

Higher Juror Compensation Trend Is Good For Justice System

By **Cary Silverman** (December 15, 2023)

For years, juror pay has generally remained stagnant. Recently, however, six states and Washington, D.C., gave their jurors a significant pay raise — some for the first time in decades.

This trend is not only cause for celebration for those on the receiving end of a juror summons, but it should also be applauded by litigants and civil and criminal justice reform advocates.

Juror compensation has long been abominable. According to a 2022 study by the National Center for State Courts, some states pay jurors as little as \$4 per day for their service.[1]



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At least 14 states have a juror per diem amount of \$15 or less. About half of states have a graduated rate, paying jurors an extremely low amount for their first day or first few days of service, then slightly more thereafter.

This trend toward better juror pay is long overdue. At the time of the NCSC report, 14 states had not adjusted their per diem "since 2000 when the cost of living was 39% less than today"; three states had not provided an increase since the 1970s; and one state had not done so since 1957.

There is a substantial gap between how much jurors are compensated and the amount they will lose if they do not receive their usual income during jury service. On average, the juror per diem is "just 20% of the daily per capita income in [their] respective states." [2]

Philadelphia jurors, for example, get a paltry \$9 for each of their first three days of service, then \$25 thereafter. The initial \$9 rate was set in 1959, when the minimum wage was \$1 per hour; the Legislature added the \$25 level in 1980.[3] That \$9 is the equivalent of \$95 today when adjusted for inflation.

States are finally narrowing this gap. The recent pay raises passed by legislatures are not nominal, \$5-per-day-type adjustments. Most of the enactments give jurors substantial raises.

This year, Indiana doubled juror compensation from \$15 to \$30 per day prior to a jury being impaneled, and from \$40 to \$80 per day for subsequent days. After the sixth day, jurors will receive \$90 per day.[4]

It was the state's first increase in 25 years. To cover the cost, the law slightly increased court fees. Before the bump, the state's courts were having difficulty seating juries, as many summoned jurors sought hardship excuses.[5]

In North Dakota, at the request of the state supreme court, the Legislature doubled the juror per diem from \$25 to \$50 for the first half-day, and from \$50 to \$100 for each full day of jury service.[6]

In testimony supporting the raise, the state court administrator noted that 60% of jurors indicated that serving on a jury at the previous level had created a financial hardship,

because the jurors had to shoulder the costs of lost income, child or dependent adult care, meals, and transportation.[7]

In Oklahoma, juror compensation jumped from \$20 to \$50 for each day of service, a level that roughly approximates the state's \$7.25 hour minimum wage.[8] It was the first increase for jurors in 20 years.[9] Jurors in Oklahoma who do not receive their usual income and serve more than 10 days can also benefit from the state's lengthy trial fund, which offers wage replacement of up to \$200 per day.[10]

For the first time in 20 years, Texas jurors also got a boost. The Lone Star State raised juror compensation from a mere \$6 to \$20 for the first day of jury service, and from \$40 to \$58 thereafter.[11]

Other states upping juror per diems in 2023 include Nevada, from \$40 to \$65 per day,[12] and Virginia, from \$30 to \$50 per day.[13] And, under a pilot program underway in San Francisco, over 1,000 low-to-moderate-income jurors receive \$100 per day rather than the usual \$15.[14]

In 2022, Washington, D.C., raised its outdated per diem for jurors not compensated by their employer from \$40 to \$50, and made this amount available on the first day of service, when those who reported had previously received just a \$5 travel stipend, which also increased to \$7.[15]

Perhaps the most significant development occurred in Arizona, which had, for 50 years, paid jurors \$12 per day during their first five days of jury service.

In 2022, a bipartisan budget bill with the support of the Arizona Supreme Court set the minimum payment at \$40 per day, and extended a lengthy trial fund that offers jurors who receive less than their ordinary income during jury service up to \$300 per day beginning on day one.[16]

That fund is already being hailed as a success story because it has allowed thousands of Arizonans to serve who otherwise would not have been able to do so because of financial hardship. As a result of the lengthy trial fund, impaneled juries in the state became "considerably more diverse." [17]

Most large business and government entities voluntarily pay their full-time employees for all or a significant portion of jury service. The financial burden of jury service falls most heavily on those in hourly-wage jobs or who work for small businesses, and those who work independently.

It is especially difficult for these individuals to serve on lengthy trials — where the stakes are highest — without substantial hardship. As a result, juries are not always fully representative of the community.

The inability of all people to participate as jurors is not only a loss for them, but also a loss for the justice system.

As a 2014 article in *The Trial Lawyer* noted, research has found that "diverse juries had longer deliberations, discussed more case facts, made fewer inaccurate statements, and were more likely to correct inaccurate statements." [18]

Having a wide range of life experiences, expertise and different ways of processing

information helps juries perform their fact-finding tasks more effectively and lessens the impact of individual biases.[19]

While the drive toward more representative juries often focuses on the stakes for criminal defendants, representative juries are also important in the civil justice system.

Though there is relatively little empirical research on the impact of increased juror diversity in civil cases, intuitively, it would seem that homogeneous juries are more likely to engage in groupthink and, as a result, present a greater risk of reaching outlier results.

