responsibility of qualifying (determining which potential jurors meet minimum statutory requirements for jury service) potential jurors to the county jury board.<sup>5</sup> Jury management in Michigan has changed significantly in the last 30 years. Many functions that had been performed manually by the jury board are now done electronically, with the assistance of court or county clerk staff, under the direction of the chief circuit judge.<sup>6</sup> [MCL 600.1353](#) gives the judges of each circuit court the authority to establish rules necessary to carry out the

<sup>2</sup> SCAO, [Michigan Trial Court Administration Reference Guide](#), Section 3-05 Jury Management, p 96.

<sup>3</sup> See [MCL 600.1301b](#).

<sup>4</sup> National Center for State Courts, [An Overview of Contemporary Jury System Management](#), (2011), p 1.

<sup>5</sup> See [MCL 600.1301](#), [MCL 600.1302](#), [MCL 600.1303](#), [MCL 600.1304](#), and [MCL 600.1305](#).

<sup>6</sup> SCAO, [Michigan Trial Court Administration Reference Guide](#), Section 3-05 Jury Management, p 98.

provisions of that chapter and to ensure proper conduct of the jury board members. The State Court Administrative Office (SCAO) recommends it be accomplished either by establishing a policy or developing a plan pursuant to [MCL 600.1301b](#) that ascribes these jury board duties to court staff or by electronic process.

In doing so, the following best practices should be considered:

- a. Courts should have a policy that identifies the specific duties of the jury board and the court or county clerk staff.
- b. The policy should include the method of random selection used by your court in selecting candidates for jury duty.
- c. The policy should be signed by the chief circuit judge.
- d. The chair of the jury board should sign an acknowledgement of the policy.<sup>7</sup>

Whether the jury management duties are carried out by the county jury board, circuit court staff, or clerk of the court staff, all judges must be committed to efficient use of jurors. Each court should promulgate administrative policies for effective management of the jury system within their statutory authority or jury management plan.

At the local level, the management of the jury system should be carried out under the supervision of the presiding judge by a member of the court administrative staff assigned the duties of jury manager. In small courts with few jury trials, a court employee should be designated to assume this responsibility, and requisite training should be provided. Generally, the responsibilities of the jury manager should include the following:

- Supervising all aspects of juror selection.
- Setting up liaison between the jury management staff and other court personnel to ensure two-way information flow: anticipated trial activities; the number of jurors available; and other matters affecting the supply of jurors needed (e.g., if temporarily out of jurors during the day, the jury supervisor might advise the master calendar assignment clerk so that a nonjury case could be assigned out next)
- Integrating management of juror selection and use so that the operation of each complements the other
- Maintaining statistical records: response and qualification rates on persons sent questionnaires or summoned; numbers of jurors used (and not used) daily; and other statistics necessary to determine how many questionnaires to send out, how many jurors to summon, etc., in the future<sup>8</sup>
- Predicting both on a long-range and day-to-day basis the number of jurors needed at court
- Managing the activities of jurors while at court
- Maintaining attendance records
- Notifying jurors to come to court

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<sup>7</sup> SCAO, [Michigan Trial Court Administration Reference Guide](#), Section 3-05 Jury Management, p 98.

<sup>8</sup> Because jury management is a performance measure in Michigan, statistics on juror yield and juror utilization must be reported to the State Court Administrative Office annually on the [Jury Statistics Report form SCAO 73](#).

- Preparing panels for jurors to be sent for voir dire
- Providing training for all court personnel involved with jurors
- Planning for better management and recommending improvements when needed
- Arranging for payment of jurors
- Taking all necessary steps to ensure the security of jurors at the courthouse and in traveling to and from the courthouse
- Planning and supervising maintenance of jury facilities and inspecting the facilities and supervising the upgrading of jury facilities to accommodate potential jurors with disabilities.

In most urban and suburban jurisdictions, these tasks will require the full-time effort of at least one professional on the court's administrative staff. Given the complexity and cost of the jury system and the importance of public participation in our system of justice, the expense of having a well-trained, full-time jury manager is a small price to pay for an efficiently and fairly administered jury system.<sup>9</sup>

## Jury Management as a Trial Court Performance Measure

The Trial Court Performance Measures Committee promotes the use of valid and reliable performance measures by the trial courts, dialogue regarding court performance, and data sharing between each court and its funding unit. In developing and implementing strategies to accomplish these objectives, the committee adopted Jury Management as a statewide performance measure in 2016 and the first jury statistics report was due from trial courts on March 31, 2017. The State Court Administrative Office Memorandum dated March 3, 2016 can be found at

<https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/TCS/Documents/TCS%20Memoranda/TCS-2016-07.pdf>

The Jury Management measure assesses the effectiveness of jury management in a trial court. The data provide information necessary to determine if the court is maximizing the use of citizens in the jury process. SCAO uses formulas to calculate juror yield and juror utilization, which can effectively reveal the efficiency of the court's jury management process.

**Juror yield** is the percentage of jurors that were sent qualification questionnaires and were qualified and available to serve.

**Juror utilization** is calculated using the following three percentages:

**Part A - Percentage of Jurors Summoned that Were Told to Report** = the number of jurors that were told to report divided by the number of jurors that were summoned. This number is an indication of whether the court is summoning more jurors than necessary.

**Part B - Percent of Jurors that are Sent for Jury Selection** = the number of jurors that are sent to a courtroom for voir dire divided by the number of jurors that are told to report

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<sup>9</sup> Commentary to Standard 10, paragraph (c) of American Bar Association, *Standards Relating to Juror Use and Management* (1993), pp 97-99 (citations omitted).

to the court. This number is important to determine if the court is telling more jurors to report for service than is necessary.

**Part C - Percentage of the Panel Used** = the total number of jurors that were seated on a panel plus the number that were challenged and excused divided by the number of jurors that were sent to the courtroom. This number is important because it demonstrates whether the court is sending more jurors to the courtroom than are necessary to seat a jury.

The final juror utilization rate is then calculated by taking the above three percentages and multiplying them together. This final juror utilization rate equals the total number of jurors used in voir dire (seated in the jury box) divided by the number of jurors that were summoned.

For courts that determine that improving their juror utilization rate is necessary, SCAO recommends a three step improvement process. Courts start with improvement efforts in Part C (percentage of panel used in voir dire) and work backward toward Part A. Ultimately courts will need to reduce the number of jurors summoned (Part A) to realize any improvement to the final juror utilization rate, but courts are encouraged to begin reducing the number of jurors for Parts C and B before making final reductions for Part A. This will make the improvement process easier and is less likely to result in having insufficient jurors for voir dire.

## Suggested Best Practices

The following best practices highlight how good jury management techniques can work in the court environment. Please note there are many ways to implement best practices and not all best practices will work in every court; courts should review their needs and abilities and implement the best practices that that will work best for them.

### Best Practice #1: Juror Orientation

**Court leadership should provide juror orientation information to potential jurors with their first contact by mail and have them watch an orientation video prior to the start of voir dire on a case.**

In 2005, the American Bar Association (ABA) developed and approved their [\*Principles for Juries and Jury Trials\*](#), which consists of 19 principles necessary to refine and improve jury practice so that the right to jury trial is preserved and juror participation is enhanced. One principle adopted by the ABA was that courts should provide orientation and preliminary information to persons called for jury service at all three of the following stages: initial contact prior to service; first appearance at the courthouse; and reporting to a courtroom for juror voir dire.<sup>10</sup>

There are several low- or no-cost resources that can be provided to jurors with their juror qualification questionnaire and/or juror summons, in case a court does not have the resources to create their own juror resources.

