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## Answering the Call: An Analysis of Jury Pool Representation in Washington State

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### ABSTRACT AND ARTICLE INFORMATION

Using survey and demographic data collected within Washington Courts from 2016-2017, this research sought to identify whether there are gender, racial/ethnic, and/or sexual orientation disparities that exist within jury pools in Washington State Courts. Results show that Black, Native/Indigenous, People of Color (BIPOC), including Asian Americans and Hispanic/Latinx Americans, are underrepresented in nearly all Washington jury pools. Findings also indicate that BIPOC women were underrepresented in all courts within this analysis. Further findings point towards differences by race and sexual orientation and may indicate underrepresentation among all racial categories. There are clear patterns across all courts included in the present study that show that marginalized groups, in particular BIPOC women, may experience significant hurdles to participate in the jury process. Policy and further research recommendations are discussed.

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In 2016-2017, the Washington State Minority and Justice Commission conducted a year-long statewide juror demographic survey in which jury pool data were collected from 33 courts across the state. Some of the preliminary findings from the survey were presented to the Washington State Supreme Court at a Symposium on Jury Diversity in May, 2017. The researchers found that a majority of the courts studied did not have jury pools that were reflective of the basic racial demographics of their jury-eligible population (Hickman & Collins, 2017). A complete analysis has not yet been conducted on whether Black, Indigenous, People of Color (BIPOC) are underrepresented in jury pools in the courts surveyed. In addition, we seek to answer the question of whether there are disparities when focusing on BIPOC women and people who are LGBTQ+ specifically. The goal of this research is to present empirical evidence on whether or to what extent disparities exist in jury service pools for specific populations in Washington State, particularly BIPOC women and people who are LGBTQ+. While there are multiple reasons why this is an important endeavor, we believe the most important are tied to equal justice through jury representativeness, the impact on jury decision-making, and the public's perceptions of the criminal justice system and processes. To our knowledge, no similar large-scale research on jury summons has been conducted in Washington State, and there have been very few studies conducted in other jurisdictions in the United States (Gastil et al., 2010; Taylor et al., 2007).

The fight for racial equality has been central in the discourse surrounding criminal justice processes and outcomes and, of particular interest here, the mitigating of racial, ethnic, gender, and sexual discrimination through the impaneling of an impartial jury. Within the *voir dire* process in particular, the focus has fallen on the equal protection clause of the 14<sup>th</sup> Amendment, as captured in the United States Supreme Court's decision in *Batson v. Kentucky* (1986). Simple logic dictates that in order to be effective at the impaneling stage, however, courts first need a representative pool of potential jurors. Therefore, we begin upstream, by looking at who responds to jury summons. In doing so, we hope to understand whether and to what degree there are disparities in summons responses and jury pools. Additionally, with this information, we hope to build a foundation from which we can begin to better understand the barriers that exist for certain underrepresented populations. In the following, we discuss the importance of representativeness on juries, and we then discuss barriers that exist to potential jurors' participation in jury service.

## Literature Review

The importance of juries in the American legal system cannot be overstated. The jury process itself provides the opportunity to serve as "citizen judges" – a chance for private citizens to render decisions on behalf of the state (Gastil et al., 2010). This participation in democracy allows jurors to engage with each other and the state in a way that solves public problems. Research conducted in King County, Washington, by Gastil and colleagues (2010) showed that deliberating on juries increased long-term civic engagement, involvement in communities, and perceptions of the legal system and its actors. However, these positive outcomes are only felt by those who are able to answer the call of jury duty and show up when they are summoned. Unfortunately, participation in this "political society" (Gastil et al., 2010, p. 9) does not appear to be equally experienced by all individuals. Rather, some groups of individuals face extraordinary barriers to jury service that are unnecessary and unjust. During the current societal movement for criminal justice reform in the United States, we draw attention to a lesser-discussed form of inequality and marginalization in our system.

### Stages of the Jury Process

According to Taylor and colleagues (2007), the American jury selection process can be conceptualized in three distinct stages: the early, middle, and late. The early stage entails the construction of the master list of potential jurors or the jury wheel. Also included in this stage are the procedures for updating and utilizing the master lists (Taylor et al., 2007). In the middle stage, the attention is placed on the actual summons process. Specifically, everything that occurs from when summons are issued to when potential jurors appear (or fail to appear) at their allotted day and time for service. Finally, according to Taylor et al. (2007), the final stage is the actual selection of jurors from those who have responded to their summons. This phase is marked by the *voir dire* process, as well as for-cause and peremptory challenges.

We would like to extend Taylor and colleagues' (2007) stages by including a *pre-stage*. This contextual stage involves legally guided practice, directed by policies and statutes, a main equivalent of which in Washington State is the Revised Code of Washington. As discussed more below, each of these *four* stages of the jury process – pre-, early, middle, and late – create unique barriers for certain individuals and groups in our society. While the underrepresentation of BIPOC occurs early in the staging process (Rose et al., 2018; see also Fukurai et al., 1993), we argue that the barriers in each stage

serve to compound the bias and create deeper inequity. The policies created in the pre-stage and implemented in subsequent stages, create a funneling effect that looks and feels differently for citizens, depending on several factors. There are variables – individual and contextual factors – that transcend all four stages. Beyond the process (i.e., the stages), the people and places matter, too. It appears as though our justice system has a jury selection process for some and a jury non-selection process for others.

### **Barriers to Jury Service**

Jury service is a chance to fulfill a civic duty to the country, engage in constitutional citizenship, and contribute to the community conscience (Ferguson, 2012; Gastil et al., 2010). Yet, not everyone has the opportunity, ability, or desire to fulfill this call; rather, their ability to participate in political society is impacted by individual and contextual factors. We will now identify various obstacles to jury service while highlighting issues that are relevant to Washington State, as that is the focus of this research. In our description below, we follow the order set forth by Taylor and colleagues (2007), beginning with our addition of recognizing a contextual pre-stage.

#### ***Pre-Stage: Anchoring Context in the Law***

The pre-stage barriers involve any hindrances that stem from statutory policy and resulting practice. While the sources of the barriers (i.e., the policies and statutes) are rooted within the pre-stage, the barriers themselves emerge during the downstream stages of the jury process, as we describe below. The saliency or penetration of pre-stage policy and resulting patterns of practice, however, are important to highlight here for two simple reasons. First, it provides context to the downstream barriers that exist for some potential jurors. Second, the statutory code provides the framework for policy amendment and change to practice.

There are several clear examples of pre-stage statutory or legal impacts that are felt in the later three stages. For instance, at the early-stage, prior felony convictions and restoration of civil rights and thresholds surrounding English language proficiency are particular to statutory jury qualifications (RCW 2.36.070). Additional examples include the framework for the random selection of potential jurors, the “master jury list” construction (RCW 2.36.054), and the interpretation of “fair cross section” of the population (RCW 2.36.080[1]; Re, 2007). Here, concerns arise or manifest in relation to socio-economic status, including potential jurors who experience periodic and persistent homelessness; increased residential instability and mobility; and/or

excusal patterns related to concentrated disadvantage, poverty, bias, and physical and/or mental disabilities.

Moreover, noteworthy examples of contextual pre-stage impacts embedded in statutes that, in turn, have downstream impacts are the policies surrounding juror compensation and the policy (RCW 2.36.150) and role employers play in providing incentives for employees to participate in their civic duty or whether employers use coercive tactics to dissuade employees in responding to a jury summons or serving on a jury (RCW 2.36.165). Significant late-stage impacts include, for example, challenges for cause (RCW 4.44.150) and peremptory challenges (RCW 4.44.130) in jury selection, as well as issues surrounding the significant decline in jury and bench trials nation-wide (Galanter, 2004, 2005). Among others, these pre-stage contextual issues have potential compounding effects on patterns of jury service. With this context in mind, we describe the manifestation of these barriers in more detail within the early, mid, and late stages of jury service.

#### ***Early Stage Barriers***

**Master Jury List.** The first barrier to participating in jury duty is not being included in the lists of names from which jury summons are pulled. At the federal level, research by Rose and colleagues (2018) revealed that the jury wheels used are widely considered to be unrepresentative in terms of race and ethnicity. This unrepresentativeness is so well-known and significant that it has actually become the norm. What is more, there is significant attrition that occurs over time with regard to these lists for BIPOC (Rose et al., 2018). The creation of the lists themselves are problematic (see Re, 2007) and contribute to the disproportionate representation of historically marginalized persons.

