

Roadmap to a Representative Jury in North Carolina

Nina Chernoff, CUNY School of Law

Aug. 19, 2022

AGENDA

1

**Why jury
diversity
matters**

2

**Legal
standard:
fair cross
section
right**

3

**Invisible
stages
interfere
with fair
cross
section**

4

**Possible
next
steps for
North
Carolina**



Jury diversity is not an intractable problem.

States can make changes to increase diversity.





1

**Why jury
diversity
matters**



**Increased public
confidence**

*Jury
diversity*



*Public
confidence*

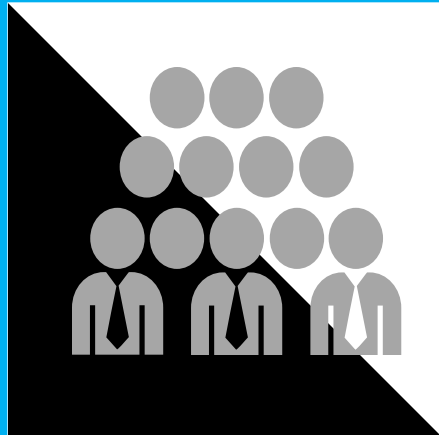
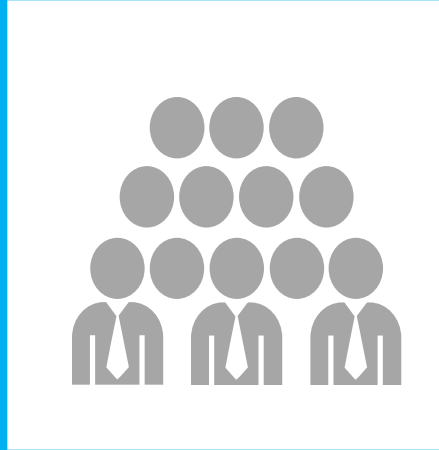


FAIR

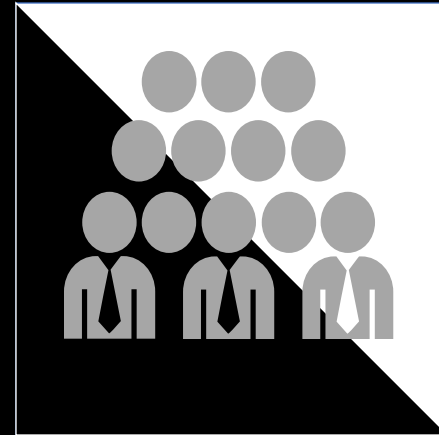
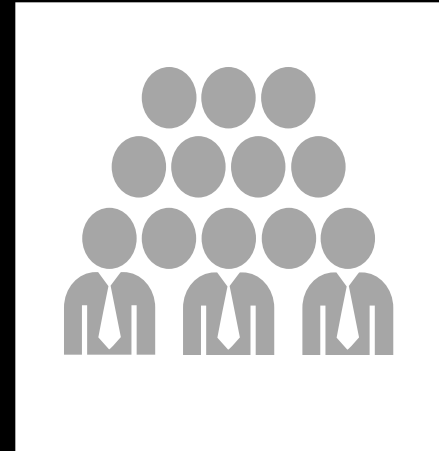


UNFAIR

ACQUITTED



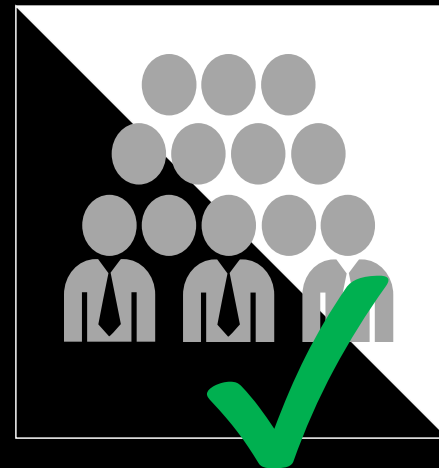
CONVICTED



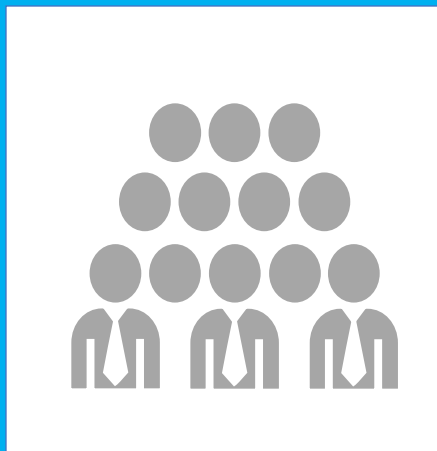
ACQUITTED

CONVICTED

Racially mixed jury = **any** outcome is seen as fair



ACQUITTED



CONVICTED



All white jury = convictions are seen as **less fair**



87%

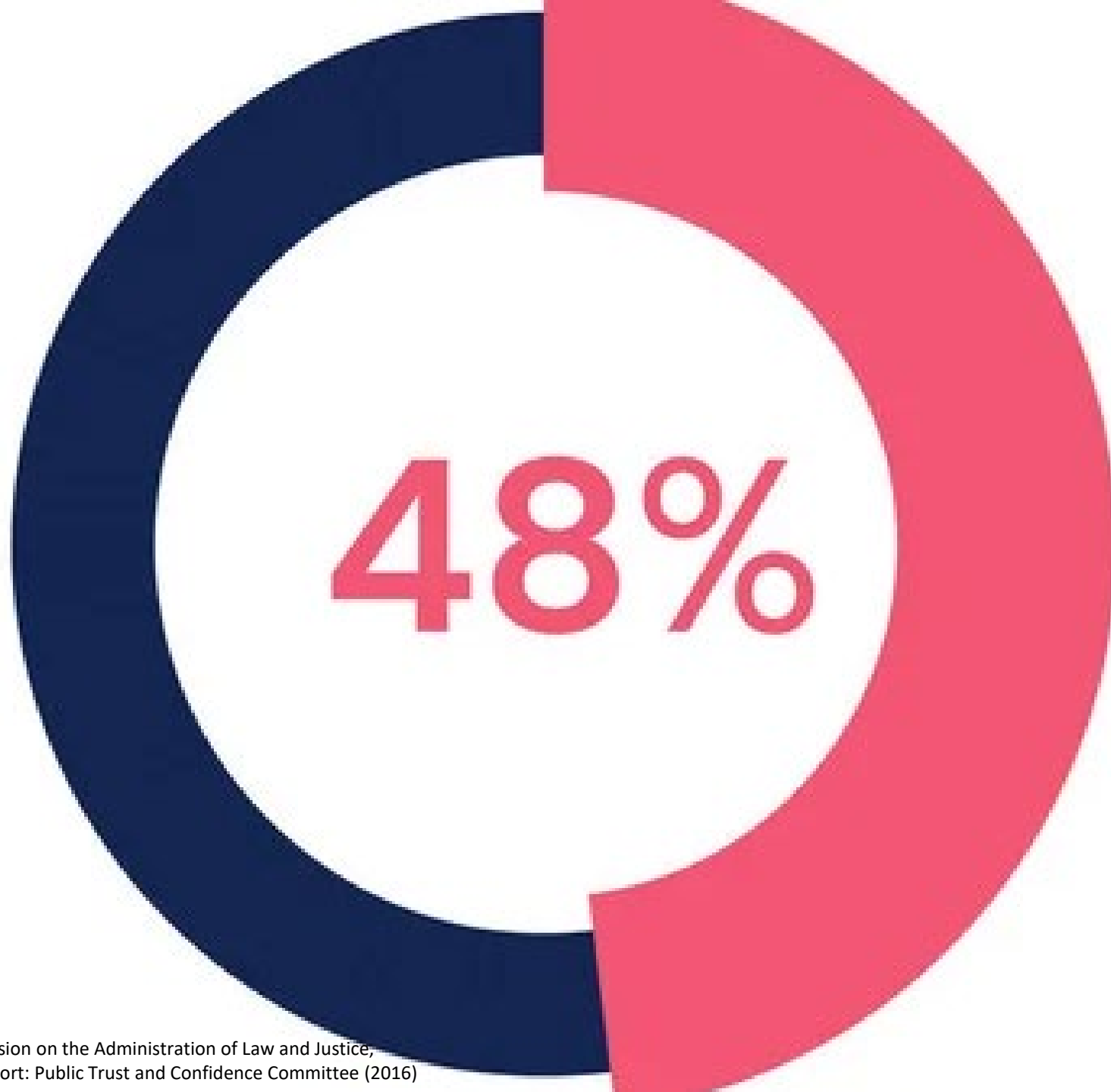
of Blacks

Blacks are treated
less fairly than whites
by the criminal justice system

61%

of whites

Protesters gather in Raleigh, North Carolina (Raleigh News & Observer)



**of North Carolina
residents believe
whites receive
better treatment
than others
in North Carolina
courts**

**NORTH CAROLINA
TASK FORCE FOR
RACIAL EQUITY IN
CRIMINAL JUSTICE**

**REPORT 2020
EXECUTIVE SUMMARY**

**“Underrepresentation
of communities of color
from the makeup of
jury panels
degrades public trust
in the criminal justice
system.”**



A vertical blue bar with a white number '1' in the center. To the right of the bar are two light blue rectangular boxes, each preceded by a medium blue circle. A thin blue line extends from the top of the bar.