The State Bar of Michigan's brochure entitled "Your Role as a Juror" may be purchased individually or in bulk from the State Bar of Michigan Membership Services Department, 306

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<sup>10</sup> Principle 6, subparts A and B of the American Bar Association, [\*Principles of Juries and Jury Trials \(Revised 2016\)\*](#).



Townsend Street Lansing, Michigan 48933-2012, [www.michbar.org](http://www.michbar.org). Call (800) 968-1442 ext. 6370 to obtain price information.

The Michigan Judicial Institute (MJ) Learning Center's educator e-newsletter called Justitia has a great description of the importance of jury service and how jurors are selected for jury duty. This could be sent or provided to jurors as well and can be found at <https://courts.michigan.gov/education/learning-center/educator-resources/pages/educator-e-newsletter.aspx>.

MJI also has a six-minute juror orientation video (produced through a grant from the Michigan Commission on Law Enforcement Standards) that is available to all trial courts in Michigan at no charge. SCAO recommends that all trial courts take advantage of this by making it available to their jurors with an online link and also by playing the video for jurors who appear at court. It can be found at <https://mjieducation.mi.gov/videos/jury-orientation>.

## **Best Practice #2: Random Selection Processes**

**Court leadership should ensure that a random process is used for all stages of jury selection, including selection for: (a) being sent a qualification questionnaire; (b) being sent a summons; (c) empaneling on a case; (d) voir dire questioning; and (e) being an alternate juror.**

Principle 10 of the ABA's *Principles for Juries and Jury Trials* states that courts should use random selection procedures throughout the juror selection process. It holds that the selection method used may be manual or automated, but that it should provide each eligible and available person with an equal probability of selection, except when a court orders an adjustment for underrepresented populations. The ABA recommends that courts use random selection procedures in: selecting persons to be [qualified and] summoned for jury service; assigning jurors to panels; calling jurors for voir dire; and designating, at the outset of jury deliberations, those jurors who will serve as regular and alternate jurors.<sup>11</sup>

With regard to the random selection of jurors used for questioning in voir dire, it is important that the attorneys or parties not know the order of selection, even if the court uses a pre-randomized list for placing jurors in the box for voir dire. It is okay for the court to use such lists, but attorneys and parties should not know who will be placed in the box next.<sup>12</sup> The element of predictability, however slight, should be eliminated from the jury selection process to ensure that randomness is preserved and protected to the fullest degree.<sup>13</sup> Some courts have a practice of filling an extra row of jurors in front of the jury box [commonly called a "hopper row"] and, as jurors get excused for cause or by peremptory challenges, then those jurors are seated next in the box. This is not a best practice because it adds an element of predictability and allows attorneys to know who will be replacing seated jurors when they are excused from the jury box.

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<sup>11</sup> Principle 10, subpart B of the American Bar Association, *Principles of Juries and Jury Trials (Revised 2016)*.

<sup>12</sup> A random pre-selected list of jurors is not an impermissible "struck jury method," does not impede defendant's right to peremptory challenges, and was a fair and impartial method of jury selection where the attorneys or parties do not have access to list at issue and were unable to manipulate selection process through exercise of peremptory challenges. *MCR 2.511(A)(4)*; *People v Fletcher*, 260 Mich App 531; 679 NW2d 127 (2004).

<sup>13</sup> *People v Green (On Remand)*, 241 Mich App 40; 613 NW2d 744 (2000).

With regard to the random selection of alternate jurors, it is important that alternative jurors not be identified until just before jury deliberations begin. This is so the alternate juror(s) will remain attentive and engaged during the trial and so no one will know who will actually be the alternate juror(s) and be discharged prior to deliberations. The ABA's Principle 11 addresses this issue and states that the "status of jurors as regular jurors or as alternates should be determined through random selection at the time for jury deliberation."<sup>14</sup>

### **Best Practice #3: Jury Management Software**

**Each county and court should use an electronic process or jury management software for qualifying, summoning, processing, and communicating with jurors.**

[MCL 600.1304a](#) and [MCL 600.1376](#) specifically authorize county jury boards and courts to utilize electronic and mechanical means to select jurors. Jury management software can increase the efficiency of staff time spent on jury management and ensure that random juror selection occurs.

Many software vendors have jury management software. Courts that do not have jury software should consider obtaining a software system.<sup>15</sup>

### **Best Practice #4: Local Administrative Order Review**

**Court leadership should review their local administrative order (LAO) regarding access to juror personal history questionnaires to determine if the court's method and means of granting attorneys and parties access to questionnaires conforms to the order.**

Principle 11 of the ABA's Principles suggests that juror questionnaires should be provided to the parties in sufficient time before the start of voir dire to enable the parties to adequately review them before the start of that examination.<sup>16</sup>

The Michigan Supreme Court adopted [Administrative Order No. 1987-1](#) on February 3, 1987, which directed the state court administrator (SCA) to develop model procedures for providing attorneys and parties access to juror personal history questionnaires and directed the trial courts to select and implement one of these procedures. [MCR 2.510\(C\)\(2\)\(a\)](#) also requires the SCA to develop model procedures for providing attorneys and parties reasonable access to these questionnaires. Juror qualification questionnaires are considered confidential pursuant to [MCL 600.1315](#) and are not to be released unless ordered by the chief circuit judge.

SCAO maintains four model LAOs from which to choose at <https://courts.michigan.gov/Administration/admin/op/Pages/Jury-Management.aspx>.

Each court must select and implement one of these procedures by LAO adopted pursuant to [MCR 8.112\(B\)](#). If the SCA determines that, given the circumstances existing in an individual

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<sup>14</sup> Principle 11, subpart G.2. of the American Bar Association, [Principles of Juries and Jury Trials \(Revised 2016\)](#).

<sup>15</sup> In addition, [MCL 600.151e](#) authorizes SCAO to investigate whether to purchase and provide jury management software to the trial courts, and SCAO is in the midst of that process. If and when a statewide software is purchased, SCAO will provide the use of this software to courts who want to use it and all courts will be informed of this option and implementation schedule.

<sup>16</sup> Principle 11, subpart A.3. of the American Bar Association, [Principles of Juries and Jury Trials \(Revised 2016\)](#).

court, the procedure selected does not provide reasonable access, the SCA may direct the court to implement one of the other model procedures. [MCR 2.510\(C\)\(2\)\(b\)](#). If the procedure selected allows attorneys or parties to receive copies of juror questionnaires, an attorney or party may not release them to any person who would not be entitled to examine them under the rule. [MCR 2.510\(C\)\(2\)\(c\)](#).

Each trial court should review its current LAO regarding access to juror personal history questionnaires to make sure the day-to-day practice of the jury office conforms to the order. If it does not, the court should revise its practices or submit a revised LAO to SCAO for approval.