According to the Revised Code of Washington<sup>1</sup>, the master jury list will contain all registered voters, licensed drivers, and individuals with identification cards. While states vary in terms of how they approach this, the idea is that more lists may produce a greater opportunity of seating a representative jury. While this comes with some disadvantages, such as it being potentially costly and time consuming to remove duplicate names, it is a fairly straightforward way of expanding the source lists. There appear to be many advantages to using multiple source lists (Fukurai & Butler, 1994).

Another obstacle that is tied to jury lists is prior felony convictions. Being excluded from lists due to felony conviction disproportionately impacts BIPOC (Tran, 2013). In Washington State, there are racial disparities in incarceration (The Sentencing Project, 2017), which directly impacts the potential jury pool. It is estimated that in Washington State

almost 50,000 people are civically disenfranchised (Uggen et al., 2016).

### *Middle Stage Barriers*

Taylor and colleagues' (2007) work illustrated how contextual factors of the neighborhood (i.e., racial composition, status, and stability of residents) impacted the turnout during the jury summons process and, by extension, the underrepresentation of certain groups. Similarly, Gau (2016) identified the summons stage as the most problematic for the recruitment of BIPOC; therefore, as seen in the discussion section, there are numerous suggestions specifically for this stage of the process.

**Failure to Receive Summons.** According to the Revised Code of Washington, the master list will be used to randomly select jurors and then those selected will be summoned by mail or personal service (RWC 2.36.095). Thus, an obstacle is not receiving one's summons for jury duty. This obstacle stems from a few issues, namely transiency, unstable housing, homelessness, and housing discrimination. When pooling juries, BIPOC tend to be poorer and more transient, which impacts their notification for jury duty (Adams & Lane, 1998). Purging of non-deliverables from lists without attempting to track down those individuals only adds to the deficiency of racial representativeness in lists (Fukurai, 1999).

In a similar vein, gender minorities across the country are more likely to experience unsheltered homelessness, and this is particularly true for non-binary individuals in Washington State (National Alliance to End Homelessness, 2019). Among transgender survey participants in Washington State, over 25% experienced housing discrimination, including being evicted or denied housing, 37% experienced homelessness in their lifetime, and 13% in the last year, because of their gender identity and/or expression (National Center for Transgender Equality [NCTE], 2015). Thus, many individuals who identify as racial, ethnic, gender, and/or sexual minorities are more likely to not receive their jury summons.

**Failure to Appear.** While many failure-to-respond motives are discussed below, it is important to note that regardless of the reasons, individuals are more likely to skip jury duty when they think that no punishment or consequence will accompany their failure to appear (Hannaford-Agor, 2011). Other obstacles to jury service deal with individuals feeling unable or unwilling to participate, and thus, not responding to their jury summons. Quite a few of these barriers may actually provide them with legal excusals or postponements from jury service, but individuals may not fully understand how to go about this process, may forget to follow through, or may just ignore the next steps. Non-response from the court when they

have communicated questions or submitted documentations comes into play, too (Judicial Council of California, 2009). In Washington State, individuals can be excused from service if they can establish undue hardship, extreme inconvenience, public necessity (such as considerations/change made in the wake of the COVID-19 pandemic), or additional reasons that the court may deem as sufficient (RCW 2.36.100).

**Socioeconomic Status.** Perhaps unsurprisingly, barriers to jury service for the groups highlighted in this report are inextricably tied to socioeconomic status. In general, BIPOC who receive notifications for jury duty are more likely to claim hardship or simply not respond to the summons (Adams & Lane, 1998) or not return qualifying questionnaires, causing them to be viewed as recalcitrant (Fukurai et al., 1991a). While these findings are admittedly dated, it is reasonable to assume these financial barriers still persist. Also, individuals with lower socioeconomic position may have trouble understanding the process, which may lead them to not respond to their summons at all (Sweeney & Dizikes, 2013). These individuals may also have unreliable transportation (Caprathe et al., 2016) and/or distance limitations (Saunders, 1997). In Washington State, for instance, the Research Working Group's Task Force on Race and the Criminal Justice System (2012) found that certain racial and ethnic groups (i.e., African Americans, Latinx, and Native Americans) were more likely to suffer economic disadvantage, as well as residential mobility, family disruption, and unstable jobs.

Individuals who hold more than one job, rely on tips, and are paid by the hour are less likely to respond when summoned for jury duty (Walters et al., 2005). Additionally, these individuals are overwhelmingly women, BIPOC (see Walters et al., 2005), and those who identify as LGBTQ+. When looking at recent poverty data for Washington State, 10.3% of people had incomes below the poverty line and a larger percentage of working-aged women than men fell into this category, 11.3% versus 9.1% respectively (Talk Poverty, 2019). This is partly because women in Washington had median earnings of 79 cents for each dollar earned by their male counterparts (Talk Poverty, 2019). This disparity in pay is even more glaring for BIPOC women. In Washington State, for instance, racial and ethnic minorities are overrepresented in those living below the poverty line. Approximately 8.9% of Whites were living below the poverty line compared to 20% of African Americans, 18.6 % of Native Americans, 16.4% of Latinx individuals, and 10% of Asian Americans (Talk Poverty, 2019). Finally, 14% of transgender persons in Washington State were



unemployed while 28% reportedly were living in poverty (NCTE, 2015).

### **Psychology, Family Roles, and Identity.**

Relatedly, psychological dispositions and personality traits can also determine whether or not persons comply with their summons, as can the interplay between these factors and other more tangible hurdles (Bloeser et al., 2012). Specifically, factors such as discretionary time, selective benefits, social integration and cultural barriers, political skill, and personality traits matter. Bloeser and colleagues (2012) found, for instance, important cultural and linguistic barriers to jury service exist and that personality traits can drive decisions to comply with jury summons.

In addition to these impacts on jury service, family roles also come into play. Adult women tend to be caregivers for children, as well as aging family members and other dependents at a higher rate than men, and thus face additional hardships from participating in jury duty (Family Caregiver Alliance, 2016; Seabury, 2016). Similarly, the stress and uncertainty surrounding breastfeeding (e.g., schedule, storage of milk, privacy, etc.) can deter some from participating in jury duty. While almost 20 states allow excusals or postponements for breastfeeding moms (National Conference of State Legislatures, 2020), there is a lack of consistency across the country on how nursing women are treated.

Members of the queer community are often hyperaware of the biases and forms of discrimination in the law and their historic lack of political power (Saltry, 2015; Satinoff, 2016). They have a shared experience that involves fear of persecution and discrimination (DePoy, 2012), and some are tainted by prior direct experience with the court or jury service (Brower, 2011). LGBTQ+ individuals who have several marginalized identities face more instance of discrimination in courts (Brower et al., 2015). Thus, it is possible they fail to appear because they have concerns about anti-LGBTQ+ biases. To illustrate, gay men and lesbians struggle with whether to try to deliberately pass as heterosexual, as well as whether to disclose voluntarily (Brower, 2011). Further, transgender and gender non-conforming persons worry about being mis-gendered or outed in front of others, as well as logistical issues like having to deal with identification mismatches and restroom access. To illustrate, the 2015 U.S. Transgender Survey found that in Washington State, only 14% of survey respondents had their preferred name and gender on all legal identity documents (NCTE, 2015). Also, 61% avoided public restrooms out of fear of confrontations or problems, and over one-third limited their food and beverage consumption to avoid restrooms altogether (NCTE, 2015).

Those who identify as LGBTQ+ also worry about being judged by persons whose opinions on queer issues are unknown. These individuals experience educational and workplace harassment, bullying, social exclusion, mistreatment, and assault due to their sexual orientation, gender identity, or gender expression. For example, in Washington State, 79% of transgender persons experienced mistreatment in primary and secondary schools and 25% in college or vocational school while 23% of those persons employed faced workplace mistreatment within the last year (NCTE, 2015). Such mistreatment extends to public accommodations, too, with transgender individuals in Washington State experiencing harassment, denial of equal treatment or service, and physical assault in public facilities, including government offices (NCTE, 2015). It is extremely likely that their lived experiences and safety related concerns might prevent them from appearing when summoned for jury duty. Although the United States Supreme Court very recently extended federal civil rights protections in the workplace by prohibiting employee discrimination based on gender identity or sexual orientation, this alone will not eradicate all bias towards the LGBTQ+ community. Further, the language used in most state statutes, including Washington's RCW 2.36.070, still treats gender as a binary. This sends a powerful message to the LGBTQ+ community about their place in courts.

Finally, some individuals simply do not want to participate in jury duty. While it is impossible to document all the reasons why, some of these are likely linked with deep-seated views regarding the social hierarchies of society and treatment of these groups at the hands of the criminal justice system. There is a long history in the United States of suffrage restrictions regarding race and ethnicity, poverty, gender, gender identity and/or expression, and sexual orientation, as well as unequal treatment by and access to the law. Mistrust of the courts, particularly for BIPOC communities, is a reason that some opt not to participate (Egelko, 2015). This research represents an important step in uncovering whether disparities exist in Washington State jury pools when it comes to BIPOC, BIPOC women, and people who are LGBTQ+.