1

**Why jury
diversity
matters**

**Increased public
confidence**

**Less biased
verdicts**



Jury drawn from
all-white jury
venire

785 felony trials



Jury drawn
from venire
with at least
one black
person

IS JUSTICE COLOR BLIND?

A Duke University-led study on the impact of race on conviction rates raises questions about the criminal justice system.

"Simply put, the luck of the draw on the racial composition of the jury pool has a lot to do with whether someone is convicted..." -- senior author Pat Bayer, chairman of Duke University's Economics Department

RESEARCHERS
EXAMINED MORE THAN
700 FELONY
TRIALS
IN SARASOTA AND LAKE COUNTIES
IN FLORIDA FROM 2000-2010.

Key findings:



In cases with no black people in the jury pool (typically consisting of around 27 people) blacks were convicted 81 percent of the time, and whites were convicted 66 percent of the time.



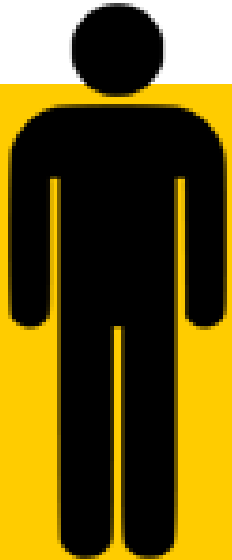
When the jury pool included at least one black person, the conviction rates were nearly identical.



"The
black-white
conviction gap
declines . . . in all
trials in which
there is at least
one black
member of the
jury pool."