### **Best Practice #5: One-Step Jury Process**

**The chief circuit judge and court leadership should consider adopting a one-step jury process for the county and its courts.**

The National Center for States Court's (NCSC) Center for Jury Studies developed a great article<sup>17</sup> that discusses the benefits of one-step jury processes and states as follows:

The 2-step jury management system first qualifies prospective jurors, then summonses those who are qualified to report for jury duty. The 1-step summoning process combines the two steps into one. Research indicates that 2-step qualification and summoning systems tend to be less efficient compared to 1-step systems. In essence, the qualification process for 2-step courts tends to be imperfect, resulting in duplicative efforts by jury staff to manage undeliverable jury summonses and disqualified, exempted, and excused jurors during the later summoning stage of jury selection. Two-step systems are also more expensive insofar that they require two separate mailings (qualification questionnaire and jury summons), necessitating additional printing and postage costs. Overall, the NCSC estimates that the overall jury yield<sup>18</sup> for 2-step jury systems is 40% compared to 52% for 1-step jury systems.<sup>19</sup> As a result, printing and postage costs are an estimated 25% to 50% higher for 2-step jury operations. A final benefit of the 1-step process is that it eliminates the task of re-verifying qualification and administrative information with jurors who report for jury service.

[MCL 600.1313\(2\)](#) specifically authorizes a county to use a one-step process and send out summonses at the same time as juror qualification questionnaires. Numerous sections of the jury management statutes give the chief circuit judge responsibility for determining the manner and methods used in the jury selection process.<sup>20</sup>

Two-step courts have been the traditional model for several decades and continue to operate in many circuits in Michigan. This process can be labor intensive and is somewhat costly since all summoned jurors receive at least two mailings from the court. Two-step processes also tend to diminish yield rates since jurors are generally given extended timelines and multiple opportunities to become ineligible. For example, a juror may be eligible when completing a

<sup>17</sup> National Center for State Courts, Jury Manager's Toolbox, [Converting from a 2-Step to 1-Step Jury System](#) (2009).

<sup>18</sup> To calculate the overall yield for a two-step jury process, multiply the qualification yield by the summoning yield.

<sup>19</sup> Local court and community characteristics affect jury yields considerably. Typically, overall jury yields in two-step courts are 10 to 15 percentage points lower than those of comparable one-step courts.

<sup>20</sup> See [MCL 600.1305](#), [MCL 600.1327](#), [MCL 600.1328](#), [MCL 600.1342](#), and [MCL 600.1353](#).

questionnaire in April, but may relocate or otherwise become ineligible if they are summoned to serve in October.

One-step courts have grown significantly over the past two decades and today comprise more than 50 percent of the jury systems in the United States. In many one-step systems, jurors are sent a qualification questionnaire and summons together approximately 3 to 6 weeks ahead of time, rather than first being sent the questionnaire, followed by a jury summons several months later, which is common in a two-step process.

It is estimated that counties can realize a direct cost savings of about \$922 per 1,000 summonses mailed if they convert to a one-step process. A one-step court must consider their juror yield rate and make sure they send out enough one-step mailings to get the necessary number of jurors who are qualified and able to serve. Forty to fifty percent of the one-step questionnaires/summonses will still be unqualified or unable to serve.

SCAO staff are available to assist courts in transitioning to a one-step process. Interested courts should contact their SCAO regional administrator. Many courts and counties have experienced this conversion process, so having a conversation with some of their leadership before taking on this conversion may be helpful. Please contact SCAO for a current list of counties or courts that have converted from a two-step to one-step process.<sup>21</sup>

## **Best Practice #6: “One Day, One Trial” Term of Service**

**Court leadership should consider adopting a “one day, one trial” rule for jury service, but if not possible, then the term of jury service should not exceed two weeks.**

“The aspect of the jury system that has the greatest effect on jury management and the citizenry is the length of the term of service.”<sup>22</sup> “From a management point of view, the length of the term determines the number of persons required to serve as jurors and the support necessary for system operation. The term may also influence the frequency of orientation, the method of handling excuse requests, the summoning yield, and even the amount of jury lounge space required.”<sup>23</sup>

G. Thomas Munsterman, founder and former director of National Center for State Courts’ Center for Jury Studies, worked for more than 30 years to improve jury service and his work led many trial courts across the country to improve their jury operations. He laid out the reason that courts should shorten the jury term of service as follows:

The purpose of a short term of jury service is to reduce the personal and financial burden upon those serving, as well as upon their employers, and to permit persons to serve who would otherwise be excused for personal or community hardship reasons. This broader participation should result in a better cross-section of the public serving on jury duty and

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<sup>21</sup> Despite their flaws in terms of efficiency and cost, two-step systems may be the best choice for certain circuits across the state, especially small court systems with unpredictable trial schedules. For example, some small circuits only need around 500 jurors per year, but cannot predict when jurors will be needed. In that case, it may make more sense to produce a list of qualified jurors and then summons from it when trials are scheduled.

<sup>22</sup> Material in this element is extracted from G. Thomas Munsterman, *Reduced Terms of Jury Service in the Federal Courts* (Arlington, VA: National Center for State Courts, Center for Jury Studies, 1986).

<sup>23</sup> National Center for State Courts, *Jury System Management*, (1996), pp 65-66.

will distribute the burden, as well as the positive educational aspects of jury service, more equitably across the eligible population.<sup>24</sup>

The American Bar Association developed and approved its original *Principles for Juries and Jury Trials* in 2005,<sup>25</sup> which was updated in 2016 and consists of 19 principles that are necessary to refine and improve jury practice so that the right to jury trial is preserved and juror participation is enhanced. One principle adopted by the ABA states that jurors should only be required to serve for the shortest period of time consistent with the needs of justice, and suggests that courts use a “term of service of one day or the completion of one trial, whichever is longer”. However, if a deviation is necessary, the principle states that “the court should not require a person to remain available to be selected for jury service for longer than two weeks.”<sup>26</sup>

The ABA also recognized in the comments to Principle 2 that “reducing the term of jury service is essential to achieving a representative and inclusive jury. A shortened term would minimize or practically eliminate the inconvenience and hardship presented by jury duty and thus would justify the application of a strict excuse policy.”<sup>27</sup>

Munsterman also listed some of the benefits to shorter jury terms of service as follows:

#### **Advantages of Shorter Terms**

- *Broader Participation:* Even though shorter terms of service call for the same total number of jurors as longer terms, more persons will be called to serve for fewer days on the average. With more people serving, the usually positive experience of jury duty is distributed across a greater portion of the population.
- *Fewer Excuses:* Many persons are excused from serving on jury duty because of the hardship of serving, upon either themselves or their employers. The number of excuses requested can be reduced when terms of service are reduced. In addition, persons excused because of community hardship, such as doctors or lawyers, should be able to serve.
- *Reduced Financial Loss:* For those individuals serving who are not being paid a salary, their financial loss is equal to the daily loss times the number of days served. By reducing the number of days served, the individual loss is reduced. Likewise, for employed jurors whose salaries are continued during service, the loss to employers is reduced.
- *More Certainty:* The uncertainty of having to be available over a long period of time, yet not knowing when or if reporting to the court will again be required, is reduced when the actual service or the period of availability is reduced and well defined to the juror.
- *Reduced Availability Monitoring:* In courts with long terms of availability, it is common to maintain records of when certain prospective jurors will not be available due to travel, medical problems, business, or personal reasons. These records can become complex and are even automated in some courts. Because many persons may not be available at certain times during a term, the courts must have available a greater number of people than under a shorter term. Under short

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<sup>24</sup> *Id.* at pp 66-67.

<sup>25</sup> American Bar Association, *Principles for Juries and Jury Trials* (2005).

<sup>26</sup> Principle 2, subpart C of the American Bar Association, *Principles of Juries and Jury Trials* (Revised 2016).