### ***Late Stage Barriers***

**Jury Selection.** There is a great deal of existing research that specifically focuses on *voir dire*, for-cause and preemptory challenges (e.g., Gau, 2016; Rose, 1999), and the deliberation process of juries that are impaneled (e.g., Baldus et al., 2001; Gastil et al., 2010). This later stage is not the focus of this project. Yet, because of the cumulative funneling that takes place across the stages, the consequences are

significant, readily apparent, and deserving of some attention. The harms from this late stage appear to impact the deliberation process and/or verdict outcome, as well as the societal impression of the American justice system.

First, there is evidence to suggest that unrepresentativeness on juries can impact the decision-making process and jury outcomes. For example, juries that are all-White have been found to make a larger number of mistakes, consider fewer perspectives, and spend less time overall during jury deliberations (Equal Justice Initiative [EJI], 2010). When using mock juries, Sommers (2006) found that White jurors behaved differently on racially homogeneous versus heterogeneous juries. For instance, they made fewer factual mistakes, considered more facts in general, and more openly discussed and considered the possibility of racism in the case while on racially heterogeneous juries (Sommers, 2006). Multi-racial juries can process information in different ways, which can impact decisions and outcomes (Tran, 2013; see also Sommers, 2007). Jurors tend to rely on their lived experiences when participating in jury deliberations; therefore, having greater perspectives can yield a discussion that is more well-balanced (Adamakos, 2016).

Likewise, gender differences influence moral reasoning and decision-making (Fowler, 2005), as well as how controversies are resolved and evidence is evaluated (Garcia Toro, 2015). Participation rates and communication styles also vary depending on gender (Garcia Toro, 2015). If juries are overrepresented by men and underrepresented by women, then research suggests this can and will impact jury deliberations, specifically the accuracy and efficiency of deliberations, and outcomes (Fowler, 2005; Garcia Toro, 2015; Marder, 1987). We argue that this same reasoning extends beyond the gender binary and to those who identify as genderqueer (e.g., agender, gender non-conforming, gender fluid, etc.). While this in and of itself is important, given the gendered nature of crime, the effects of this inequality are likely amplified. This may impact all types of criminal cases, but particularly ones marked by sexual violence, such as rape (Forman, 1992) and child maltreatment.

Second, jury diversity impacts societal trust in the courts and justice system as a whole (Fowler, 2005). According to the Equal Justice Initiative (EJI, 2010), failure to produce juries that are racially diverse has impacted public perceptions regarding the system's credibility, integrity, and reliability. These beliefs can translate into protests, riots, and even violence after jury verdicts are decided that are perceived to stem from racially-driven bias or discrimination (EJI, 2010). Homogeneous juries can

reinforce implicit bias (Seabury, 2016) while multi-racial juries can remove bias and prejudices during the jury deliberations (Tran, 2013). Also, the optics of the jury matter to the public and can inform individuals' legal consciousness. Not only can procedural justice or fairness in the process matter as much as the actual outcomes, but Ellis and Diamond's (2003) experiment found that guilty verdicts reached by homogeneous juries were considered less fair than those that were heterogeneous.

Clearly, there is evidence of obstacles to jury service at every stage highlighted above. With the above considerations in mind, we now address the current effort to understand whether and to what extent there are gender, racial, ethnic, and/or sexual orientation disparities that exist within jury pools in Washington State Courts.

## Method

### Survey & Data Collection

In order to answer questions regarding the basic demographics of jurors in Washington State, with the goal of addressing representation among marginalized populations, a brief survey was conducted over a one-year period beginning in February 2016 and ending in February 2017. The survey was sent to 33 participating Washington Courts, ranging from municipal to county-level superior courts. The surveys were printed and administered by each individual court and were made available to jurors as they checked in/out or reported for jury duty. The surveys were both voluntary and anonymous. Each of the participating courts sent their completed surveys to the Washington State Administrative Office of the Courts and to the Minority and Justice Commission designees on a monthly basis, and then answers were recorded in a simple database.

### Comparison Group Strategy

In order to test whether or to what degree each court was seeing a demographically representative cross-section of their county or jurisdiction, we needed to develop comparison group estimations. Given the eligibility requirements for jury service, we drew our estimates using Citizen Voting Age Population (CVAP) from the 2010-2015 United States Census Bureau's 5-Year American Community Survey. Fortunately, each of the participating courts have clear geographical jurisdictional boundaries, so CVAP data were captured/aggregated at the census block level. We developed CVAP benchmarks for each court on the following categories of persons by gender, race, and ethnicity: total number, by age,

number of U.S. Citizens, and U.S. Citizens 18 years of age or older.

### **Survey Response Rates**

Each court kept records of summons and number of jurors who appeared for duty, and the number of returned surveys were also tallied, which allowed for some response rate monitoring for each individual court, as well as all courts combined. A raw total of 69,514 surveys were returned; however, some were blank or significantly incomplete, resulting in a total  $N = 64,752$  survey responses. The per-court survey response rates ranged from 63.75% to 99.84% and the average response rate for the entire sample was 83.74%. Given these rates, we assume a high degree of confidence that our sample adequately reflects the juror summons populations in the surveyed courts.

The brief one-page, seven-answer survey asked participants some very basic demographic information. The first question asked participants to identify the court where they reported for jury service. The remaining six questions asked jurors to identify their gender and sexual orientation, their age (ranged), the month and year of their service, and their race and ethnicity. We present the total frequencies for each of the main question categories below.

### **Measures and Sample Descriptives**

In the following, we present aggregate sample descriptives for the questions listed on the survey, beginning with returned surveys by court. In some cases, categories were collapsed in order to present a more cogent picture of the reporting patterns by survey question. For example, under the race question, a respondent could mark “all that apply” resulting in low cell count in some multi-selected categories. Due to low cell count, some multi-selection categories were combined into an “all other two or more races” category. We understand and are conscious of issues surrounding identity (i.e., racial, sexual, gender, and gender identity) and related harm marginalized groups face due to racism, bias, and discrimination within the criminal justice system and in society. We want to be clear that the sub-categorizations used in this research are imperfect and may not capture all combinations of identity or orientation, and as a result, the analysis here may not properly reflect the true nature of personal identity within these populations.<sup>2</sup>

**Court Where You Are Serving.** A total of 33 courts were given the survey. Due to low case and low juror counts and the resulting low number of survey responses, some courts were grouped under a larger county-wide jurisdiction, which would include county superior, district, and municipal court(s), for example. Additionally, four other courts were

removed because of low number of surveys returned (defined as less than 25). This resulted in a total of 22 courts/county court systems included in the analysis with a total of 64,681 returned surveys. The number of returned surveys within this group ranged from 135 to 11,251 (average of 2,940 surveys). As expected, more densely populated counties and jurisdictions, such as King, Pierce, Snohomish, Clark, and Spokane account for the majority of cases, jurors, and completed surveys ( $n = 45,320$  or about 70%).

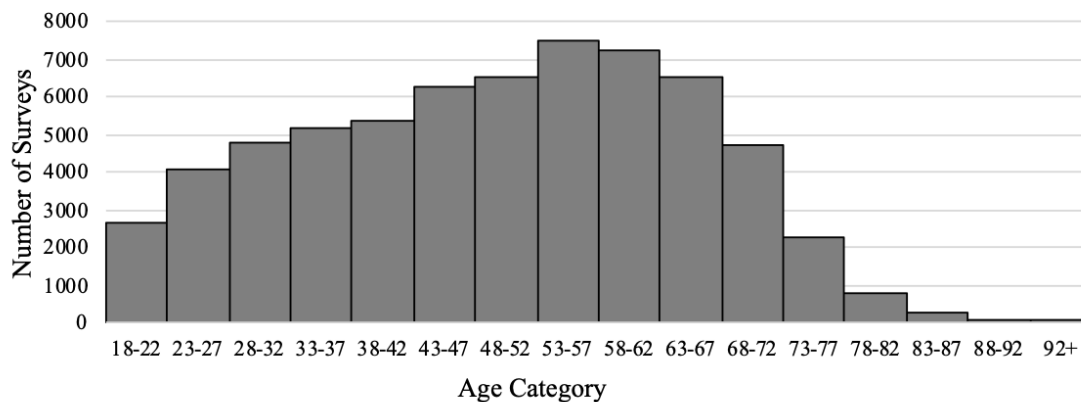
### **Gender Identity & Sexual Orientation.**

Respondents were asked to self-report their gender identity and sexual orientation (see Table 1) and were given the option to “mark all that apply.” There were six designated categories, including female, male, transgender, gay, lesbian, bisexual, and other.<sup>3</sup> The “other” category included a space to write-in responses. With the addition of multiple subcategories and the resulting low cell count issue, we combined some of the categories (there were 60 unique self-reported gender and sexual orientation categories). The majority of respondents, 95.8%, self-identified as either female or male, with the mutually exclusive category of female representing nearly half of the sample. For context purposes only, the U.S. Census reports that 50% of Washington’s population is female.