737 felony trials in North Carolina 2010-2012

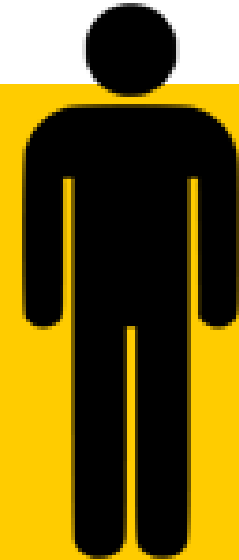
White men =
less than 22% of
jury pool



70%

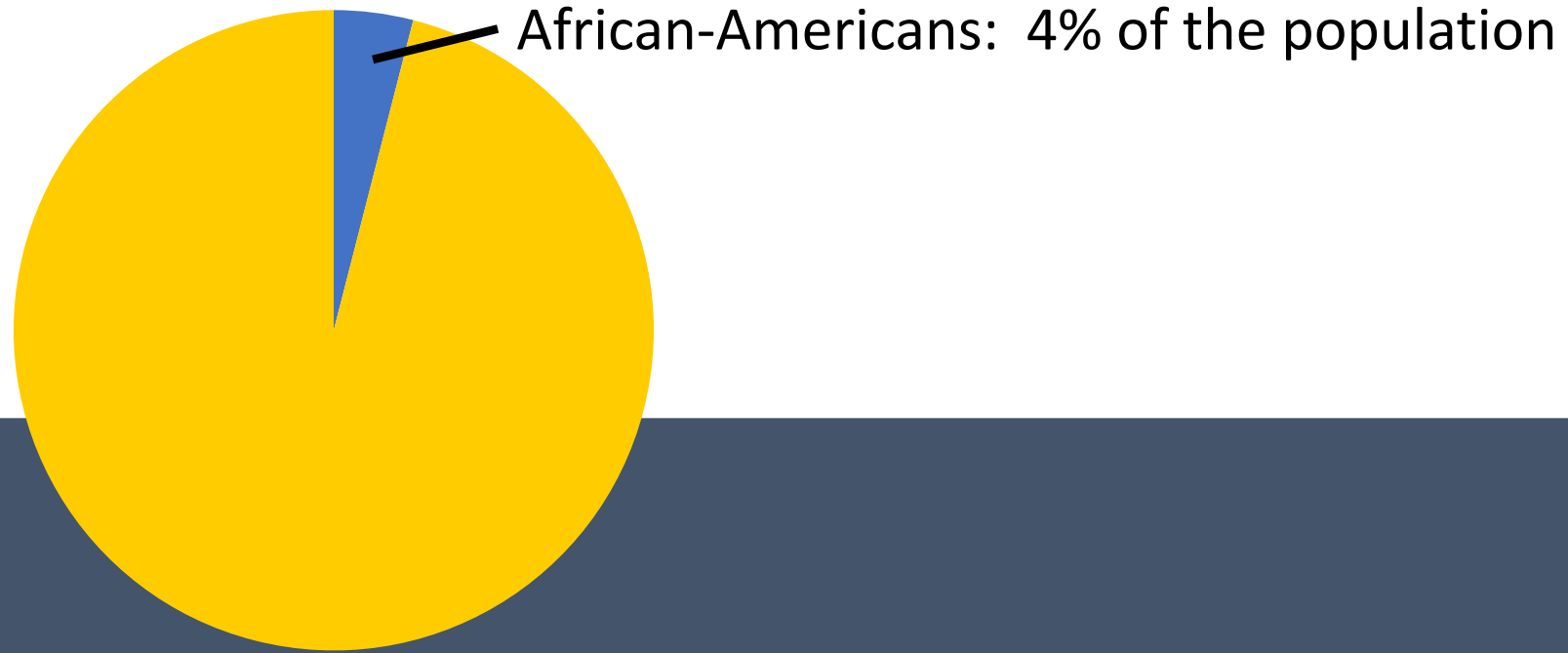


White men =
more than 39% of
jury pool

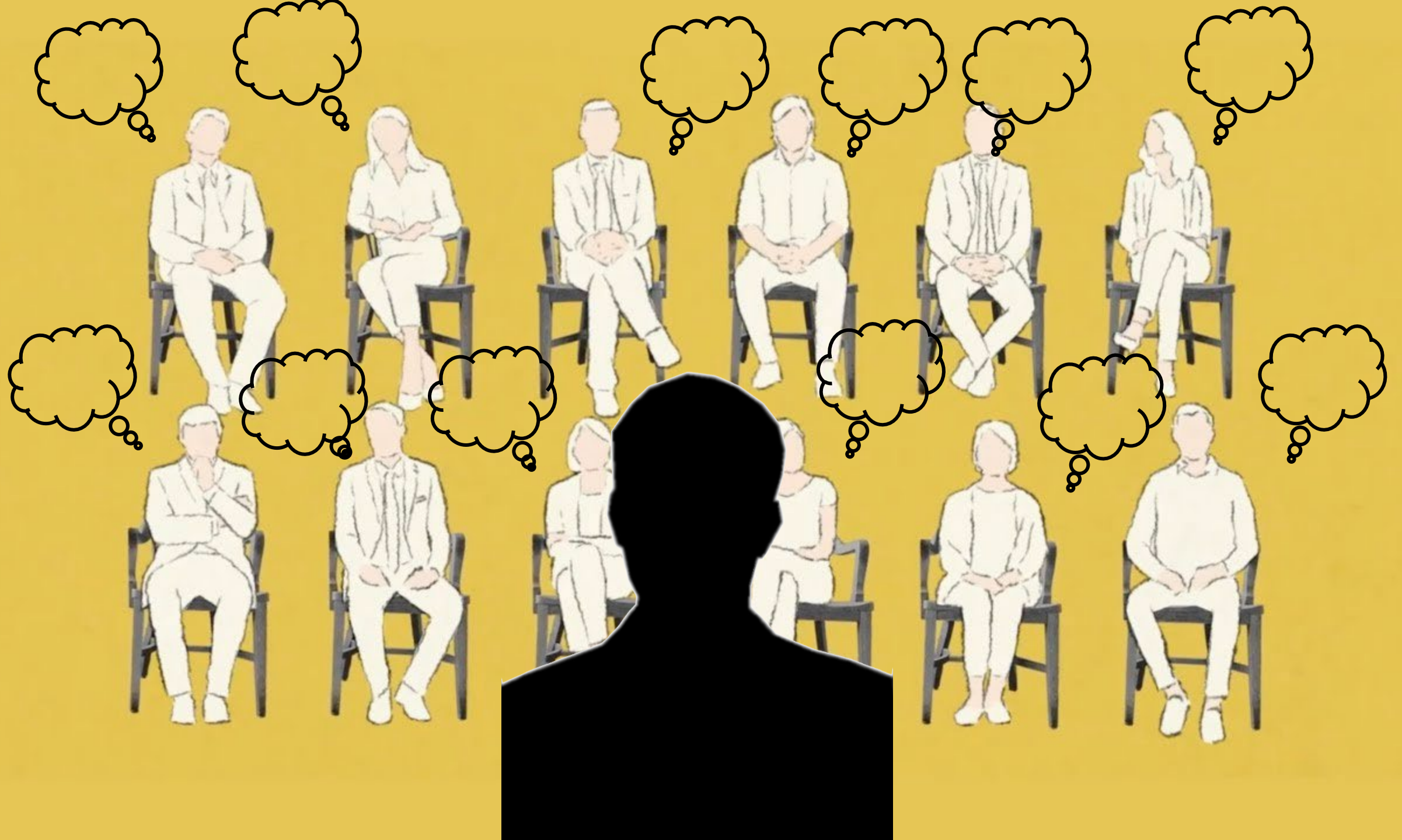


82%

Conviction rate for Black defendants



“[E]ven **small changes**
in the composition of the jury
pool have a large impact”



1

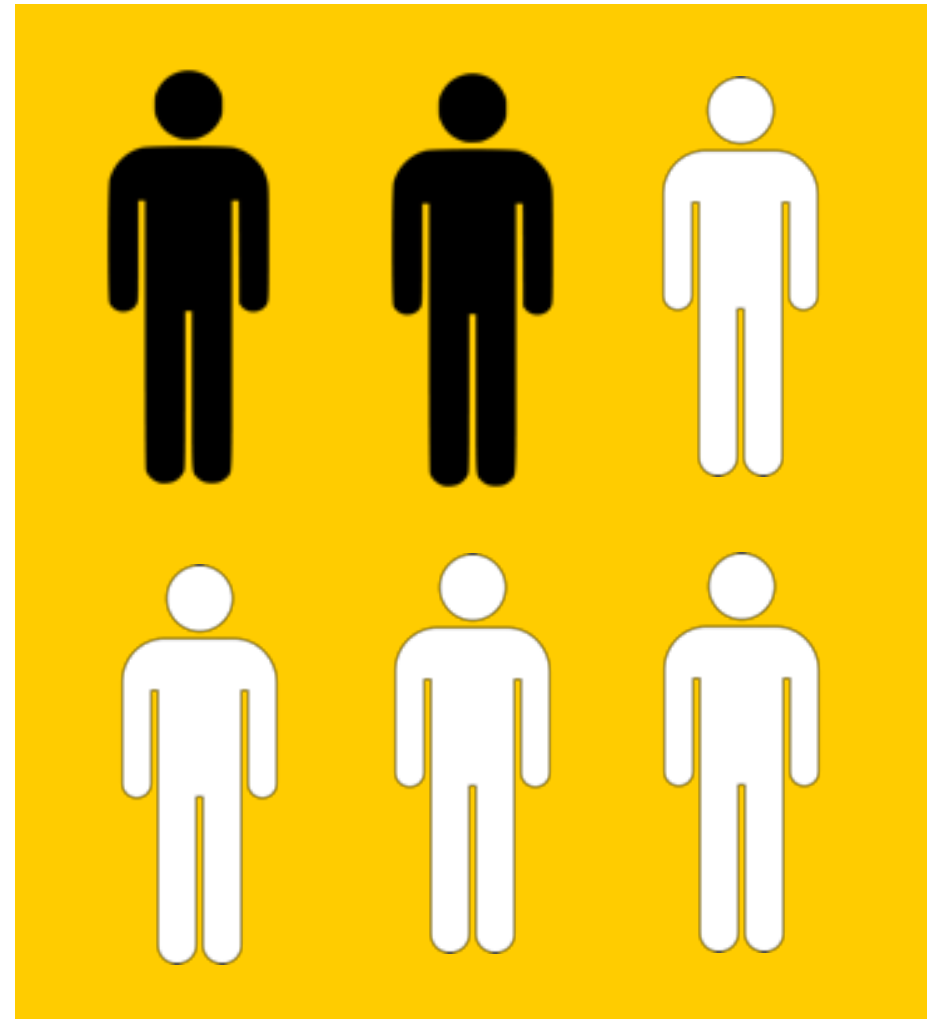
The infographic features a central vertical column with a blue top section containing the number '1', a light blue middle section with the title 'Why jury diversity matters', and a blue bottom section. To the right of the column are three light blue rectangular boxes, each preceded by a blue circle. A thin blue line extends from the top of the page down to the top of the central column.

**Why jury
diversity
matters**

**Increased public
confidence**

**Less biased
verdicts**

**Higher quality
deliberations**



Samuel R. Sommers & Phoebe C. Ellsworth, *How Much Do We Really Know About Race and Juries? A Review of Social Science Theory and Research*, 78 Chi.-Kent L. Rev. 997 (2003); Samuel R. Sommers, *Determinants and Consequences of Jury Racial Diversity: Empirical Findings, Implications, and Directions for Future Research*, Social Issues and Policy Rev., V. 2., No. 1, pp. 65-102; Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, J. Personality & Soc. Psych., V. 90, No. 4, pp. 597-612 (2006) .



RACIALLY MIXED JURIES

- ☐ Deliberate longer
- ☐ Discuss more case facts
- ☐ Fewer factual errors
- ☐ Fewer uncorrected factual errors
- ☐ More statements about race

Table 2

Group-Level Analyses of Deliberation Content

Measure	White jurors in:	
	Diverse group	All-White group
Deliberation length, in min	50.67 _a	38.49 _b
No. of case facts discussed	30.48 _a	25.93 _b
No. of factual inaccuracies	4.14 _a	7.28 _b
No. of uncorrected inaccurate statements	1.36 _a	2.49 _b
Amount of “missing” evidence cited	1.87	1.07
No. of race-related issues raised	3.79 _a	2.07 _b
No. of mentions of racism	1.35	0.93
% of time mention of racism met with objection	22% _a	100% _b

Note. Values with different subscript letters differ significantly at $p \leq .05$; $n = 15$ diverse groups and 14 all-White groups.

“Jury representativeness can be
more than a moral or
Constitutional ideal;

it is sometimes an ingredient
for superior performance.”

1

The infographic features a central vertical column with a blue top section containing the number '1', a light blue middle section with the title 'Why jury diversity matters', and a blue bottom section. To the right of this column are three light blue rectangular boxes, each preceded by a blue circle. A thin blue line extends from the top of the page down to the top of the central column.