<sup>27</sup> Comments to Principle 2, subpart C of American Bar Association, *Principles of Juries and Jury Trials*, p 11; citing National Center for State Courts, *Jury Trial Innovations*, eds. 1997, Section II-2, p 30.

terms, if that period of time is inconvenient, persons are simply postponed to a new term. If the postponement is for a short period, a new summons may not be needed.

- *Reduced Waiting*: Despite the best efforts of jury managers, there will be some unavoidable waiting for the prospective jurors; waiting is associated with juror dissatisfaction. With reduced terms of service, this waiting experienced by each person will be reduced.
- *Juror Voting Records*: In some courts, attorneys or even private firms maintain records of a juror's performance in other trials. This enables the attorneys to use their peremptory challenges to exclude those considered to be conviction-prone, acquittal-prone, too generous, or too stingy. With short terms of service, these repetitive selections simply do not exist, making this activity a moot point.<sup>28</sup>

[MCL 600.1371](#) authorizes a court to implement a “one day, one trial system”, but it is not mandatory. Adopting such a term promotes the goals of a good jury management system that are also set forth in [MCL 600.1301b](#):

- (a) Lessening the inconvenience to citizens of serving as a juror.
- (b) Broadening citizen participation in the jury system.
- (c) Distributing the responsibility for participation in the jury system among the people in as fair a manner as possible.
- (d) Increasing the efficiency and effectiveness of circuit court activity.
- (e) Reducing the length of the term of service of a juror.
- (f) Reducing the number of trials on which an individual juror serves during the juror's term.

Converting to a one day, one trial system can also positively affect a court's excusal rate. The NCSC found that “courts that have reduced the length of the term of service to ‘one day or one trial’ greatly minimize the potential hardship associated with jury service, making it feasible for many individuals to serve who would otherwise be excused for financial hardship.”<sup>29</sup>

“For most courts, adoption of a one-day/one-trial term of service will mean an increase in the number of citizens called to serve. Although this increase is advantageous to those serving because it improves their overall opportunity to serve on jury duty while decreasing their individual hardship, it is sometimes feared that it may increase the workload of administrators. However, as has been shown by recent conversions to a one-day/one-trial term, the costs of running a system with a one-day term can be restricted with advance planning and improved automation techniques for offsetting the increased mailing and forms costs.”<sup>30</sup>

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<sup>28</sup> National Center for State Courts, *Jury System Management*, pp 69-71.

<sup>29</sup> National Center for State Courts, Jury Manager's Toolbox, *Best Practices for Excusal Policies* (2009).

<sup>30</sup> National Center for State Courts, *Jury System Management*, p 74.



## **Best Practice #7: Standardized Jury Panel Sizes**

**Court leadership should collaborate with all judges in the court to adopt a standardized jury panel size for certain case types and complexities.**

ABA Principle 2 states that “[c]ourts should respect jurors’ time by calling in ... the minimally sufficient number of jurors needed to accommodate trial activity.”<sup>31</sup>

The committee commentary to Principle 2, subpart D. goes on to recommend:

Courts should set a standardized size for panels in a given type of case after analyzing data of past juror use. In general, courts that have reduced their panel sizes have found them sufficient to meet most of their needs for jurors with little or no delay. Furthermore, setting a standardized size for panels is essential to effective jury management so that judges and court administrators recognize the importance of improved juror use and its crucial impact on both the overall cost and efficiency of jury system operations and the public’s attitude toward jury duty.<sup>32</sup>

The NCSC recommends the following method to determine panel sizes:

To maximize juror utilization, courts first need to obtain reliable information about historical patterns of juror usage over time. Estimates of the number of jurors to report to the courthouse on any given day depend on the number and types of trials scheduled and the optimal panel sizes for those trials. Similarly, estimates of the number of jurors to summon for jury service depend on the number of jurors needed to report. Thus, the most appropriate place to begin is to determine the optimal panel size for different types of cases and work backward. Normally, the jury panel should consist of enough prospective jurors to accommodate the number of jurors and alternates to be sworn (6-12 jurors plus 1-2 alternates, depending on case type, jurisdiction, and anticipated trial length); the number of peremptory challenges allocated to each side (3 to 20, depending on case type and jurisdiction); the anticipated number of jurors excused for cause or hardship; and a small number of “extra” jurors, just in case. The nature of the case and the anticipated trial length are the factors that tend to affect the number of jurors excused for cause or for hardship. High-profile trials and trials involving difficult or disturbing evidence (e.g., sex offenses, offenses involving children, offenses involving drug or alcohol abuse) often result in greater numbers of jurors excused for cause, while lengthy trials tend to result in greater numbers of jurors excused for hardship.<sup>33</sup>

The variables in this equation are numerous, but a basic study of this process often reveals that courts, and particularly judges, overestimate the number of jurors needed to select a jury. For example, a court may request 40-50 jurors for a standard felony and seldom use more than 25-30 of those individuals during selection. While the remaining balance provides some comfort in the event of a shortage, it also costs several hundred additional dollars and staff time dedicated to the maintenance of these additional individuals.

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<sup>31</sup> Principle 2, subpart D of the American Bar Association, *Principles of Juries and Jury Trials (Revised 2016)*.

<sup>32</sup> Commentary to Principle 2, subpart D of American Bar Association, *Principles of Juries and Jury Trials (Revised 2016)*, pp 12-13; citing National Center for State Courts, *Jury System Management* (1996), Elem. 7-12.

<sup>33</sup> National Center for State Courts, *An Overview of Contemporary Jury System Management* (2011), pp 15-16.

Courts should track how many jurors were actually used in voir dire for particular case types. Maintaining and analyzing this data will allow court leadership to demonstrate that reductions can be made in the number of people sent to the courtroom.

Another strategy, “jury pooling,” is possible if courts can conduct jury trials with different judges on the same day. If two judges each want 45 jurors to start trials on the same day, it is possible to serve both trials with a smaller number than 90 jurors. If the jury office prepares to send 35 jurors to each courtroom, with the possibility of ‘recycling’ jurors if one courtroom or the other runs out, the court could save hundreds of dollars by calling 20 fewer individuals.

### **Best Practice #8: Allow for Pretrial Discussions**

**Court leadership should adopt a policy of delaying the initial scheduling of jury trials until after pretrial discussions and the parties have had opportunity to settle the case.**

Court should be careful not to schedule jury trials too early in the life of the case. Wait until settlement attempts have been unsuccessful. Many cases are resolved prior to a jury trial date being scheduled. Courts should not schedule a judge’s docket time for a jury trial that may be unnecessary. Scheduling a case too soon for jury trial can also lead to the jury clerk or jury office summoning more jurors than are necessary because they believe more cases are going to trial.

Paula Hannaford-Agor, Director of the Center for Jury Studies, makes a good point about how pretrial management can have a direct affect upon jury management at times:

Once the optimal panel size has been determined, the court next needs to determine the number of jurors to report to the courthouse for jury service on any given day based on the number and type of scheduled trials. Typically, the accuracy of this estimate is a reflection of trial date certainty – that is, the likelihood that a scheduled trial will go forward. Courts in which trial date certainty is high will be able to make more reliable estimates than courts in which trial date certainty is more tenuous due to day-of-trial settlements, plea agreements, and continuances. As a practical matter, this component of juror utilization is less reflective of effective jury system management and more a function of effective pretrial management.<sup>34</sup>

Adopting this best practice will also positively affect trial date certainty, which is another trial court performance measure recommended by the National Center for State Courts but not yet adopted in Michigan. Trial date certainty is the National Center for State Courts’ CourTool #5 and is a valuable trial court performance measure because it monitors and tracks the percentage of cases where a trial date occurs on the first date it is set.