**Table 1. Gender Identity & Sexual Orientation,  
 $N = 63,296$ .**

Category	Frequency	Percent	Valid %
Female	31,248	48.3	49.4
Male	29,415	45.4	46.5
M_Gay	663	1	1
F_Gay	608	0.9	1
F_Bi	543	0.8	0.9
Non-conforming	474	0.7	0.7
M_Bi	153	0.2	0.2
Gay	60	0.1	0.1
Trans	58	0.1	0.1
M_Trans	42	0.1	0.1
F_Trans	32	<0.1	0.1
Total	63,296	97.8	100
Missing	1,456	2.2	
Total	64,752	100	

Notes: M= Male, F= Female. Categories in table are mutually exclusive. The Valid % column presents the percentages as if the missing data were removed.

**Figure 1. Respondent Age Distribution, N = 64,162.**

**Age.** Age was measured categorically, in five-year increments, ranging from those aged 18-22 to those over 92 years of age (See Figure 1). The modal age category was made of respondents aged 53-57, which represented 7,465 or 11.6% of the total sample. The top five categories ranged in age from 43 to 67 and represented over 50% of the total sample. Additionally, about 65% of the entire sample were over the age of 42. For context purposes only, the U.S. Census reports that 77.9% of Washington's population is aged 18 or over.

#### **Month and Year Jury Service Began.**

Surveys were returned and updated on a monthly basis. Both of the month and year questions reflect when the jury service began, not when the survey was completed. The vast majority of cases occurred over the study period. The data show monthly totals ranging from 3,876 returned in December 2016 to 6,895 in January 2017. The increase in January likely reflects normal seasonal workflow. Over the study period, from March 2016 to February 2017, there were an average of 5,275 surveys completed per month.

**Race and Ethnicity.** Both the race and ethnicity questions were originally designed to be comparable to U.S. Census data, as this was the most accessible data for building a baseline to compare the survey respondents to. The race question asked respondents to "mark all that apply," as did the ethnicity question.<sup>4</sup> To begin, the raw race data was recoded to match CVAP race categories. This was done to allow for a direct comparison between the jury survey responses and the baseline CVAP data for each jurisdiction or court. There was a total of 266 different mutually exclusive self-reported race combinations in the raw file. Multi-race categories were merged into larger mixed-race or other categories due to low cell counts. Table 2 provides the counts within mutually exclusive single race categories, as well as the multi-race categories.

**Table 2. Race Recoded to Aggregated CVAP Categories, N = 64,752.**

Category	Frequency	Percent	Valid %
White Alone	53,198	82.2	83.1
All other Two or More Races	2,983	4.6	4.7
Asian Alone	2,606	4	4.1
Black or African American Alone	1,741	2.7	2.7
Native Hawaiian or Pacific Islander Alone	1,578	2.4	2.5
Other	1,115	1.7	1.7
American Indian or Alaska Native Alone	382	0.6	0.6
Black or African American and White	234	0.4	0.4
Asian and White	162	0.3	0.3
AI/AN and Black or African American	40	0.1	0.1
Total	64,039	98.9	100
Missing	713	1.1	
Total	64,752	100	

Notes: There were 266 different race category combinations, some of which make up the "other" category here. Valid % omits missing cases.

According to the U.S. Census (2020), about 78.9% of Washington's population is "White alone" (68% is White alone and not Hispanic or Latinx), while the "Black or African American alone" is reported at 4.3%, "Asian alone" is reported at 9.3%, "American Indian or Alaskan Native alone" is 1.9%,



“Native Hawaiian and Other Pacific Islander alone” is 0.8%, the “two or more races” category is 4.8%, and the “Hispanic or Latinx” category is 12.9%. These percentages reflect the entire population, including those under the age of 18, so direct comparisons here are not recommended, but these Census numbers do provide some very basic information about the population in Washington. Additionally, we should note that there continues to be significant growth in the overall population, as it grew from an estimated 6,724,540 in 2010, to 7,614,893 in 2019 – a 13.2% increase.

The ethnicity question asked respondents to indicate whether they self-report as “Spanish/Hispanic/Latinx” and include an origin write-in section if they indicate another category other than those provided (i.e., Mexican, Mexican American, Puerto Rican, Cuban, or other). While omitting missing responses (8,484), findings indicate that 94.9% (53,376) reported as non-Hispanic, while 5.1% reported Hispanic (2,892). As stated above, about 12.9% of Washington’s general population are reported as Hispanic or Latinx, while only about 4.5% of the jury summons respondents reported as such.

To further investigate the race-ethnicity intersection, we ran a simple a crosstabulation. Findings indicated that there is some overlap among the categories, with the White-Hispanic category representing the largest Hispanic category (1,408 or 2.52%), followed by the two or more or other (write-in) combinations (364 or 0.65% and 611 or 1.09%, respectively). We explore the intersection of race categories further in the findings section below.

## Results

In the following, we present the summary descriptive findings for race and ethnicity and gender and sexual orientation by jury service representation. We begin with an overview of the findings from the entire sample of surveys, we then present the race and ethnicity comparisons, followed by the findings from the gender and sexual orientation comparisons.

To reiterate, the purpose of the current study is to address the following questions to the best of our ability, given the relative unavailability of data: Are people in the following categories proportionally represented in jury pools in each jurisdiction included in the data set: 1) BIPOC, specifically including subpopulations such as BIPOC women; 2) people of all genders; 3) people of different sexual orientations; and last, when we analyze the intersection of these different identities, are there subpopulations of people experiencing multiple oppressions who are not proportionally represented in the data?

In order to address these questions, we present two general sets of findings. In the first, we present jury summons response patterns by race. To build on the findings by race, the second set of findings turns to the intersections of race, gender, and sexual orientation together. These findings were included in order to further understand jury summons response patterns and to provide a starting point to uncovering barriers to jury service affecting marginalized populations.

The following analyses are descriptive and aim to compare the number and demographics of jurors who show up to jury service and compare these numbers to population estimates in each court jurisdiction. To date, no such empirical comparisons have been completed, and, therefore, it is hoped that these data and findings can serve as a starting point for further data collection and analysis. The findings presented below are interpreted as ratios, meaning the percentage of the survey respondents divided by the percentage of the estimated population percentage. A ratio below 1 means that group or class is *underrepresented*, while a ratio over 1 means that that group or class is *overrepresented*. As detailed above, the estimated population percentages were developed from CVAP data. Additionally, we requested and were given aggregated race and sexual identity data from the Public Health-Seattle and King County, Assessment, Policy Development, and Evaluation Unit. These data are used to provide some additional comparisons for race, gender, and sexual identity and are limited to King County courts only.

Please note as we move from general to specific and begin to look at the intersections of any two or more categories, such as race by court, race and gender, or sexual identity by court, some of the cell counts get very low and some become zero, which can and does have a significant impact on both interpretability and, ultimately, the validity of the findings. Moreover, as we investigate the intersection of multiple survey measures, such as with race and gender, the unique sample sizes viewed in the univariate descriptives above will be different than those presented below. This is due to censorship across rows because of the unique missing data for each unique variable.

## Jury Pool Representation by Race and Court/Jurisdiction

We present the following findings in aggregate by racial category. In Table 3, we present the aggregated White/non-White comparisons, ascending by court. As illustrated in the table, with the exception of the Clark County courts, all other courts reported non-White populations as underrepresented. The ratios ranged from a low 0.59 to a high of 1.07.