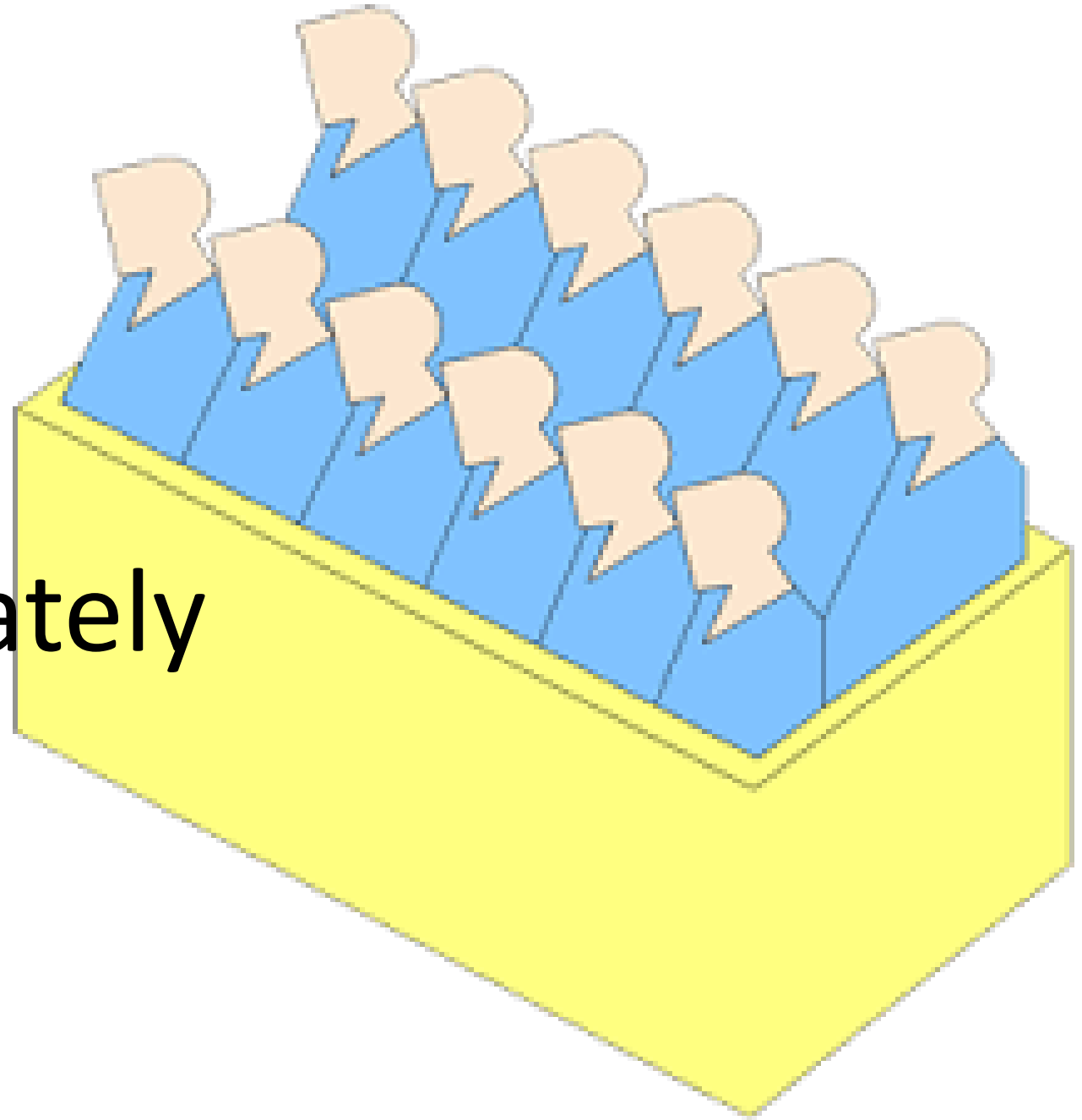
**Why jury
diversity
matters**

**Increased public
confidence**

**Less biased
verdicts**

**Higher quality
deliberations**

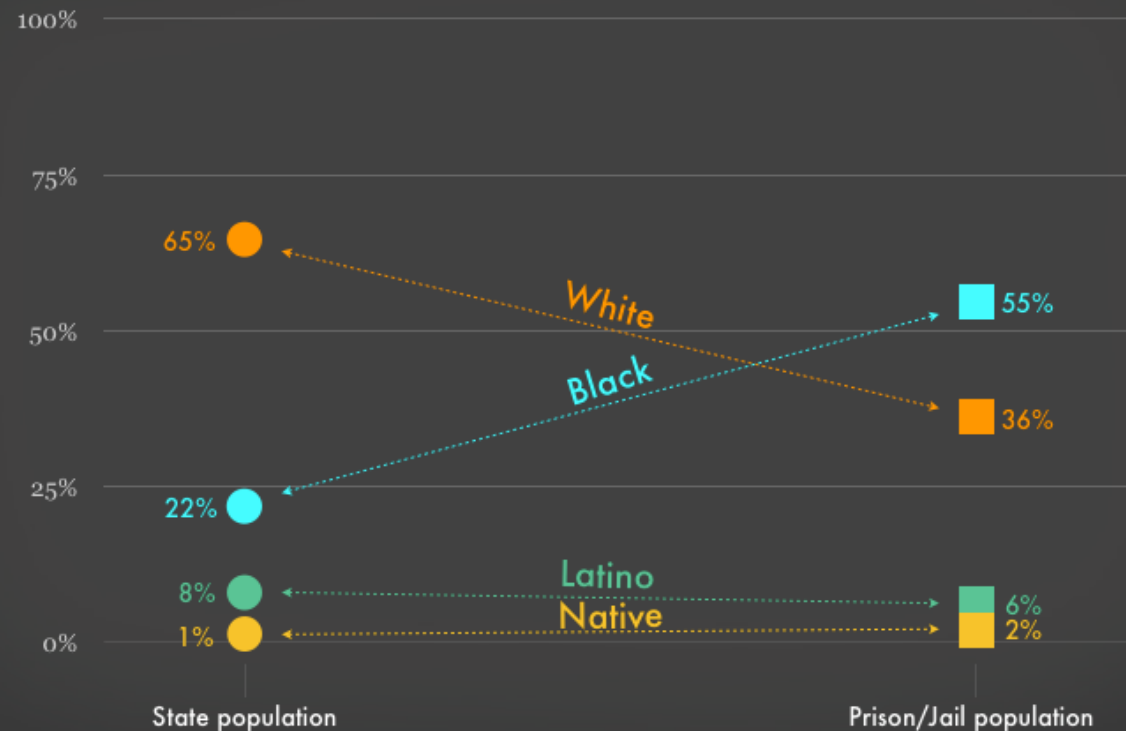
Jury pools are
disproportionately
white



Criminal
defendants are
disproportionately
people of color

Racial and ethnic disparities in prisons and jails in North Carolina

Whites are underrepresented in the incarcerated population while Blacks and American Indians are overrepresented.



PRISON
POLICY INITIATIVE

Compiled from 2010 Census, Summary File 1.

2018 national assessment of jury pool data in the federal courts



“underrepresentation of the Latino and African-American population is ubiquitous”

2018 national assessment of jury pool data in the federal courts



40%

**of African-Americans are
not part
of their community's jury pools**



30%

**of Latinx people are
not part
of their community's jury pools**

A scenic view of the Blue Ridge Mountains in North Carolina at dusk or dawn. The mountains are layered, with the closest ones in dark blue and purple, and the distant ones fading into a hazy, light blue. The sky is a mix of soft pinks, oranges, and blues. In the foreground, there are some dark, leafless tree branches on the right side. A large, white, stylized question mark is centered over the middle of the image.

?

NORTH CAROLINA

**NORTH CAROLINA
TASK FORCE FOR
RACIAL EQUITY IN
CRIMINAL JUSTICE**

**REPORT 2020
EXECUTIVE SUMMARY**

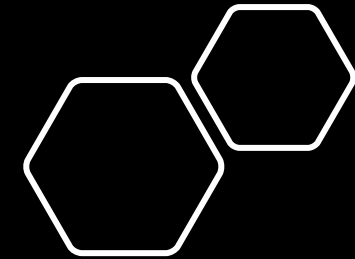
**“To improve data collection,
enact a statute
mandating collection of jury data,
with the exception of personal
identifying information, to be
available as public record”**

**NORTH CAROLINA
TASK FORCE FOR
RACIAL EQUITY IN
CRIMINAL JUSTICE**

**REPORT 2020
EXECUTIVE SUMMARY**

**“TREC recommends that the N.C.
Division of Motor Vehicles (NCDMV)
Commissioner
include race data on jury lists
provided to county jury commissions
to monitor compliance
with Fair Cross Section guarantee.”**

Hertford	58.2%
Northampton	57.4%
Edgecombe	56.7%
Halifax	52.1%
Warren	50.8%
Durham	37.6%
North Carolina	22.3%



% Black or
African-
American

In your opinion, how often do the juries in your jurisdiction reflect the diversity of that community?