And the research that does exist indicating that juries that engage in more thorough deliberations — in which they may discuss the burden of proof, elements of the claim and complex expert testimony — should be welcome by all.[20]

The trend toward increasing juror compensation — especially for lengthy civil and criminal trials where the stakes are high — should continue. As the Arizona experience proves, taking this action reduces a key barrier to jury service and facilitates more representative juries, aiding decision making and boosting public confidence in the justice system.

Legislatures have more options available to them than simply increasing the per diem.

For example, a judicial conference committee established by the New Jersey Supreme Court recommended that the Legislature consider increasing jury pay for those who are not compensated during jury service to the minimum wage, creating tax incentives for employers that pay their employees during jury service, and requiring certain publicly subsidized employers to pay employees during jury service.

The committee also highlighted the possibility of creating a lengthy trial fund for jurors who serve more than five days — a proposal of the New Jersey Civil Justice Institute that could be funded through court filing fees.[21]

These types of alternatives can minimize the fiscal impact of a broader juror compensation increase on the state.

Until the Legislature acts, New Jersey judges will continue to excuse over 25,000 summoned jurors each year who are unable to serve for the expected duration of a trial due to financial hardship.[22]

That result, in any state, should be unacceptable. State legislatures, working with the judiciary, should consider these and other innovative ideas for reducing financial hardship as a barrier to jury service and safeguarding the promise of a representative jury.

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[1] See Brendan W. Clark, Juror Compensation in the United States 4-5 (NCSC Center for Jury Studies Apr. 2022).

[2] *Id.* at 7.

[3] See Lucia Geng, Why Pennsylvania Jury Duty Pays \$9 Per Day, *Philadelphia Inquirer*, Aug. 26, 2019.

[4] H.B. 1466 (Ind. 2023) (Act No. 1466).

[5] See Marc Mullins, Indiana Counties Adjusting to New Juror Compensation Rate Law, *WRTV (ABC)*, Sept. 26, 2023.

[6] H.B. 1002, § 8 (N.D. 2023).

[7] State of North Dakota Courts, *Juror Pay to Increase*, June 24, 2023.

[8] H.B. 1024 (Okla. 2023).

[9] See Ben Felder, Have Jury Duty? You'll Soon be Seeing a Bigger Paycheck, *The Oklahoman*, May 27, 2023.

[10] 28 Okla. Stat. S 86(D).

[11] H.B. 3474 (Tex. 2023).

[12] S.B. 222 (Nev. 2023).

[13] S.B. 789 (Va. 2023). As originally proposed, the Virginia bill would have increased the per diem from \$30 to \$100.

[14] A.B. 1452 (Cal. 2021). Eighty-four percent of participants in that program, most of which served three to four days and received an average of average of \$382, said the additional compensation allowed them to serve. San Francisco Government, *San Francisco Be The Jury Pilot Program Results* (Aug. 2023). The pilot program is limited to criminal trials.

[15] District of Columbia Courts, *Press Release, DC Superior Court Raises Juror Compensation*, May 2, 2022.

[16] H.B. 2859 (Ariz. 2022); see also Heley Tenore, *Jurors Receive 1st Pay Hike in 50 Years*, *Ariz. Capitol Times*, Oct. 12, 2022.

[17] Paula Hannaford-Agor, *The Arizona Lengthy Trial Fund – A Ten-Year Success Story*, *Court Manager*, vol. 29, iss. 2, at 48-49 (May 2014); see also G. Thomas Munsterman & Cary Silverman, *Arizona's Experience with the Jury Patriotism Act: Assessing the First Year of New Jury Reforms*, 45 *Judges' J.* 18 (2006).

[18] Sonia Chopra, *Preserving Jury Diversity by Preventing Illegal Peremptory Challenges: How to Make a Batson/Wheeler Motion at Trial (and Why You Should)*, *The Trial Lawyer*, Summer 2014, at 13; see also Valerie P. Hans & Neil Vidmar, *The Verdict on Juries*, *Judicature*, v. 91, no. 5, 226, 227 (2008) (observing that a representative, diverse jury

promotes vigorous debate, improves comprehension, leads to self-correction of errors, and encourages sharing of knowledge).

[19] Hong Tran, *Jury Diversity: Policy, Legislative and Legal Arguments to Address the Lack of Diversity in Juries*, Defense, May 2013, at 6.

[20] See Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 *J. Personality & Social Psychology* 597, 606, 608 (2006) (finding diverse juries "deliberated longer and considered a wider range of information" and "made fewer factual errors").

[21] See Notice to the Bar & Public, *Recommendations of the Committee of the Judicial Conference on Jury Selection* (Apr. 28, 2022).

[22] See *id.* at 7-8. New Jersey jurors receive just \$5 per day for the first three days and \$40 thereafter, an amount that has not increased in thirty years. N.J. Stat. Ann. § 22A:1-1.1. Legislation that would have increased juror compensation to reflect the state's hourly minimum wage failed in 2023. A.B. 5183 (N.J. 2023).