**Table 3. Jury Pool Representation by Race & Court.**

Court Name	Total Non-White		
	CVAP %	Juror %	Ratio
Walla Walla County Superior Court*	15.6	9.2	<b>0.59</b>
Federal Way Municipal Court	37.1	25.6	<b>0.69</b>
Bremerton Municipal Court*	23.3	16.3	<b>0.70</b>
Whatcom Cty Dist., Sup., & Muni. Court	14.0	9.8	<b>0.70</b>
Grant County District & Superior Court	23.5	16.7	<b>0.71</b>
Skagit County Superior Court	14.0	10.1	<b>0.72</b>
Kent Municipal Court	39.5	30.5	<b>0.77</b>
Mason County Dist., Sup., & Muni. Court	11.4	8.8	<b>0.77</b>
Island County District & Superior Court	14.1	11.2	<b>0.79</b>
Seattle Municipal Court	26.9	21.4	<b>0.79</b>
Pierce County Dist., Sup., & Muni. Court	24.2	20.5	<b>0.85</b>
Kirkland Municipal Court*	17.7	15.3	<b>0.87</b>
King County Superior Court - Kent	32.9	28.6	<b>0.87</b>
King County District Court	26.9	24.0	<b>0.89</b>
Grays Harbor District Court*	12.5	11.2	<b>0.90</b>
King County Superior Court - Seattle	23.6	22.1	<b>0.94</b>
Snohomish County Superior Court	18.7	17.7	<b>0.95</b>
Spokane Cty Dist., Sup., & Muni. Court	10.6	10.1	<b>0.96</b>
Okanogan County District Court	20.2	19.4	<b>0.96</b>
Kitsap County Superior Court	17.4	16.7	<b>0.96</b>
Thurston County District & Sup. Court	16.8	16.5	<b>0.98</b>
Clark County Dist., Sup., & Muni Court	13.3	14.2	<b>1.07</b>
All Courts Combined	22.8	19.4	<b>0.85</b>

Notes: \* indicates low sample size,  $n < 300$  surveys. Benton, Lewis, Whitman, and Yakima not included due to missing or very low sample size,  $n < 25$  surveys.

The overall average for all courts was 0.85, a 15% gap between non-White and White representation for all Washington Courts.

In Table 4, we present a condensed version, containing final ratios only, of all courts combined and CVAP race category. We do not provide per-court figures here because of issues pertaining to low cell counts in certain courts. Likewise, these findings should be interpreted with some caution, as many of the combined survey categories suffer from low sample sizes. When looking specifically at the representation ratios per-court and by CVAP race category, there are three categories that are

overrepresented, Hawaiian/Pacific Islander, Multi-Race, and White, respectively. In contrast, there are three separate racial categories that were underrepresented, including Black/African American, American Indian/Alaskan Native, and Asian, respectively. Additionally, in considering all of the jury sample, compared to the CVAP data for each court or jurisdiction, both mutually exclusive Hispanic/Latinx and the aggregated All Minority/non-White categories were underrepresented.

To summarize, these findings indicate that people of color, especially Black, Native, and Asian Americans, as well as Hispanic/Latinx Americans, are

**Table 4. Percentages of (CVAP) within Race/Ethnicity Categories: Representation Ratios.**

Court Name	Am. Ind/ AK Native	Asian	Black/ African Am	HI/ Pacific Is.	White	Multi- Race	Hispanic (all)	All non- White
All Courts Combined	<i>0.53</i>	<i>0.48</i>	<i>0.58</i>	3.80	1.04	1.68	<i>0.87</i>	<i>0.85</i>

Notes: Figures in italics signify underrepresentation. Benton, Lewis, Whitman, and Yakima not included due to missing or very low sample size,  $n < 25$  surveys.

underrepresented in nearly all Washington jury pools. As illustrated in the findings above, the level of underrepresentation does vary by court or court jurisdiction; however, all but one court system (Clark County) showed underrepresentation. Next, we address the intersections of race, gender, and sexual orientation and provide some estimates of representation by court and court jurisdiction.

### **Jury Pool Representation by Gender Identity, Sexual Orientation, and Race**

Unlike race, the estimation of representation by gender identity and sexual orientation presents some additional issues surrounding both generalizability and reliability. We can and do present jury survey demographics, which include gender identity and sexual orientation. The main issue beyond simple description of the sample is that there are few well defined and tested sources of baseline gender identity and sexual orientation data for Washington State beyond the binary gender data collected by the U.S. Census or, more specifically, the CVAP data. Therefore, we are limited in our ability to estimate differences in jury pool representation because of the lack of valid population parameters for LGBTQ+,

non-binary, and gender non-conforming populations. Furthermore, gender identity and sexual orientation were combined on the same survey question, further complicating meaningful analysis due to low cell counts.

We can, however, make some observations, including some basic comparisons using the binary gender CVAP data, specifically for estimating representation patterns for BIPOC women. Additionally, we were able to secure some data on the (combined) LGBT population in King County, from the Washington State Department of Health, Center for Health Statistics, Behavioral Risk Factor Surveillance System (BRFSS) and Washington State Office of Financial Management, Forecasting Division, single year intercensal estimates 2001-2018, Community Health Assessment Tool (CHAT), March 2019. These data were prepared and provided to the authors by the Public Health-Seattle and King County Assessment, Policy Development, and Evaluation Unit, May 2020.

### **Gender Identity, Sexual Orientation, and Race**

In Table 5, we present a cross-tabulation of gender and sexual orientation and the CVAP race

**Table 5. Frequencies: Gender Identity, Sexual Orientation & Race CVAP Categories Crosstabulation.**

Gender Orientation	Am. Ind/ AK Native	Asian	Black/ African Am	HI/ Pacific Is.	White	Multi- Race	Total
Male	171	1,140	842	705	24,220	2,005	29,083
Female	185	1,342	792	774	25,753	2,122	30,968
Female Bi	2	13	18	6	437	66	542
Female Gay	2	7	9	15	518	53	604
Female Total	4	20	27	21	955	119	1,146
Male Bi	1	2	3	1	130	16	153
Male Gay	4	29	17	22	521	67	660
Male Total	5	31	20	23	651	83	813
Female Trans	0	1	0	0	28	3	32
Male Trans	1	1	1	1	35	2	41
Trans (no desg.)	0	1	2	1	45	9	58
Trans Total	1	3	3	2	108	14	131
Gender non-conforming	1	9	12	9	371	71	473
Gay (no desg.)	1	2	4	0	46	5	58
Total LGBTQ	12	65	66	55	2,131	292	2,621
Total	368	2,547	1,700	1,534	52,104	4,419	62,672

Notes: Within Race/Gender/Sex Orientation - Total percent of jury sample LGBTQ (all race categories) = 4.18%; total percent jury sample LGBTQ non-White = 1.25%. Total sample Male (all races) = 46.41%; Female (all races) 49.41%. Total LGBTQ within non-White = 16.86% and White = 83.14%.

categories. We present this here for context purposes. The categories presented in Table 7 are all mutually exclusive. As is clear, across all race categories, the majority of the jury survey respondents self-identified as either Female (49.41%) or Male (46.41%) only (total = 95.82%). The remaining 4.18% of respondents ( $n = 2,621$ ) self-identified as either (female, male, non-binary) gay, lesbian, bisexual, transgender, or some combination of all categories present – there were 60 unique combinations within the survey data.

### BIPOC Women Representation by Court/Court Jurisdiction

Next, we present comparative findings centered on BIPOC women with estimates drawn from the CVAP data. These findings should also be interpreted with some caution because the jury data include additional categories beyond the binary female category. For our purposes here, female is inclusive and consists of individuals who self-identified as Female Only, Female-Bi, Female-Gay, and Female-Trans. In order to develop estimates, the Male-Only and all other possible answers, including “other” were

combined to make up a non-female category. For these estimates, race does not take into account ethnicity. Race was recoded as White-Only, BIPOC women (both race/ethnicity included), and other/missing.

The BIPOC women jury summons representation estimates provided below were conducted per court or court jurisdiction. Baseline estimates for combined non-White, gender (female), and sexual orientation were not available for the current analysis, so we used a combination of statewide estimates (50.2% Female), jury survey estimates, and CVAP estimates per jurisdiction. In Table 6, below, we present the difference in the percent of BIPOC women between the CVAP estimates and the jury survey estimates, by court. The column marked Survey represents the percentage of BIPOC women reported in the survey data. The column marked CVAP is the percent estimate for each court within the BIPOC women subcategory. The underrepresented column is the differences, in percentage, between what we would expect to see given the CVAP estimates and what was ultimately reported in the survey data. Following a similar pattern

**Table 6. BIPOC Women Representation Estimates, by Court/Court Jurisdiction.**

Court/Court Jurisdiction	% SURVEY (Observed)	% CVAP (Expected)	% Under-represented
Bremerton Muni	8.89	11.68	2.80
Clark Dist. Sup. & Muni. Courts	5.00	6.66	1.65
Federal Way Muni	10.58	18.61	8.02
Grant Sup., Muni, & Dist.	5.05	11.82	6.77
Grays Harbor District	4.56	6.27	1.70
Island Sup. & Dis. Courts	5.01	7.09	2.08
Kent Municipal	12.07	19.84	7.76
Kirkland Municipal	4.96	8.88	3.92
Kitsap Superior	6.91	8.74	1.82
King District	10.14	13.49	3.35
King Superior - Seattle	9.71	11.84	2.13
King Superior - Kent	12.48	16.54	4.06
Mason Dist., Sup., & Muni.	3.80	5.70	1.89
Okanogan District	8.66	10.15	1.49
Pierce Dist., Sup., & Muni.	8.63	12.12	3.50
Seattle Municipal	9.02	13.52	4.50
Skagit Superior	3.16	7.01	3.84
Snohomish Superior	6.61	9.38	2.76
Spokane Dist., Sup., & Muni.	4.10	5.30	1.20
Thurston Dist. & Sup.	7.01	8.45	1.44
Walla Walla Superior	3.73	7.85	4.11
Whatcom Dist., Sup., & Muni.	3.91	7.01	3.09

Notes: The % Under-represented column represents the difference in the percentage of BIPOC Women observed in the survey data compared to what would be expected in each jurisdiction according to the CVAP data.



with race alone, BIPOC women were underrepresented in the jury survey data across all courts included in this study.