A. Almost always

B. Frequently

C. Sometimes

D. Almost never

NORTH CAROLINA

AGENDA

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**Why jury
diversity
matters**

2

**Legal
standard:
fair cross
section
right**

*If a jury system
underrepresents people of
color but there is no
discrimination at any stage
of the jury selection process:*

Can there be a
constitutional violation?

A wooden block with a black circle containing the word YES.

YES

Equal Protection



Prohibits intentional
discrimination

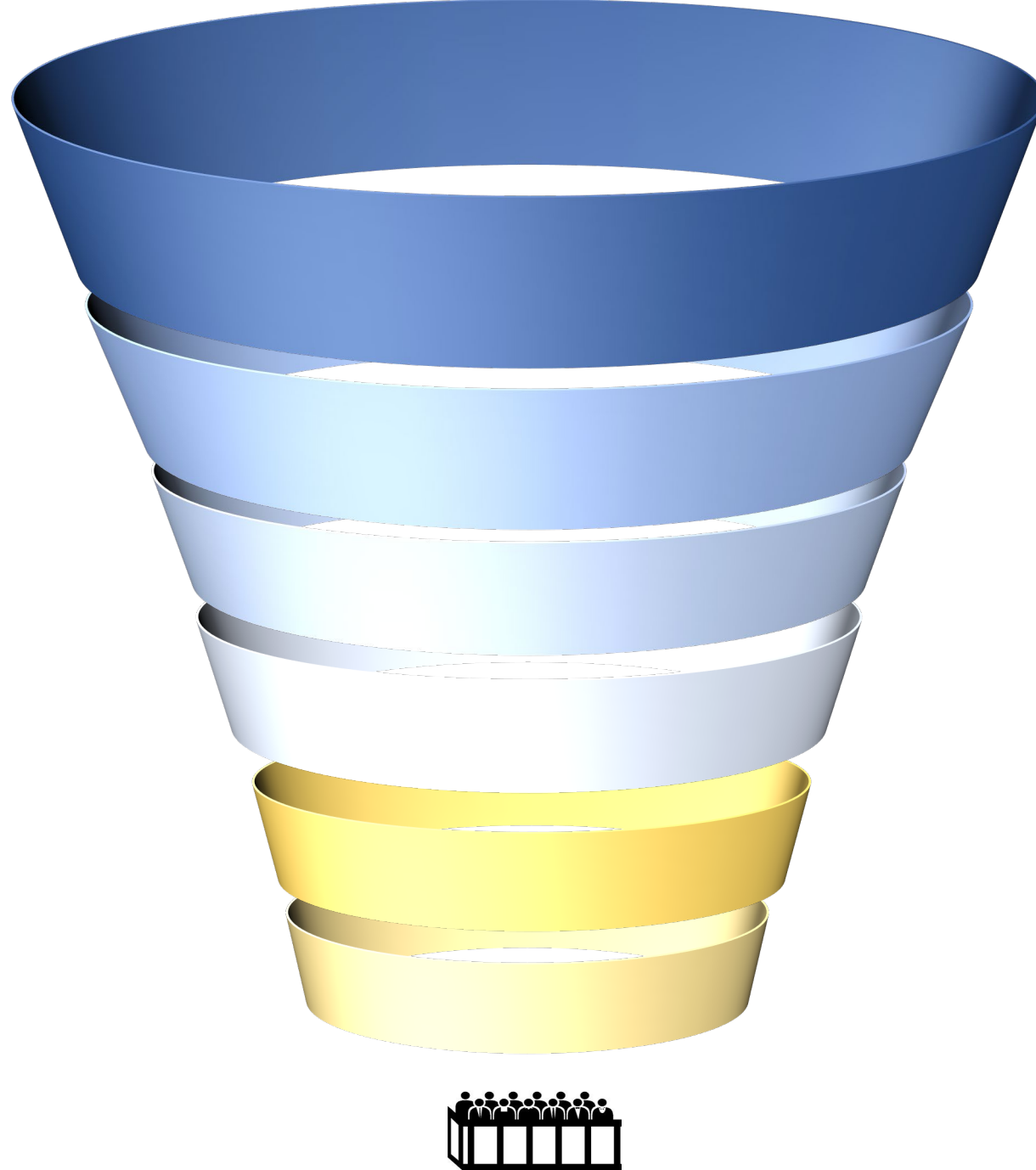


Fourteenth Amendment



Applies to every stage of
jury selection

**STAGES OF THE
JURY SELECTION
PROCESS**



**Right to
equal
protection**

Equal Protection



Prohibits intentional discrimination



Fourteenth Amendment



Applies to every stage of jury selection



Requires proof of discrimination

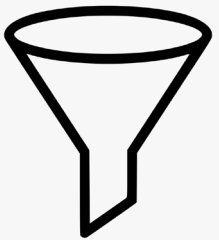
Fair Cross-Section



Requires jury pool that includes fair cross-section of community



Sixth Amendment



Doesn't apply to all stages of jury selection

Equal Protection



Prohibits intentional discrimination



Fourteenth Amendment



Applies to every stage of jury selection



Requires proof of discrimination

Which stage of the jury selection process does NOT need to include a fair cross-section of the community?

The source lists?

The qualified jurors?

The summonsed jurors?

The jurors at the courthouse?

The jurors on an individual jury?



Fair Cross-Section



Requires jury pool that includes fair cross-section of community



Sixth Amendment



Applies to all stages of jury selection **before voir dire**

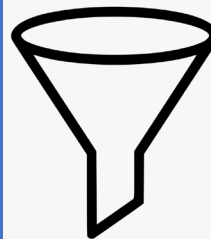
Equal Protection



Prohibits intentional discrimination



Fourteenth Amendment

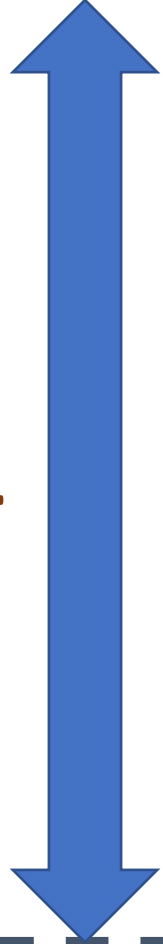


Applies to every stage of jury selection



Requires proof of discrimination

**Right to
fair cross-
section**



Selection of source lists

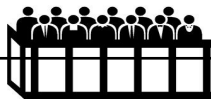
Qualified jurors

Summoned jurors

Venire

~~For cause challenges~~

~~Peremptory strikes~~



Guarantees a
chance to obtain
a representative
individual jury



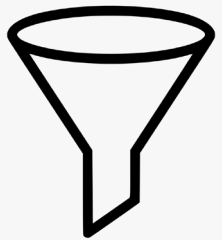
Fair Cross-Section



Requires jury pool that includes fair cross-section of community



Sixth Amendment



Applies to all stages of jury selection before voir dire



Discrimination is irrelevant

Equal Protection



Prohibits intentional discrimination



Fourteenth Amendment



Applies to every stage of jury selection



Requires proof of discrimination

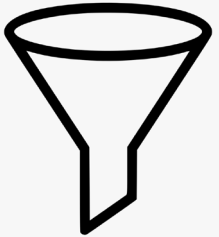
Fair Cross-Section



Requires jury pool that includes fair cross-section of community



Sixth Amendment



Applies to all stages of jury selection before voir dire



Discrimination is irrelevant; race-neutral policies can = constitutional violation

Equal Protection



Prohibits intentional discrimination



Fourteenth Amendment



Applies to every stage of jury selection



Requires proof of discrimination



Which **inherent** aspects of the jury selection system can lead to disparity?



More jury
diversity

Less jury
diversity





“undeliverable rates,
non-response and
failure-to-appear rates,
excusal rates”

“the components of jury yield
that offer the most potential
for effective control”



1

**Why jury
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**Legal
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right**

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**Invisible
stages
interfere
with fair
cross
section**



Jury diversity is not an intractable problem.