### **Best Practice #9: Jury Trials on Same Day as Selection**

**Court leadership should adopt a policy that jury trials should commence the same day as jury selection, more commonly known as a “pick and trial” process.**

Once a jury is selected or impaneled on a case, the case should be tried unless there is a mistrial. Conducting a “mass jury pick day” during which multiple juries are selected and then required to

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<sup>34</sup> *Id.* at 16.



return in the future for the start of the trial, is an inefficient way to conduct jury selections on a regular basis. Data collected from SCAO management assistance projects involving trial courts that conduct mass jury pick days shows that two-thirds (67 percent) of the cases that completed jury selection ended up getting settled or dismissed prior to the return of the jurors for the jury trial.<sup>35</sup> Most, if not all of these cases, could have been settled prior to bringing jurors to court at all. Another problem with this system is that it prevents the court from adopting a one day, one trial system (see Best Practice #6) because it requires jurors to appear at court for two days at a minimum.

Courts that process jury selections in this way should consider adopting a pick and trial process that involves setting multiple cases for jury selection and jury trial on the same day in a call order (first call, second call, etc.) from the oldest case to the newest case. This is a more efficient use of everyone's time, as well as more cost-effective.

Adopting this best practice can also have other benefits, such as saving the judge's docket time used for impaneling the juries, docket time for the days the canceled jury trials were scheduled to continue, as well as the direct expense of reimbursing the jurors brought in unnecessarily.

### **Best Practice #10: All Challenges for Cause Made on the Record**

**Court leadership and judges should ensure that all challenges for cause, pursuant to MCR 2.511(D), are made and decided on the record, even if they are out of the presence of the potential jurors.**

Courts should be cautious about allowing jury clerks to excuse jurors outside the courtroom during the process of voir dire on the grounds that a juror could be challenged for cause pursuant to [MCR 2.511\(D\)](#). This also goes for ex-parte requests for jurors to be excused prior to coming to court.

Some courts erroneously allow the prosecutor's office to go through the juror list and the court will excuse all jurors who have been prosecuted by their office [[MCR 2.511\(D\)\(10\)](#)]. This is done prior to voir dire and defense counsel may not even know about it. While this challenge is mandatory and the court must grant it<sup>36</sup>, it still must be done on the record or with the consent of defense counsel. There should be a record and agreement of the opposing party that the challenge for cause is appropriate.

Principle 11 of the ABA's [Principles for Juries and Jury Trials](#) states that the voir dire process should be held on the record and the questioning of jurors should be sufficient to determine the jurors' legal qualification to serve in the case. Portions of the same principle also state that each party should have the opportunity to question jurors directly and that the voir dire should be sufficient to disclose grounds for challenges for cause. Also, in ruling on a challenge for cause, the court should make a record of the reasons for the ruling including whatever factual findings are appropriate.<sup>37</sup>

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<sup>35</sup> Eleven years of data collected from management assistance projects conducted between 2013 and 2018 (four court locations) using a mass jury pick method. The court with lowest settlement rate was 62 percent (for a two-year period) and the highest settlement rate was 75 percent (for a three-year period).

<sup>36</sup> [People v Eccles, 260 Mich App 379; 677 NW2d 76 \(2004\)](#).

<sup>37</sup> Principle 11, subparts B and C of the American Bar Association, [Principles of Juries and Jury Trials \(Revised 2016\)](#).

## **Best Practice #11: Scheduling Orders and Firm Plea Cut-Off Dates**

**Court leadership and judges should adopt a policy of entering pretrial scheduling orders on all cases, with firm plea cut-off dates for criminal cases.**

When a jury trial is ready to be scheduled, the court can send a pretrial scheduling or trial order with the jury trial notice for all civil and criminal cases. Utilizing scheduling orders that establish dates when future actions should begin or be completed, such as plea cutoff dates, is supported by Michigan case law.<sup>38</sup> If the judge enforces the deadlines in the order and holds the attorneys accountable for following them, cases can be settled earlier and the number of jurors to be summoned can be reduced. In addition to the pretrial scheduling or trial orders, some judges schedule a supplemental pretrial prior to the summoning of jurors. This can be done on the record in the courtroom to get the attorneys and parties to confirm whether they have talked about settlement and whether they are actually ready for trial and have all their exhibits and witnesses ready.

## **Best Practice #12: Prefer Deferrals of Jury Service over Excusals**

**Each county and court should implement local policies that will reduce the number of outright excusals.**

Another great article from the NCSC's Center for Jury Studies is called [\*Best Practices for Excusal Policies\*](#) and it states as follows:

All jurisdictions grant discretion to their trial courts to excuse individuals from jury service due to hardship. Excusal differs from disqualification in that individuals who do meet the qualification criteria are statutorily prohibited from serving. Likewise, excusal differs from exemption in that the latter provides individuals with a statutory right to decline to serve if summonsed. While some statutes are more explicit than others with respect to the degree of the hardship that a juror must demonstrate to be excused from jury service, most jurisdictions recognize three types of hardship: medical hardship, financial hardship, and extreme inconvenience.<sup>39</sup>

In Michigan, excusals from jury service are allowed by [MCL 600.1320](#) and are solely at the discretion of the court. If any authority to excuse jurors is handed down to clerical staff or other members of the organization, the chief judge should document such authority. Unlike disqualifications and exemptions, there is no statutory requirement regarding excusal from service. The statute states a juror may be excused, "when it appears that the interests of the public or of the prospective juror will be materially injured by his or her attendance or the health of the juror or that of a member of his or her family requires his or her absence from court."

Needless to say, this language provides ample room for interpretation and local practices vary across the state. For example, some courts may excuse jurors who lack transportation or face financial hardship, while others deny the same requests. These slight differences in interpretation can contribute to differences in juror yield rate from court to court.

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<sup>38</sup> [People v Grove, 455 Mich 439; 566 NW2d 547 \(1997\)](#); [People v Amison](#), unpublished opinion of the Court of Appeals, issued April 27, 2010 (Docket No. 289777).

<sup>39</sup> National Center for State Courts, Jury Manager's Toolbox, [Best Practices for Excusal Policies](#) (2009).

To minimize the use of excusals from service, reschedule or defer jurors to a term that works better for them. The ABA's Principle 10 suggests that deferrals to a date certain within six months should be permitted and that jurors seeking to postpone their jury service to a specific date should be permitted to submit a request by telephone, mail, in person, or electronically. For example, someone undergoing a medical procedure may be willing and able to serve in a subsequent term instead of being dismissed from their duties entirely. The ABA's Principle 10 also recommends that deferrals "should be preferred to excusals whenever possible."<sup>40</sup> Local practices in the use of deferrals can vary significantly, but should be documented in the event of an appeal or other challenge to the selection process.

Courts should be particularly cautious about exercising widespread excusals based upon hardship since the practice can inadvertently lead to the underrepresentation of groups in the jury array.