### Gender Identity, Sexual Orientation and Race, King County

We were not able to assess the intersections of race gender identity and sexual orientation because there is not much, if any, data available for the entire State of Washington. There are, however, some pockets of data, including estimates that have been created using the Washington State Department of Health, Center for Health Statistics, Behavioral Risk Factor Surveillance System (BRFSS) survey data and the Washington State Office of Financial Management, Forecasting Division, single year intercensal estimates 2001-2018, Community Health Assessment Tool (CHAT, March, 2019). The BRFSS survey has been conducted for some time in King County and, therefore, some very preliminary estimates can be made for the participating King County Courts. The BRFSS combines LGB/T.

## Discussion

There were three main findings that are worth highlighting. First, our findings indicate that BIPOC, especially Black, Native, and Asian Americans, as well as Hispanic/Latinx Americans, are underrepresented in nearly all Washington jury pools. Second, we compared the number of BIPOC women respondents to the estimated number of BIPOC women in each court jurisdiction and found that BIPOC women were underrepresented in all courts within this analysis. Third, although these findings are limited, differences by race, gender identity, and sexual orientation may also indicate underrepresentation among all racial categories, including White and multi-race groups within the LGBTQ+ population in King County. It is important to note that the level of under or overrepresentation does vary by court or court jurisdiction; however, the directional patterns –indicating underrepresentation – are abundantly clear.

**Table 7. King County LGBTQ within Race Comparison between Survey & BRFSS Baseline.**

<u>Gender Identity &amp; Sexual Orientation Aggregated</u>					
Race CVAP Categories	Survey LGBTQ	Survey Total	% LGBTQ	% BRFSS	% Diff
American Indian or Alaska Native	6	94	6.38	14.2*	7.82*
Asian	50	1,834	2.73	4.1	1.37
Black or African American	44	958	4.59	6.1*	1.51*
Native Hawaiian or Pacific Islander	37	883	4.19	26.4*	22.21*
White	1,163	20,719	5.61	9.1	3.49
Multiple Races	157	2167	7.25	10.1	2.85

Notes: % Diff = percent different (underrepresented) between the baseline BRFSS (expected) percentages and what was observed within the survey data). \*Interpret with caution: sample size is small, so estimate is imprecise. BRFSS: Behavioral Risk Factor Surveillance System.

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As with the other findings reported here, these analyses should be interpreted with care, because some sub-categories suffer from small sample size, and, therefore, may be imprecise. The findings presented in Table 7 above do, however, provide a starting point to begin to understand the intersections of race and sexual orientation. As may be interpreted from the outcomes presented above, the differences by race and sexual orientation may also indicate underrepresentation among all racial categories, including White and multi-race groups, and the LGBTQ+ population in King County. These findings, however, will need to be further substantiated in future studies.

As we have pointed out throughout this entire section, there are some significant limitations to the present study. First, there is a lack of comparison data that includes multiple categories of self-identification, especially for gender and sexual orientation. Therefore, clear benchmarks for individuals who identify under multiple categories do not currently exist or do so on a very limited basis. At times, some of the sub-category data that are available are limited by small sample size. Analyses of the survey data collected here are limited because the survey was narrowly tailored to simply address “who was coming into jury duty,” and we can only assume that where we do see differences in relative proportions, these

differences are indeed significant and are due to some of the barriers we have noted herein.

In light of these limitations, we also have some recommendations for future study, primarily, that given the evidence of underrepresentation within several groups studied here, we recommend the following: First, future studies should move beyond description and attempt to capture the myriad reasons why people choose not to participate in jury duty. Second, an updated survey should continue or be given periodically, with questions that are more inclusive and expand to further include answers regarding juror experience with the jury service process. Third, a wider community survey could be designed and sent out using any number of modalities, with the intent to measure people's willingness to participate in jury duty, as well as questions regarding hardships that may arise in trying to participate. Utilizing focus groups within these underrepresented communities seems to be a logical next step. There are many more possibilities with future research, but with all additional work, we argue that because there is clear evidence of underrepresentation among marginalized populations, future research works to explain how and why these barriers exist as well as provides clear recommendations on how to better manage these issues. Discovering the actual causes of underrepresentation is of the utmost importance, as it allows courts the opportunity to correct these with more effective practices (Hannaford-Agor & Waters, 2011).

### Considerations

Based on the findings of this report, there are several suggestions we make regarding ideas for moving forward and improving the representativeness of jury lists and jury pools in the United States. It is important to note that not all of the information recommended is empirically derived, as there is a limited body of scholarly works devoted to this topic. Rather, some of this comes anecdotally or is drawn from recommendations implemented from other states and in federal courts. Regardless, they represent ideas worth exploring that have the potential to improve the equality and diversity of our jury process in Washington State. Unfortunately, there is no panacea. Courts will have to experiment with solutions to figure out what is the most effective for their jurisdiction (Joshi & Kline, 2015). Essentially, there is no guarantee that what has worked in other states or in federal district courts will work in Washington State. And while it may seem daunting, the costs are too high, and the benefits of diverse juries are too significant for state lawmakers and courts not to act (Joshi & Kline, 2015). In an age when the criminal justice system, especially police and corrections, is

being scrutinized and reworked, the courts and the jury process are in need of reform, as well.

The following recommendations are useful in this endeavor, and as with our literature review, we cover the pre-stage through the middle stage of the jury selection process. As mentioned above, we do not include late-stage changes associated with *voir dire* challenges for cause and peremptory challenges, as these are not the main focus here and are thoroughly covered in the extant research (Gau, 2016; Rose, 1999). The creation of many of these changes fall in the pre-stage while the implementation may take place at either the early or middle stages. Not only can these recommendations help to increase diversity on juries and possibly lead to more just outcomes, but they can also work towards improving perceptions of the American legal and justice system and restoring a sense of fairness, respect, and impartiality.

### Pre-Stage Changes

The first consideration is changing the actual jury duty requirements. Washington State has recently revised restrictions related to felony disenfranchisement to allow voting and civil rights to be restored more quickly after the incarceration period is over, but not before they have completed their conditions of community custody or while still incarcerated (SB 5162, Clarifying qualifications for jury service, passed into law 4/4/2020). Also, per RCW 29A.08.520, at least twice a year, voter registration lists will be reconciled with felons who are ineligible to vote (and, by extension, are ineligible for jury duty). In response, a suggestion would be to do this quarterly or monthly to help increase the racial and ethnic diversity of the list. Further, states should make sure to clearly outline voter registration processes, as many individuals are unaware or unsure of the process (Seabury, 2016).

A more radical suggestion is to reduce the felonies in Washington State that lead to voter (and, eventually, jury duty) disenfranchisement. Broad sweeping rules that do not consider individual cases or rehabilitation impact the legitimacy of law and procedural justice (Binnall, 2010). The fact that many states do not allow persons with prior felony convictions to serve on juries yet still allow them the possibility of becoming a bar-certified attorney is illogical and hinders reintegration efforts (Binnall, 2010). It also represents antiquated thinking about why individuals commit crime, increases social stigma, and diminishes their moral worth.