States can make changes to increase diversity.

*Which of these steps is
most likely to
increase jury diversity
in North Carolina?*

*Use tax list as source list?
Update addresses annually?
Increase pay for jury service?
Community education?*



**Invisible
stages**

Selection of source lists

Qualified jurors

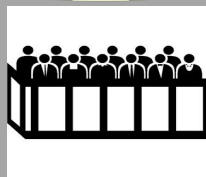
Summoned jurors

Venire

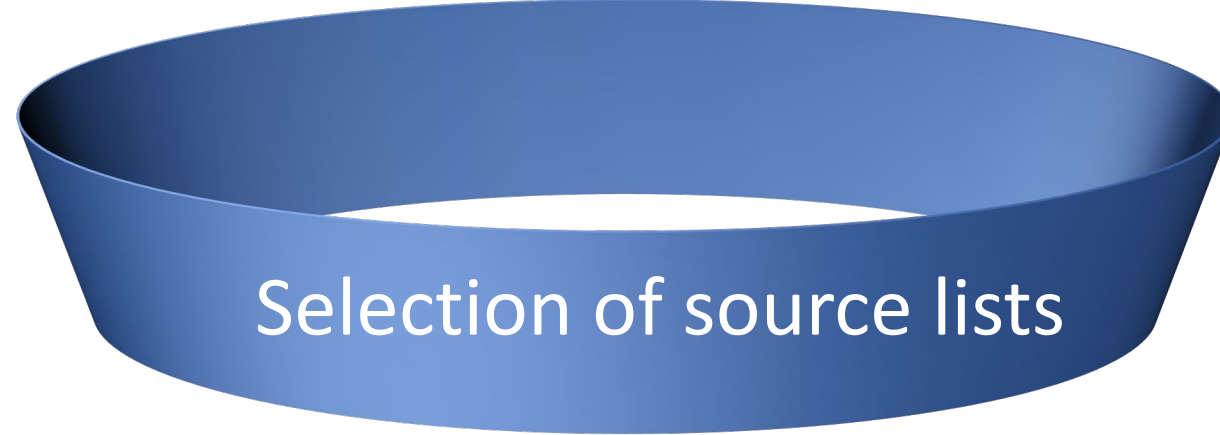
**Visible
stages**

For cause challenges

Peremptory strikes



**Invisible
stages**



Selection of source lists



SOURCE LISTS:

Lists from agencies that become the source of potential juror names

Registered voters

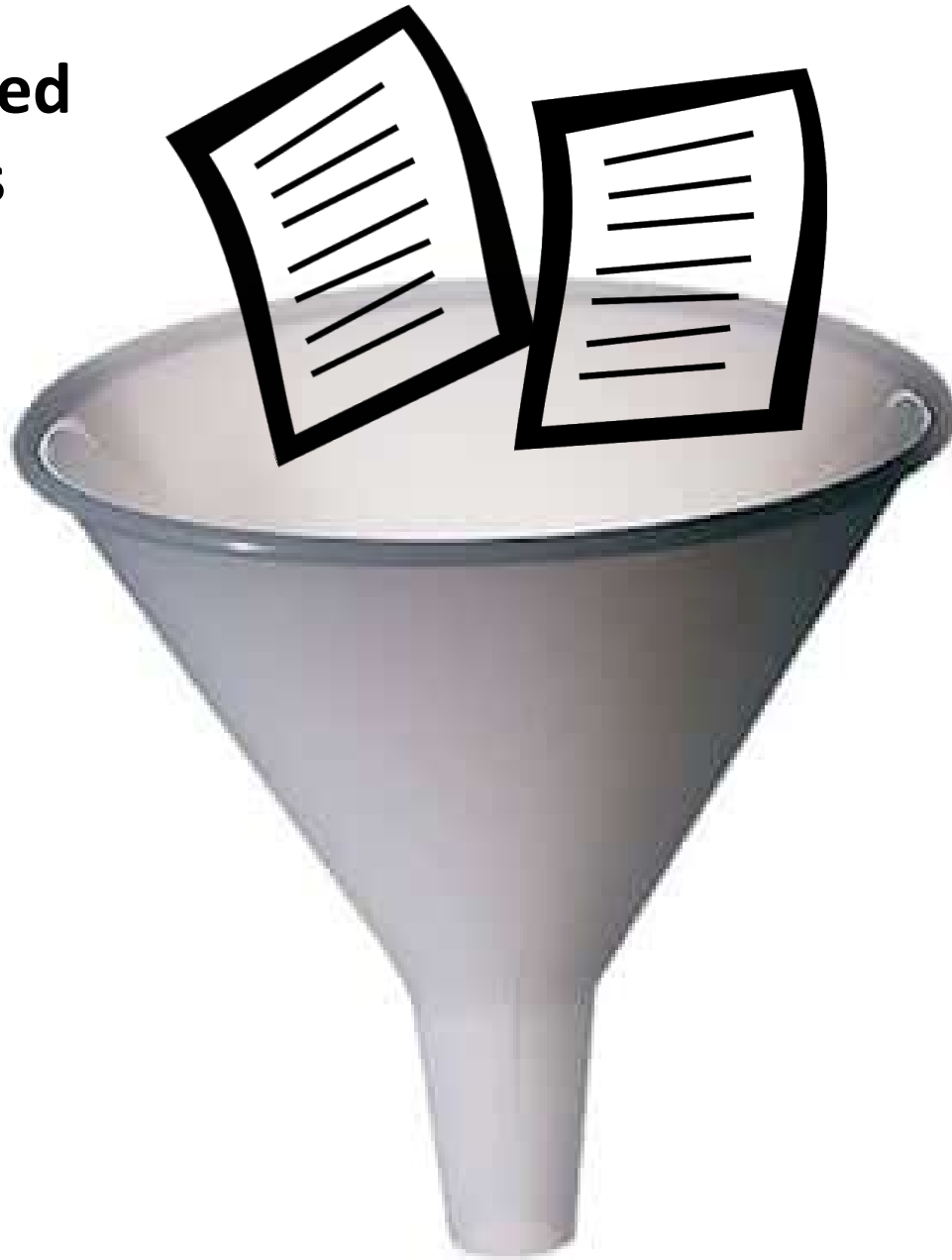
Licensed drivers





The jury
system will
never be more
diverse than
the source
lists selected

**Registered
voters**



Licensed drivers

	No Photo ID
White	5%
Black	13%
Hispanic	10%

	No Photo ID
Less than \$25,000	12%
More than \$150,000	2%

More jury
diversity



Representative source lists



Jury
diversity

- **California**
- **Connecticut**
- Colorado
- D.C.
- Hawaii
- Idaho
- Indiana
- Kentucky
- Missouri
- New Jersey
- New Mexico
- New York
- Pennsylvania
- Tennessee
- West Virginia





- **Connecticut**
- **D.C.**
- **Idaho**
- **Indiana**
- **New York**
- **Rhode Island**

**NORTH CAROLINA
TASK FORCE FOR
RACIAL EQUITY IN
CRIMINAL JUSTICE**

**REPORT 2020
EXECUTIVE SUMMARY**

“North Carolina should increase representation on juries by expanding jury list sources to ensure that more eligible individuals are included in the pool.”