Nationally, excusal rates average 9 percent – roughly 1 out of every 10 people summonsed for jury service – but individual rates range from virtually 0 percent to more than 20 percent in some courts. Although community social and demographic factors obviously play a role in excusal rates, the NCSC found that jury management policies significantly affect these rates. For example, courts that reduced the length of the term of service to "one day or one trial" greatly minimize the potential hardship associated with jury service, making it feasible for many individuals to serve who would otherwise be excused for financial hardship.<sup>41</sup>

### **Best Practice #13: Juror Qualification and Exemption Training**

**Circuit court leadership should ensure the jury board and/or jury staff are determining juror qualifications and juror exemptions properly.**

Disqualifications are defined in statute as legal reasons that people cannot serve as a juror. If a juror is disqualified and is allowed to sit on a jury, it can create potential legal challenges to a jury verdict. Exemptions, on the other hand, are legally protected reasons that a person can "opt out" of jury service if they request an exemption. The full list of causes for disqualification and exemption from service are included in [MCL 600.1307a](#) and apply to every trial court in Michigan.

A juror must be a citizen of the United States who is over the age of 18 and a resident of the county or district in which the individual is assigned to serve. Jurors must be able to communicate in the English language, be physically and mentally able to carry out the functions of a juror, not have served within the past 12 months, and have no past felony convictions. If a prospective juror fails to meet any of these qualifications, they are disqualified and may not serve as a juror.

Jurors who are over the age of 70; or jurors who are currently a nursing mother may be exempt from service. If a juror requests exemption under one of these legally protected grounds and is able to prove that status, they should be granted the exemption from jury service.

There is also an exemption for certain active military service members under federal law that Michigan courts are obligated to honor. Federal law<sup>42</sup> exempts active military service members

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<sup>40</sup> Principle 10, subpart C.3. of the American Bar Association, [Principles of Juries and Jury Trials \(Revised 2016\)](#).

<sup>41</sup> National Center for State Courts, Jury Manager's Toolbox, [Best Practices for Excusal Policies](#) (2009).

<sup>42</sup> [10 USC 982\(a\)](#); also see *Hall v Burlingame*, 88 Mich 438 (1891).

from service on state or local juries if their service would unreasonably interfere with the performance of their duties or would adversely affect the readiness of their unit, command, or activity to which the member is assigned. Another subsection<sup>43</sup> states that all personnel assigned to the operating forces in a training status or stationed outside the United States are exempt from jury service because being overseas necessarily creates both situations. Even though the law is clear, the service member might need to provide proof of their situation to the court.

[MCL 600.1320](#) specifically authorizes the county jury board to determine the qualification of potential jurors. [MCL 600.1303](#) authorizes the county board of commissioners to authorize assistants to the jury board. It is through [MCL 600.1303](#) that duties of the county jury board may be delegated to other court staff (generally within the county or circuit court). [MCL 600.1320](#) also allows a trial court to declare a juror who was summoned to be disqualified after they appear in court. Court staff who have not been specifically delegated authority under [MCL 600.1320](#) may not make the initial review and determination of qualification based on the qualification questionnaire.

Courts are somewhat limited in their ability to prevent disqualifications or exemptions since the conditions under which they are granted are statutory. However, courts or jury boards can adjust the effort they put into investigating these claims, which can then impact juror yield. For example, many jurors do not know the difference between a civil infraction, a misdemeanor, and a felony. Some jurors may simply check “yes” to a past felony conviction as a result of any past conviction. Courts that require proof of requests for disqualification or exemption are likely to see some improvement in juror yield.

However, courts should consider their local practices around investigating requests for disqualification and excusal. There are two countervailing interests at play. It is true that requiring proof of all such requests would maximize yield, but it may not be practicable, especially in large counties where staff could spend a huge amount of time trying to collect this information from hundreds or thousands of individuals. It is also true that some of these causes can be very difficult to verify without personal contact with the individual.

## **Best Practice #14: Research and Resend Undeliverable Juror Mailings**

**Each county or court should have an active program for researching and resending juror mailings that are returned undeliverable or have a bad address.**

Undeliverable jurors are those who cannot be contacted by the court, or for whom the United States Postal Service (USPS) returns mail marked undeliverable or unable to forward. Every court in the country sees some percentage of the pool come back undeliverable. There are multiple causes for this, and the court’s efforts to address them can have a significant impact on yield rates.

Another great article from the NCSC’s Center for Jury Studies, [\*Best Practices to Decrease Undeliverable Rates\*](#)<sup>44</sup> states as follows:

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<sup>43</sup> [10 USC 982\(c\)](#).

<sup>44</sup> National Center for State Courts, Jury Manager’s Toolbox, [\*Best Practices to Decrease Undeliverable Rates\*](#) (2009).

Nationally, an average of 12% of qualification questionnaires and jury summonses are returned by the U.S. Postal Service marked “undeliverable as addressed.”<sup>45</sup> Undeliverable rates are the single largest factor contributing to decreased jury yields. In most instances, the qualification questionnaire or summons was returned because the person moved to a new address since the master jury list was last created or updated. In other instances, the juror’s address may be incorrect from the source list or the U.S. Postal Service may have returned the qualification questionnaire or jury summons in error. While it may not be possible to eliminate the undeliverable rate completely, courts can take steps to greatly reduce it.

Most modern jury management software solutions include use of the National Change of Address (NCOA) database as maintained by the USPS. Courts that do not utilize software solutions for jury management can still subscribe to NCOA services through independent companies. The NCOA process can update as many as 10 percent of the addresses in any given mailing and significantly improve response and juror yield rates.

Courts can also use locator services as a means of identifying current addresses and contact information for potential jurors for which the court no longer has accurate records. Other court staff may already utilize such locator services in their collections division or probation department, so access to these services may be at no additional cost. Some of these services charge a fee, while others do not. Many of the services are electronic databases, accessible through the Internet, that allow search parameters to be chosen to assist in identifying contact information for individuals. While SCAO does not recommend nor endorse particular services, locator options include USPS postal checks, Judicial Data Warehouse (JDW), CLEAR, Accurant, and LexisNexis.

### **Best Practice #15: Enforcement Program for Juror Qualification Responses**

**Each county or court should actively monitor and enforce the requirements that potential jurors answer any juror qualification questionnaires sent to them.**

Non-responding jurors are those individuals who have not responded to the questionnaire, but the court has not received the mailing back as undeliverable. [MCL 600.1313](#) requires that potential jurors respond to and answer the qualification questionnaire within 10 days after receiving it. However, some counties or courts do not follow-up with potential jurors who do not respond to and return the questionnaire. If those counties or courts use a two-step jury process, then those jurors are likely to never receive a summons and might never be held accountable because, in a two-step system, courts generally only send summonses to those persons who return the questionnaire and are determined to be qualified jurors. In these situations, word can “get out” in the community that potential jurors can ignore the questionnaire and they will never get a jury summons, which can have a negative impact on the juror yield rate in that county or court.

There are two commonly utilized methods of reducing the volume of unanswered questionnaires, and therefore increasing juror yield. The most effective method of improving juror yield is through additional efforts to contact non-responding jurors. If a juror has not responded within two to three weeks of the original questionnaire distribution, courts may choose to send an additional mailing to the same address. This is often sent in the form of a reminder letter or

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<sup>45</sup> National Center for State Courts, [State-of-the-States Survey of Jury Improvement Efforts \(2007\)](#).



duplicate questionnaire, and can increase response rates by 25 percent or more compared with courts that issue only a single mailing. While this method of enforcement carries with it the cost of additional postage, it can generally be done with less involvement of judges and without taking up valuable staff and judicial docket time.

The second solution is enforcement by entering an order to show cause. The order is for a hearing for the juror to show why he or she should not be held in contempt. Show cause orders require a judge's signature and hearings have to be placed on the judge's docket, so they require more judicial time than resending questionnaires. This process is useful in reminding citizens of the importance of the civic obligation, but can also be extremely time consuming, especially in large courts with high juror counts. It is important to keep in mind that some percentage of the population fails to respond for completely viable reasons such as long-term travel, physical or mental disability, or death.