An additional consideration is to alter language requirements so that those with limited English proficiency can participate in jury duty via interpreters (Tran, 2013). Although this approach may appear radical, it is actually encouraged by the

American Bar Association's Commission on the American Jury Project. According to this, those who are ineligible for jury service "are not able to communicate in the English language *and* [emphasis added] the court is unable to provide a satisfactory interpreter" (American Bar Association, 2005, p. 4). Also, the provision of interpreters was reviewed 20 years ago by Washington State's *Report to the Board of Judicial Administration*, and it was recommended that the use of certified interpreters be piloted (Washington State Jury Commission, 2000). Further, it has been argued that consistency could be achieved by using similar procedures for non-English speakers and individuals who are hearing impaired (Kisor, 2001). Related to this is the idea of allowing non-citizens to partake in jury duty. This would increase non-White representativeness in jury pools, help overcome the perceptions that non-citizens are outsiders despite being well integrated into their communities, and perhaps strengthen the overall legitimacy of the jury (Motomura, 2012).

Additionally, as pointed out earlier, changes to the language of the Revised Code of Washington would be useful to help LGBTQ+ persons feel more included in the judicial process, particularly if this wording is found on the actual jury summons. New York very recently altered their gender options on their jury summons to include transgender, non-binary, intersex, and other (Golding 2019). It is important to follow suit, as the use of the gender binary is an insult to their identity and a not-so-gentle reminder of the historic and systemic bias towards the LGBTQ+ community.

### *Early Stage Changes*

**Changes to the Lists.** The criminal defendants' right to a representative jury begins with the lists from which juries are assembled. Individuals who identify with a historically marginalized group, whether it be racial, ethnic, gender, gender identity and/or expression, or a combination of these – have shared experiences that include, but are not limited to, bias, discrimination, and social stigma. These lived experiences could have fundamental implications for how cases are viewed, deliberated, and decided.

As already demonstrated, jurors in Washington State are not assembled from a true cross-section of local communities. At the very least, Washington State needs targeted efforts to increase juror registration in communities that are underrepresented in terms of race, ethnicity, socioeconomic status, gender identity, and sexual orientation. This will require a commitment in terms of time, personnel, and money. Additionally, there are options employed by other states that could be utilized, too. While one suggestion is to follow Massachusetts's

lead and employ resident lists to generate the jury pool (Dreiling, 2006), a more feasible suggestion is to expand the lists from which jury pools are gathered. This is key as individuals without necessary forms of identification tend to reside in BIPOC communities (Seabury, 2016). Simply, more inclusive jury lists lead to better representation in the jury pool (Caprathe et al., 2016). Both voter registrations and motor vehicle registries inherently include fewer BIPOC (Adamakos, 2016), and driver registration lists tend to underrepresent women (Eisenberg, 2017), which is why states have gone beyond these sources. For example, New York uses five separate lists, and Connecticut uses four (Dreiling, 2006). Recommendations include using parishioner lists (Tran, 2013), community center lists, food pantry lists (Seabury, 2016), U.S. Postal Service's national change-of-address list (Dreiling, 2006), and sources such as state income tax records, utility records, and welfare records.

In some counties in Pennsylvania, jury service applications are left in public libraries in BIPOC communities, and these names are cross-checked and, if necessary, added to the master jury list (Saunders, 1997). These efforts may help capture the homeless population that may not be represented on existing lists. If passed, the free ID card efforts, as recently proposed in Washington State (Goldstein-Street, 2019), could also serve as an addition to the jury source list. However, specific details, like receiving the jury summons, still needs to be fleshed out. Please note that like the original lists (i.e., voter registration and driver registration lists), some of these lists suggested here have potential gender and age limitations, too. For example, utility bills often appear in a household man's name (Tran, 2013). Not only do some of these additional lists have similar issues in terms of being under-inclusive, but they also present the additional challenges of consolidation and duplicated names (Fukurai, 1999).

Alternatively, Washington State could explore severing the tie between voter registration and jury lists. Some have argued that the use of voter registration lists as a primary source for jury duty lists is problematic because it creates a self-disenfranchising incentive for many people (Preller, 2012). Essentially, to avoid having to serve when summoned, people simply opt not to register to vote. Also, racial minorities are historically less likely to register to vote (Fukurai et al., 1991a).

Beyond these, efforts to improve racial representativeness of jury composition could take many forms including a type of jural districting that increases community representation (Forte-Mazrui, 1999). Creating smaller locales from which to pull jurors can help ensure they are demographically

appropriate (Dreiling, 2006), as well as utilizing a stratified random sampling technique (Munsterman & Munsterman, 1986; Saunders, 1997) or cluster sampling that uses probability proportionate to size (Fukurai et al., 1991b).

Building a race-conscious jury and taking aggressive steps are necessary to overcome the Jim Crow jury that has perpetuated over time (Frampton, 2018). Some have suggested that creating more localized jury pools, instead of drawing the venire from the broader district or community, would help give a voice to or restore the communities that were victimized (Deitch, 2018; Stuntz, 2011). Another suggestion is tailoring jury plans and shifting the definition of “community” in a way that ensures both ethnic and cultural representation for crimes where concurrent jurisdiction exists (Gross, 2016).

The American Bar Association’s (2005) *Principles for Juries and Jury Trials* recommends that lists should be updated at least once each year, which is what Washington State does (see RCW 2.36.054). However, updating the jury pool master lists every three or six months instead of one year could prove helpful. For instance, by only updating the list once a year, states run the risk of eliminating age-eligible jurors who have turned 18 (Fukurai & Butler, 1994). Another suggestion is to utilize the U.S. Postal Service’s system of updated addresses more frequently to increase the likelihood of potential jurors receiving summons (U.S. Courts, 2019). Courts could also send a follow-up summons or questionnaires or try mailing a summons to a different resident within that same zip code, as Massachusetts has done when summons are returned to the court as undeliverable (Sweeney & Dizikes, 2013). Wisconsin is one example where more aggressive follow-ups reduced non-response rate (Tran, 2013). Follow-up summons or notices should be sent within three weeks (Caprathe et al., 2016).

**Changes to the Random Selection of Jurors.** Another consideration worth pursuing involves re-evaluating the random selection process from the master list. In many states, including Washington, there is no uniform process required when it comes to the method of selecting potential jurors from the master list (see RCW 2.36.065). It is entirely possible that some counties are selecting in a truly statistically random fashion while others are not. Beyond this, states could explore limiting or modifying both exceptions and excuses for jury duty. These do not appear to be random across key demographic groups, which could impact the random selection process and yield an unrepresentative jury (Fukurai, 1999). Also, EJI (2010) argues that source lists need to be supplemented or computer models utilized to weight groups appropriately. They contend

that this could allow groups to be fully and rather quickly represented in jury pools.

### *Middle Stage Changes*

Preller (2012) argues that because voter registration lists are utilized for jury duty and because of the financial burden felt by many when having to miss work to serve, our country essentially has a poll tax, which violates the 24<sup>th</sup> Amendment to the Constitution. This supports the earlier idea of severing ties with voter registration lists. Beyond this, though, there are other options to prevent individuals from having to override their civic responsibility due to financial hardships. States could consider minimizing economic hardship excuses (Adamakos, 2016; Saunders, 1997) and instead, better support these prospective jurors (EJI, 2010). Reducing excuses would seem appropriate if paired with increased compensation for jury duty and compensation from one’s employer. Some research has found that courts with considerably higher compensation had a lower percentage of excusals than those with lower compensation (Hannaford-Agor, 2011). While states like New York had success with this approach (Walters et al., 2005), it is important to note that a Washington State study found significant compensation increases did not necessarily yield a higher compliance rate for jury duty (Bloeser et al., 2012). However, there are some key methodological limitations of their study that may be driving their findings; therefore, additional research is warranted to substantiate these conclusions.

While RCW 2.36.165 requires that Washington employers provide time off for employees and also prohibits the harassment or firing of jurors, another recommendation is to change the Washington State law to mandate that employers pay employees for jury duty. Several states including New York, Colorado, and Massachusetts require employers to pay a particular amount per day or up to a certain number of days (Walters et al., 2005). An alternative approach that may better protect smaller businesses from this economic hardship is to pay at least the state minimum wage to jurors.

**Changes to Additional Accommodations.** Beyond compensation for jury duty, Washington State could explore reimbursing for meals, parking, mileage, or other transportation costs (Bernstein, 2017) and other out-of-pocket expenses (Hannaford-Agor, 2011). Some have argued, though, that other costs, such as non-income compensation paid by employers and lost opportunity costs (e.g., education, recreation, volunteering), cannot be reimbursed and may still contribute to failure to appear for jury duty (Hannaford-Agor, 2011).



In a similar vein, courts can explore providing childcare options (Caprathe et al., 2016), which could take the form of either facilities or reimbursements for individuals with young children, especially single parents (see also Hannaford-Agor, 2011). To illustrate, Connecticut provides reimbursements for childcare during jury duty (EJI, 2010). Additionally, the newly proposed law in Washington State to either exempt breastfeeding women from serving on jury duty or provide designated private spaces for pumping and/or breastfeeding is a step in the right direction (Luck, 2020).