**NORTH CAROLINA
TASK FORCE FOR
RACIAL EQUITY IN
CRIMINAL JUSTICE**

**REPORT 2020
EXECUTIVE SUMMARY**

“This requires using sources in addition to licensed drivers and/or registered voters for jury pools, including:

- ✓ **those holding state identification cards,**
- ✓ **receiving public assistance,**
- ✓ **applying for unemployment,**
- ✓ **telephone directories,**
- ✓ **utility customer lists,**
- ✓ **newly naturalized citizens,**
- ✓ **and income tax filers.”**

N.C. Gen. Stat. Ann. § 9-2(b)

“In preparing the master list, the jury commission shall use the list of registered voters and persons with drivers license records supplied to the county by the Commissioner of Motor Vehicles

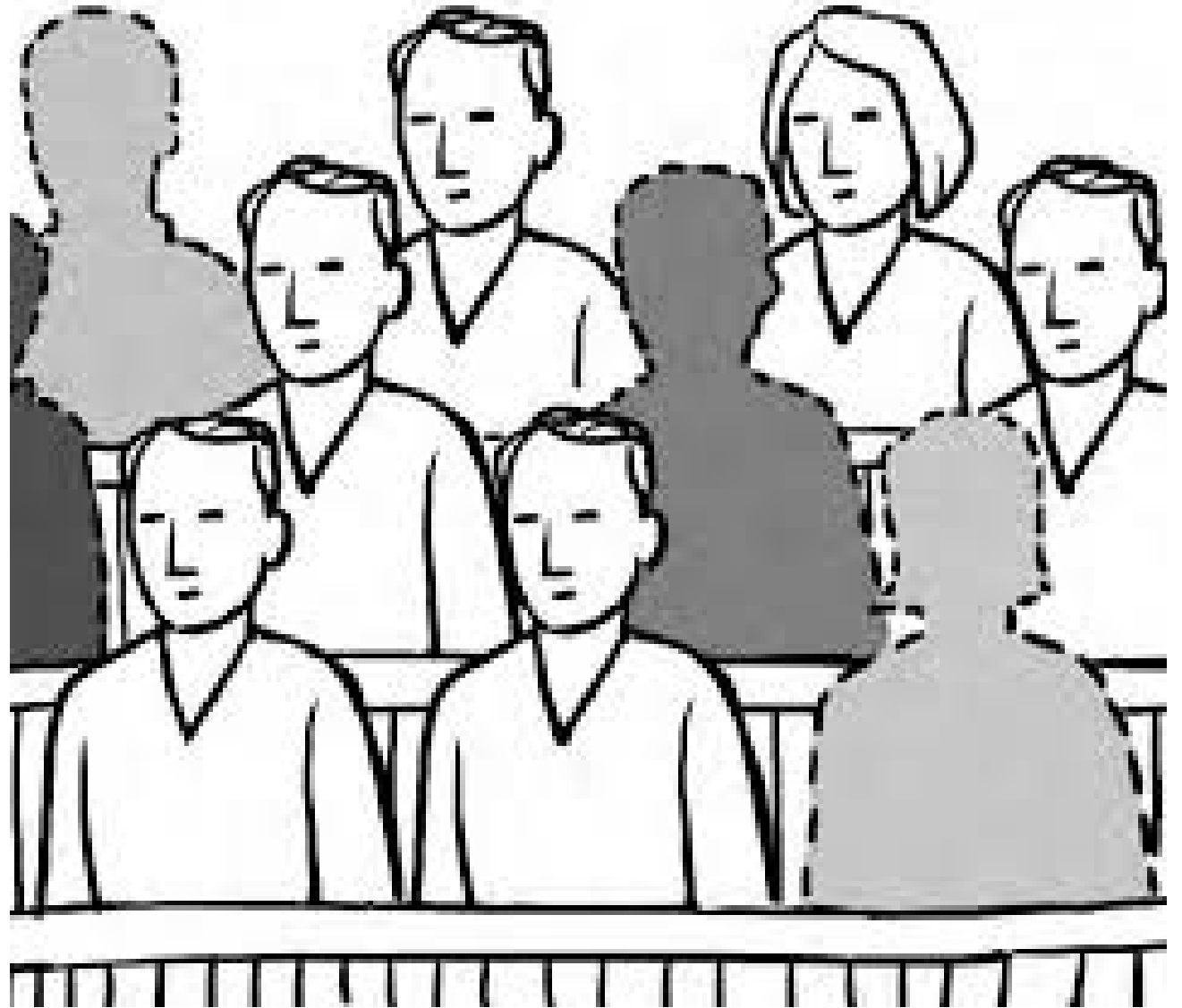
The commission may use other sources of names deemed by it to be reliable.”

**Invisible
stages**



N.C. Gen. Stat. Ann. § 9-3

~~People with
felony
convictions
who have not
had their
citizenship
restored~~



56,000 people with felony convictions

42%

African-American

A large, three-dimensional red graphic of the number '9' followed by a percentage sign, casting a soft shadow on the white background.

of the voting age population

A large, three-dimensional blue graphic of the number '36' followed by a percentage sign, casting a soft shadow on the white background.

of population excluded
because of felony conviction

African-American men

Exclude only the currently incarcerated

Colorado
Illinois
Iowa
Indiana
North Dakota



A large yellow circle containing the number 55,039 in dark blue text. Below the number, the text 'in prison or jail' is written in a smaller dark blue font.

55,039

in prison or jail



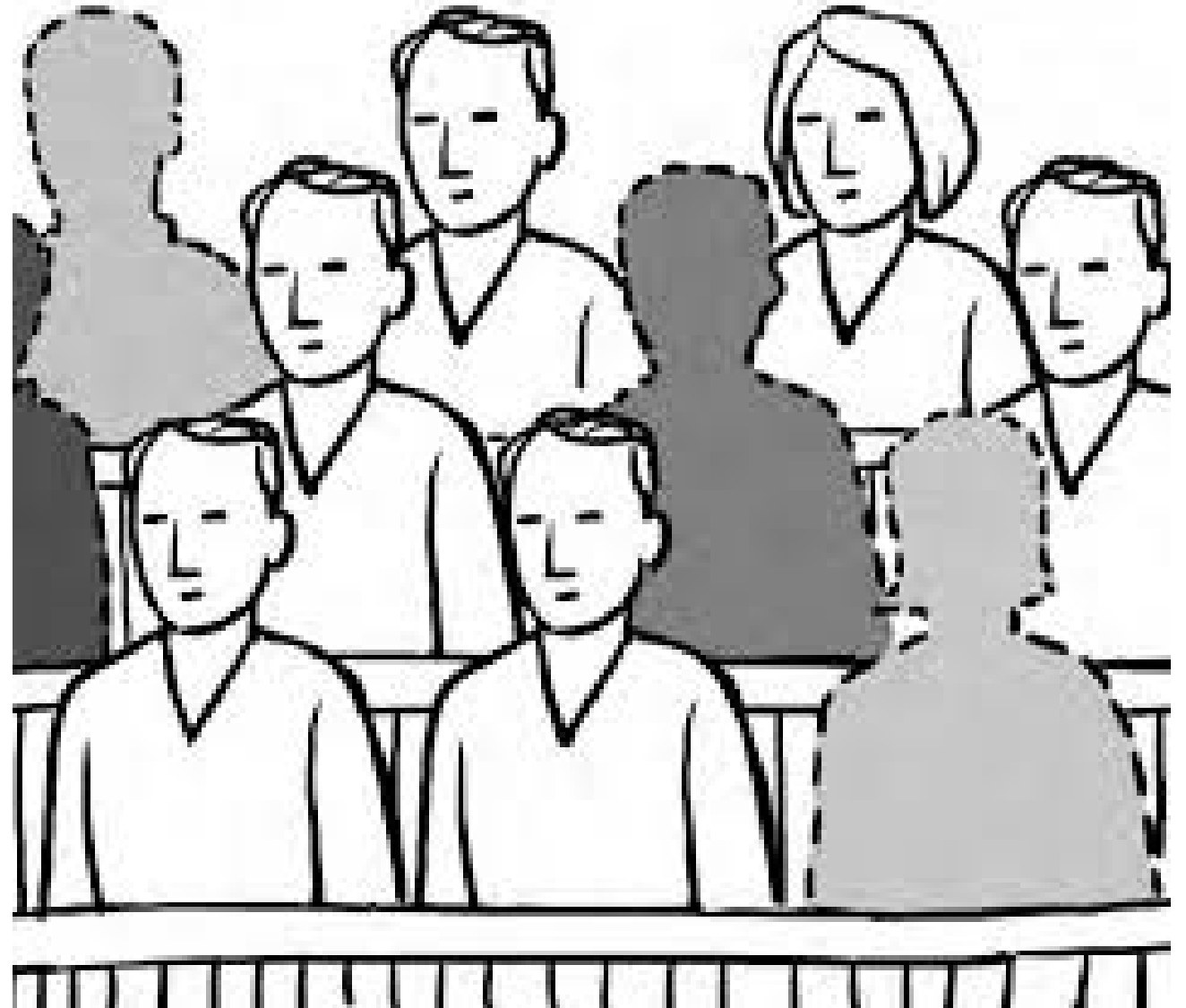
A large blue circle containing the number 91,117 in white text. Below the number, the text 'on probation or parole' is written in a smaller white font.