Courts should consider checking the Servicemembers Civil Relief Act (SCRA) website [<https://scra.dmdc.osd.mil/scra/#/single-record>] to see if persons failing to respond are active military personnel prior to sending out additional mailings or taking other enforcement action.

### **Best Practice #16: Enforcement Program for Failures to Appear**

**Each court should actively monitor which jurors fail to appear for jury duty when summoned to do so, and should take enforcement action against those who fail to appear for jury service.**

Potential jurors who are mailed a summons or notice must appear in court unless they are informed they are disqualified, exempt, excused, postponed, or cancelled, and they can be held in contempt for failing to appear in court without being excused.<sup>46</sup> The failure to appear (FTA) rate reported by Michigan trial courts for 2017 was 25.3 percent, while the NCSC estimates that jurors who fail to appear in state trial courts nationally averages between 6 percent (two-step courts) and 8.9 percent (one-step courts).<sup>47</sup>

Similar to the enforcement mechanisms for non-responding jurors, the most effective and least expensive method of enforcing jury summonses is to automatically reschedule jury duty for jurors who fail to appear. Courts can automatically schedule these FTA jurors for another jury trial day and send them a second summons. While this method of enforcement carries with it the cost of additional postage, it can generally be done with less involvement of judges and without taking up valuable staff and judicial docket time.

The second solution is enforcement by entering an order for the juror to show cause as to why he or she should not be held in contempt. This process is useful in reminding citizens of the importance of jury service and also builds consistency and trust in the public that court orders should be obeyed. However, some percentage of the population fails to appear for jury duty for completely viable reasons such as long-term travel, physical or mental disability, or death, and a show cause hearing gives those jurors an opportunity to explain their legitimate absence.

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<sup>46</sup> [MCL 600.1346\(e\)](#) gives this contempt power to circuit courts, while other statutes give the same power to district courts ([MCL 600.8317](#)) and probate courts ([MCL 712A.26](#)).

<sup>47</sup> Reflects the estimated national jury yield based on statistics provided by local courts in the National Center for State Courts, *State-of-the-States Survey of Jury Improvement Efforts* (2007).

The ABA principles suggest that courts adopt specific guidelines for enforcing a summons for jury service and for monitoring failures to respond or appear. Courts should also utilize appropriate sanctions in the cases of persons who fail to respond to a jury summons.<sup>48</sup>

The Center for Jury Studies suggests that “[n]on-response and failure-to-appear (FTA) rates for jury service can significantly undermine jury system efficiency. Nationally, FTA rates average 9 percent, but rates as high as 50 percent have been reported by some courts. Timely and consistent follow up on jurors who fail to respond to a jury questionnaire or who fail to appear for service is a key feature of a well-run jury operation; specifically, it increases overall jury yield and improves the representativeness of the jury pool.”<sup>49</sup>

The Center for Jury Studies article goes on to state that “[s]ending a second notice or second summons to the non-responsive or FTA juror is the single most efficient and cost-effective method of follow-up. NCSC research on summons enforcement programs found that FTA rates are 24 to 46 percent lower in courts that send a second notice/summons compared to courts that do not use this approach.<sup>50</sup> Implementation of a second notice/summons program typically involves only printing, postage, and minimal staff resources. Most commercial jury software includes the capacity to automate this type of program with ease.”

As mentioned in other best practices, courts should also check the Servicemembers Civil Relief Act (SCRA) website [<https://scra.dmdc.osd.mil/scra/#/single-record>] to see if persons failing to respond or appear for jury service are active military personnel prior to taking any enforcement action against such individuals.

### **Best Practice #17: Alleviate Financial Barriers of Jury Service**

**Court leadership should work with their funding units to find creative ways to alleviate some of the financial barriers that jurors face in coming to court for jury service, such as costs for childcare, parking, and transportation.**

Some courts and their funding units provide jurors with reimbursement for parking and transportation costs. Court leadership might be able to negotiate with local parking companies for a reduced rate parking for which the court could pay or reimburse jurors. Another idea for courts in urban areas is to negotiate with local non-profit organizations or sporting venues that own parking lots that are not utilized during business days in order to provide free or low-cost parking for jurors. Courts could also work with their downtown development authority, parking authority, or local law enforcement to give parking passes to jurors in certain parking areas so they will not be ticketed.

Examples of this type of creative thinking are: The 18th Circuit and 74th District Courts (Bay County) purchased a used shuttle bus to transport jurors to a county-owned parking lot some distance away to provide jurors with free parking. This prevents jurors from receiving parking tickets in the strictly-enforced parking spots near the courthouse. The 25th Circuit and 96th District Courts (Marquette County) negotiated with the local police department to honor juror

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<sup>48</sup> Principle 10, subpart D.2. of the American Bar Association, *Principles of Juries and Jury Trials (Revised 2016)*.

<sup>49</sup> National Center for State Courts, Jury Manager’s Toolbox, *Best Practices for Jury Summons Enforcement* (2009).

<sup>50</sup> More than half (54%) of all courts use a second notice/summons program for summons enforcement; nearly one-quarter (24%) of courts use this approach as the only form of summons enforcement. National Center for State Courts, *State-of-the-States Survey of Jury Improvement Efforts* (2007).

parking passes at downtown meters and not issue tickets, and to allow the use of reserved parking bags over meters in a designated area for seated jurors.

### **Best Practice #18: Educate, Encourage and Celebrate Jury Service**

**Court leadership should periodically disseminate press releases that educate the public on jury service and thank and encourage citizens who are selected for jury duty.**

Court leadership should take every opportunity to explain the importance of jury duty and to explain to the public how jurors' names are selected and what direct communication they will get from the court or county if they are selected. Such communications provide general education as well as assist citizens in identifying potential scams before they fall victim.

At a minimum, courts should send out a press release through their local media outlets during July each year, which was designated by the Michigan Supreme Court as Juror Appreciation Month. The Justices execute a resolution and the court issues a statewide press release each July thanking and honoring jurors for their service. This press release could be used as a template for local trial courts to release a similar press release with quotes of thankfulness from their local judges. See SCAO's juror appreciation website at <https://courts.michigan.gov/Courts/MichiganSupremeCourt/PublicInfoOffice/PublicOutreach/Pages/Juror-Appreciation.aspx>

This type of outreach improves the public trust and confidence in the courts and also has shown to improve response rates to questionnaires and decrease non-appearance (failure to appear) rates for summonsed jurors.

This can also give court leadership the opportunity to educate potential jurors about the fact that they can use online or interactive voice response (IVR) systems (if available) to get qualified or request a postponement or excusal.

### **Best Practice #19: Assistance with Relieving the Stress of Jury Service**

**Court leadership should investigate the possibility of providing services or programs that offer jurors seated on a case some options for cost-effective ways of relieving the stress of jury service.**

Court leadership should survey seated jurors during or after cases involving disturbing testimony or exhibits to assess jurors' states of mind and stress levels and determine if jurors have a need for mental health services.

If the need exists, court leadership should consider offering free or low-cost counseling or mental health services to seated jurors through community mental health or another state agency or organization. Court leadership could attempt to negotiate with their local mental health authority or local counseling services to provide pro-bono or low-cost services for seated jurors in particularly difficult cases.