The creation of a Juror Bill of Rights is another option (Bennett, 2016; Ferguson, 2015) and could occur at both the federal and state levels. While this would be a pre-stage change, it would be implemented in the middle stage of the jury selection process. Such a juror-centric focus could help change the stigma associated with jury duty by showing jurors more respect and increasing amenities. Some examples include frequent stretch breaks, jury instructions that are clearer, summaries of arguments, as well as smaller gestures like more comfortable chairs and cup-holders for drinks and snacks (Bennett, 2016; Ferguson, 2015). States have experimented with making the waiting experience more comfortable with amenities (Bernstein, 2017), including data ports for laptops (Walters et al., 2005). Several pillars for the Juror Bill of Rights include not having their time wasted by excessive or unnecessary procedures, providing fixed timeframes for their service, including visual *voir dire* process and electronic evidence for deliberations to accommodate different learning styles (Ferguson, 2015).

**Changes to Education & Societal Perceptions.** Community outreach has been recommended as a strategy in areas with low response rates (Sweeney & Dizikes, 2013). Groups that could assist with this endeavor include community and nonprofit organizations, law firms, religious-based organizations and institutions, the media (U.S. Courts, 2019), as well as college or law students. In this vein, the Washington State Jury Commission (2000) previously recommended the use of publicity campaigns that unite business and employers as a potential strategy to educate the community. Additional recommendations they considered were specifically targeting new citizens and BIPOC communities for educational outreach, as well as programming for youth. States such as Washington and California have adopted “Judges in the Classroom” programs, which brings age-appropriate lessons into primary and secondary institutions (California Courts, 2020; Washington Courts, 2020). Other suggestions include increasing and/or adding

civic lesson requirements in high school and post-secondary institutions. In addition to articulating to the public why it matters, changing the mindset to view jury duty as a day of “constitutional connection” that helps us to foster “democracy skills” such as dynamic thinking, improved listening, debate, deliberation, tolerance, civility, and cooperation (Ferguson, 2013).

Perhaps Washington State could enhance its existing juror appreciation week activities by hosting mock or virtual reality jury activities. Such activities and outreach could also be used to dispel misconceptions that the general public may have regarding jury duty that may keep them from serving (Sommers, 2008). Empirically, there is support for the idea that public information campaigns for jury duty work in Washington State (Bloeser et al., 2012). These are important avenues to consider and should likely be attempted before punishment (see, e.g., Judicial Council of California, 2009). Other tactics have included pleas to the community regarding the importance of BIPOC to become civically engaged (Starkey, 2017) and recognize that juror diversity is a necessary for the justice system to function appropriately and fairly (Coleman, Jr., 2015). This rationale extends to gender, gender identity and/or expression, and sexual orientation, too.

#### **Changes to Responses to Non-Compliance.**

Across the country, judges at all levels are becoming stricter and following through with punishments for jury dodgers (Bernstein, 2017). Federal courts often use automated text messages or phone calls to gently remind individuals of their jury duty (Bernstein, 2017), which can help eliminate non-compliance due to forgetfulness. One courthouse in Alameda County, California, for instance, has implemented a staggered approach to jury no-shows by sending reminders, then another summons with a different date, and then a fine schedule (which shows increasing fines for repeat offenders), and, collectively, this has appeared to increase their response rate (Egelko, 2015). New York takes a similar approach but also includes a show-cause order (Walters et al., 2005). An empirical study in California found that all reminder postcards were effective, but the ones that included possible penalties were more effective than altruistic appeals regarding civic duty or even basic reminders (Bowler et al., 2014).

If more strides can be taken to reach out, remind, and educate people about the necessity of answering the civic call to serve, then another option could be to enforce existing penalties, as recommended by the American Bar Association (Hannaford-Agor, 2011). While slightly dated, Fukurai’s (1999) empirical findings also lead to this recommendation of effective enforcement. While states vary in terms of their penalties, in Washington

State, an intentional failure to appear for jury service is a misdemeanor (RCW 2.36.170). Yet, it is important that enforcement is proportionate and fair to avoid public outcry and perceived racial disparities in the system (see, e.g., Lockhart, 2019). Additionally, selective enforcement with media publicity can be useful in this endeavor (Boatright, 1998). While this option could generate some pushback from jury dodgers, it is theoretically consistent with some approaches to preventing crime. More specifically, certainty of punishment is a necessary component of deterrence theory (Nagin, 1998). If courts have hesitation regarding the enforcement of their penalties, then perhaps changing the penalties to make them more palatable is a viable strategy.

### Conclusion

Over the years, a sizeable body of jury selection research has amassed, including works that empirically and theoretically explore the use of peremptory challenges and *Batson* related issues. There is a paucity of social science research, however, that has examined jury lists, jury summons, and failure to serve from an empirical lens. A crucial first step is determining whether there are indeed inequalities in jury pools. The present study reveals that there are clear disparities across all Washington State courts surveyed and that marginalized groups, in particular BIPOC women, experience these disparities at higher rates than other populations. Our findings here show that certain populations who experience multiple oppressions, such as those who identify as LGBTQ+, women, and BIPOC, may experience even more obstacles to participate in jury service.

By identifying that there are, in fact, disparities and underrepresentation of key demographic groups in Washington State, our attention and resources can now be spent understanding *why*. While our work here provides a comprehensive overview of the theoretical and logical barriers to jury service and ways to increase participation and diversify juries, they are merely assumptions. What is now needed is a concentrated effort to gather more data through survey, focus groups, or other more quantitative and qualitative research endeavors. Doing this will help us to understand and target which obstacles are actually impacting marginalized groups specifically, and all others in these jurisdictions. Asking BIPOC and LGBTQ+ individuals why they are unable or unwilling to answer the call of jury service and what can be done to alleviate these hardships and obstacles is paramount to understanding downstream inequalities in jury representation. Increasing the diversity of those who respond to jury summons can

also improve the composition of seated juries. Not only will this be key in holding criminal justice personnel accountable at trial, but, conversely, it could possibly bolster the use of jury nullification when charges and/or sentences are simply unjust. Jury nullification that is race-based (Butler, 1995) or driven by sexual orientation and/or gender identity (Leavitt, 2012) are powerful tools for juries.

Although the calls for criminal justice reform have been largely concentrated on police and mass incarceration, the courts and the judicial process are not immune from this scrutiny. In fact, the United States Supreme Court is currently tackling whether individuals found guilty under non-unanimous juries should be resentenced (Ockerman, 2020). These “Jim Crow jury” decisions are just one example of how the judiciary will continue to be inspected and reformed. Beyond this, current societal issues and technology changes are impacting our juries. Not only are recent social movements (e.g., Black Lives Matter) complicating the impaneling of juries due to disqualifying responses to questions posed during *voir dire* (Oppenheim, 2018; Vansickle, 2020), but the widespread use of social media is taking a toll on jury impartiality (Brown, 2013). While restructuring *voir dire* is beyond the scope of the current research, it does appear that there is even more of a need to expand jury lists and increase the pool of possible jurors to include marginalized individuals. Distrust in the criminal justice process has escalated. Systematic and institutionalized biases and discrimination have been thrust into the limelight. Now is the time to get behind change and to help jury lists and potential jurors mirror the communities they represent.

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#### Endnotes

- <sup>1</sup> According to the Revised Code of Washington, Title 2, Chapter 36, Section 70, “A person shall be competent to serve as a juror in the state of Washington unless that person: (1) Is less than eighteen years of age; (2) Is not a citizen of the United States; (3) Is not a resident of the county in which he or she has been summoned to serve; (4) Is not able to communicate in the English language; or (5) Has been convicted of a felony and has not had his or her civil rights restored” (RCW 2.36.070).
- <sup>2</sup> Statement on Demographic Categorization: We understand and are conscious of issues surrounding identity (i.e., racial, sexual, gender, and gender identity) and related harm that marginalized groups face due to racism, bias, and discrimination within the criminal justice system and in society. We want to be clear that the sub-categorizations used in this research are imperfect and may not capture all combinations of self-reported identity or orientation, and as a result, the analysis here may not properly reflect the true nature of personal identity within these populations. The term Women of Color includes American Indian/Alaskan Native (indigenous) populations, but we recognize that this population may not identify as people of color. The authors were not a part of the group who first developed and employed the survey instrument.
- <sup>3</sup> Please note we are using the exact terms used on the survey but note that these terms should be “women” and “men” rather than “female” and “male” since we are discussing social constructions and identity rather than biological sex.
- <sup>4</sup> Please note that the survey used “Latino” in its questions, but we prefer Latinx as it is gender neutral.