## **Role of the Court and other Entities in Implementing Best Practices**

Before implementing new practices within your court's jury management process, it is important to consider your stakeholders and how changes will flow to and from them. Bringing stakeholders into the planning phase of rolling out a new practice will assist with garnering support and buy-in of the new process. Below is a summary of some of the key statutory roles and responsibilities to consider when reviewing the court's jury management processes, but keep in mind that some of these duties can be delegated within the jury management plan adopted by the county and the circuit court.

### **Circuit Judges and Chief Circuit Judge**

The circuit judges recommend jury board members to the county board of commissioners and may establish rules necessary to carry out the statutory provisions and insure the proper conduct of the jury board.<sup>51</sup>

The chief circuit judge determines the times and places of the jury board meetings, and may give the jury board authority to grant hardship excusals. The chief circuit judge determines if the qualification questionnaires shall be kept longer than three years, and also determines when and how the qualification questionnaires shall be disclosed, as well as if and when jury lists are unsealed. The chief circuit judge fixes the time limit for selection of jurors, designates who shall attend, witnesses and assists in the selection of jurors, and determines the manner of random selection of jurors. The chief circuit judge may also order a new list of jurors, if needed.<sup>52</sup>

### **County Board of Commissioners**

The county board of commissioners appoints the county jury board, fixes the amount that jury board members are paid, and may also authorize assistants to the jury board and fix their salaries.<sup>53</sup>

### **Clerk of the Circuit Court**

The clerk of the court may summon jurors for court attendance, and may attend, witness, and assist in the selection of jurors, and maintain juror names and jury lists.<sup>54</sup>

### **County Jury Board**

The jury board meets annually in May and any other times and places necessary to carry out its duties as ordered by the chief circuit judge. They select the lists of jurors, either manually or using an electronic process, and mail or supply a juror qualification questionnaire to each potential juror. The jury board excuses persons on the first jury list who are deceased, claim an exemption, or are not qualified for jury service. They may also investigate the accuracy of

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<sup>51</sup> [MCL 600.1301](#) and [MCL 600.1353](#).

<sup>52</sup> [MCL 600.1305](#), [MCL 600.1314](#) through [MCL 600.1323](#), [MCL 600.1327](#) through [MCL 600.1328](#), and [MCL 600.1342](#).

<sup>53</sup> [MCL 600.1301](#) through [MCL 600.1303](#).

<sup>54</sup> [MCL 600.1327](#), [MCL 600.1330](#) through [MCL 600.1332](#), [MCL 600.1338](#), and [MCL 600.1340](#).

answers to questionnaires and are responsible for keeping the questionnaires confidential. The jury board selects the jurors in a random manner as ordered by the chief circuit judge, keeps a record of the process, and delivers the lists of jurors to the clerk.<sup>55</sup>

### **Trial Judges and Chief Judges**

A trial court may decide juror qualifications and exemptions at any time after the jurors attend court, and may discharge them from further attendance and service if they are not qualified or are exempt from service and claim an exemption. A trial judge may grant hardship deferrals and determine a future date on which the person may serve without hardship, and shall determine who shall summons the jurors for attendance.<sup>56</sup>

By May 1 each year, the chief judge of each court shall estimate the number of jurors needed for the upcoming jury year and delivered the estimate to the jury board. The chief judge shall also, from time to time, order the jury board to select jurors for jury service, and the order must contain the time deadline (when needed), number of jurors in each panel, number of panels needed, term of service for each panel, and which court(s) each panel will serve.<sup>57</sup>

The chief judge may excuse jurors from attendance for any portion of the term or on days when they will not be required, may grant hardship excusals, and may postpone service to a later term, but must report the names of the postponed jurors to the jury board so they can be added to the list of jurors for that time. The chief judge can discharge panels or portions of panels for the balance of the term or excuse them until a day certain within the term if the number of jurors is greater than needed.<sup>58</sup>

### **Other Partners**

Jury clerks and other staff, attorneys, and software vendors do not have specific statutory responsibilities with regard to jury management. Nevertheless, their input and buy-in is critical to the success of court improvements. Involving those with front line and external perspectives will ensure a more well-rounded initiative.

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<sup>55</sup> [MCL 600.1302](#), [MCL 600.1304](#) through [MCL 600.1304a](#), [MCL 600.1305](#), [MCL 600.1311](#) through [MCL 600.1323](#), and [MCL 600.1327](#) through [MCL 600.1331](#).

<sup>56</sup> [MCL 600.1320](#), [MCL 600.1332](#), [MCL 600.1336](#), and [MCL 600.1337](#).

<sup>57</sup> [MCL 600.1308](#), [MCL 600.1324](#), [MCL 600.1341](#) and [MCL 600.1343](#).

<sup>58</sup> [MCL 600.1333](#) through [MCL 600.1337](#) and [MCL 600.1339](#).

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## Resources

### State Court Administrative Office

- *Jury Management Web Page*  
<https://courts.michigan.gov/Administration/admin/op/Pages/Jury-Management.aspx>
- *Trial Court Performance Measures Web Page*  
<http://courts.mi.gov/administration/admin/op/performance/pages/default.aspx>
- *Administrative Order 1987-1: Providing Access to Juror Personal History Questionnaires:*
- *Trial Court Directory*  
<http://courts.mi.gov/self-help/directories/pages/trial-court-directory.aspx>

### National Center for State Courts

- *Jury Manager's Toolbox* – is an online diagnostic tool designed to help state court administrators and jury managers evaluate and improve jury management operations and procedures. There are also helpful articles developed below:
  - [\*Best Practices for Duplicate Removal\*](#)
  - [\*Best Practices for Effective Juror Utilization\*](#)
  - [\*Best Practices for Excusal Policies\*](#)
  - [\*Best Practices for Implementation of Online and IVR Capabilities in Jury Automation\*](#)
  - [\*Best Practices for Jury Summons Enforcement\*](#)
  - [\*Best Practices to Decrease Undeliverable Rates\*](#)
  - [\*Characteristics of an Effective Master Jury List\*](#)
  - [\*Converting from a 2-step to a 1-step Jury System\*](#)
  - [\*A Primer on Fair Cross Section Jurisprudence\*](#)
- *CourTools – Trial Court Performance Measures*  
<http://www.courttools.org/Trial-Court-Performance-Measures.aspx>
- *CourTool #5 – Trial Date Certainty*  
[http://www.courttools.org/~/\\_media/Microsites/Files/CourTools/courttools\\_Trial\\_measure5\\_Trial\\_Date\\_Certainty.ashx](http://www.courttools.org/~/_media/Microsites/Files/CourTools/courttools_Trial_measure5_Trial_Date_Certainty.ashx)
- *CourTool #8 - Effective Use of Jurors*  
[http://www.courttools.org/~/\\_media/Microsites/Files/CourTools/courttools\\_Trial\\_measure8\\_Effective\\_Use\\_Of\\_Jurors.ashx](http://www.courttools.org/~/_media/Microsites/Files/CourTools/courttools_Trial_measure8_Effective_Use_Of_Jurors.ashx)

### American Bar Association

- [\*Standards Relating to Trial Courts\*](#) (1976, amended 1992)  
[Note: many of the standards relating to juror selection were replaced by standards contained in the ABA's *Standards Relating to Juror Use and Management* (1993)]
- [\*Standards Relating to Juror Use and Management\*](#) (1993)
- [\*Principles of Juries and Jury Trials\*](#) (2005, revised 2016)