91,117

on probation or parole

N.C. Gen. Stat. Ann. § 9-3

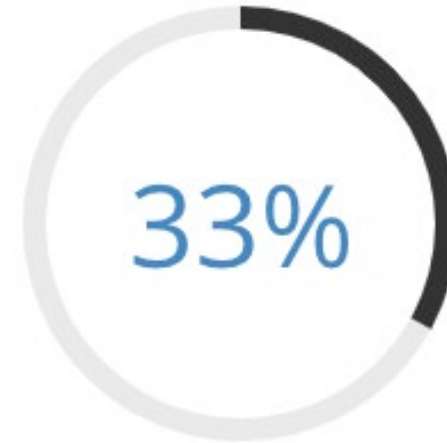
~~Non-~~
~~citizens~~



Non-citizens nationally



Adult
Hispanic
population

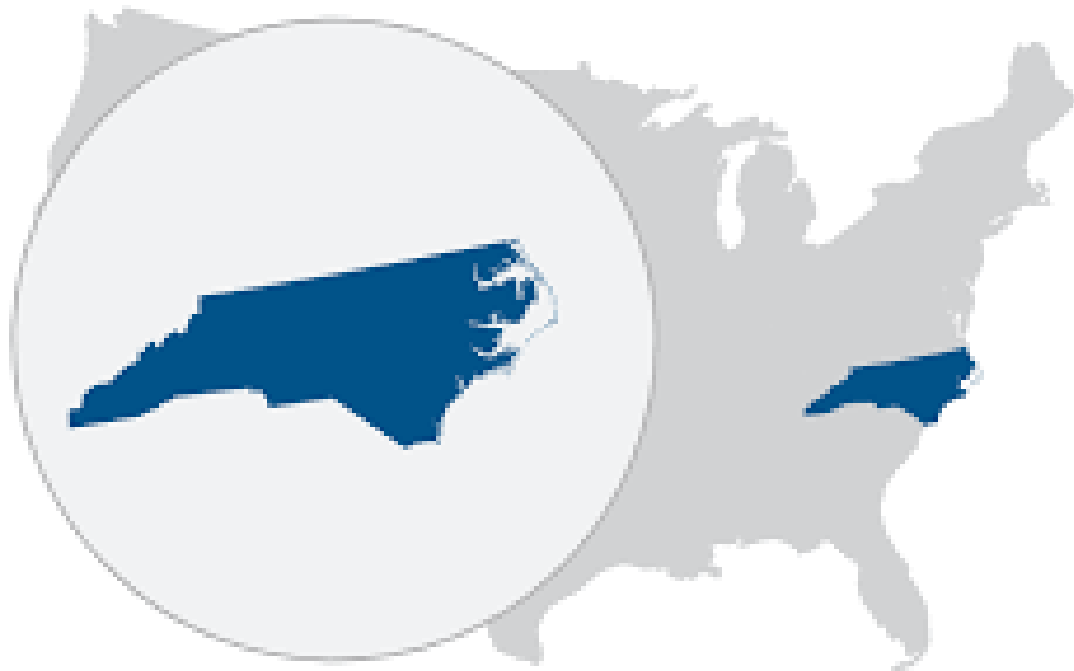


Adult
Asian
population

Connecticut law enacted 2021

Section 1. Section 51-217 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) All jurors shall be electors, individuals lawfully admitted for permanent residence, as defined in 8 USC 1101(a)(20), as amended from time to time, or citizens of the United States, who are residents of this state having a permanent place of abode in this state and appear on the list compiled by the Jury Administrator under subsection (b) of section 51-222a, who have reached the age of eighteen. A person shall be



110,000

Lawful
Permanent
Residents

More jury
diversity



Limit felony exclusion to incarceration

Include lawful permanent residents



Jury
diversity

**Invisible
stages**



“Undeliverable rates are the single largest drain on jury yield, averaging 13% of all jury-related mailings nationally.”



National Center for State Courts

Undeliverable rate higher in communities of color

EXIE

430

4E 1

78 07/29/08

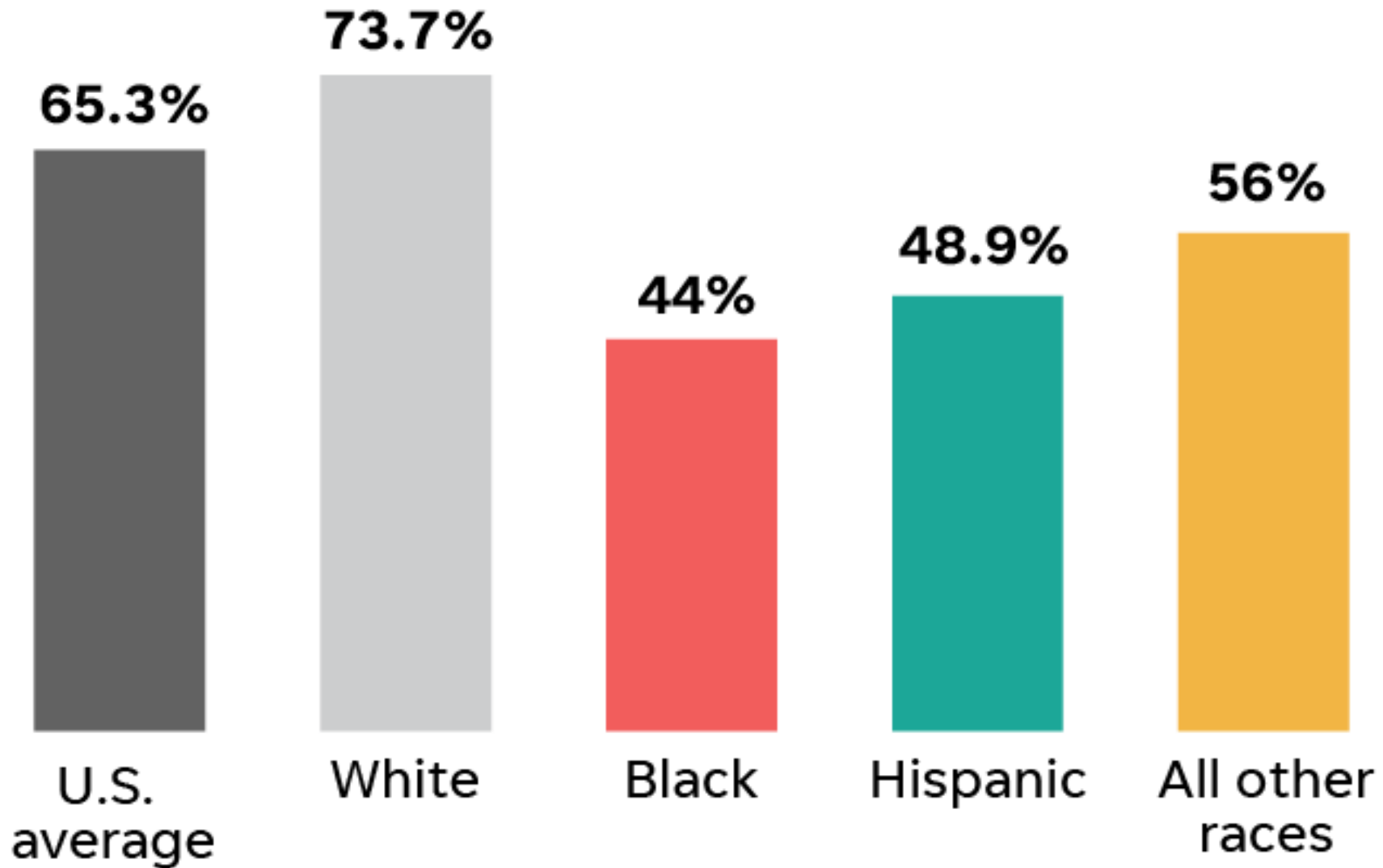
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

19027028282

*0746-00719-29-25



HOME OWNERSHIP BY RACE & ETHNICITY IN U.S. 2020





75.1%

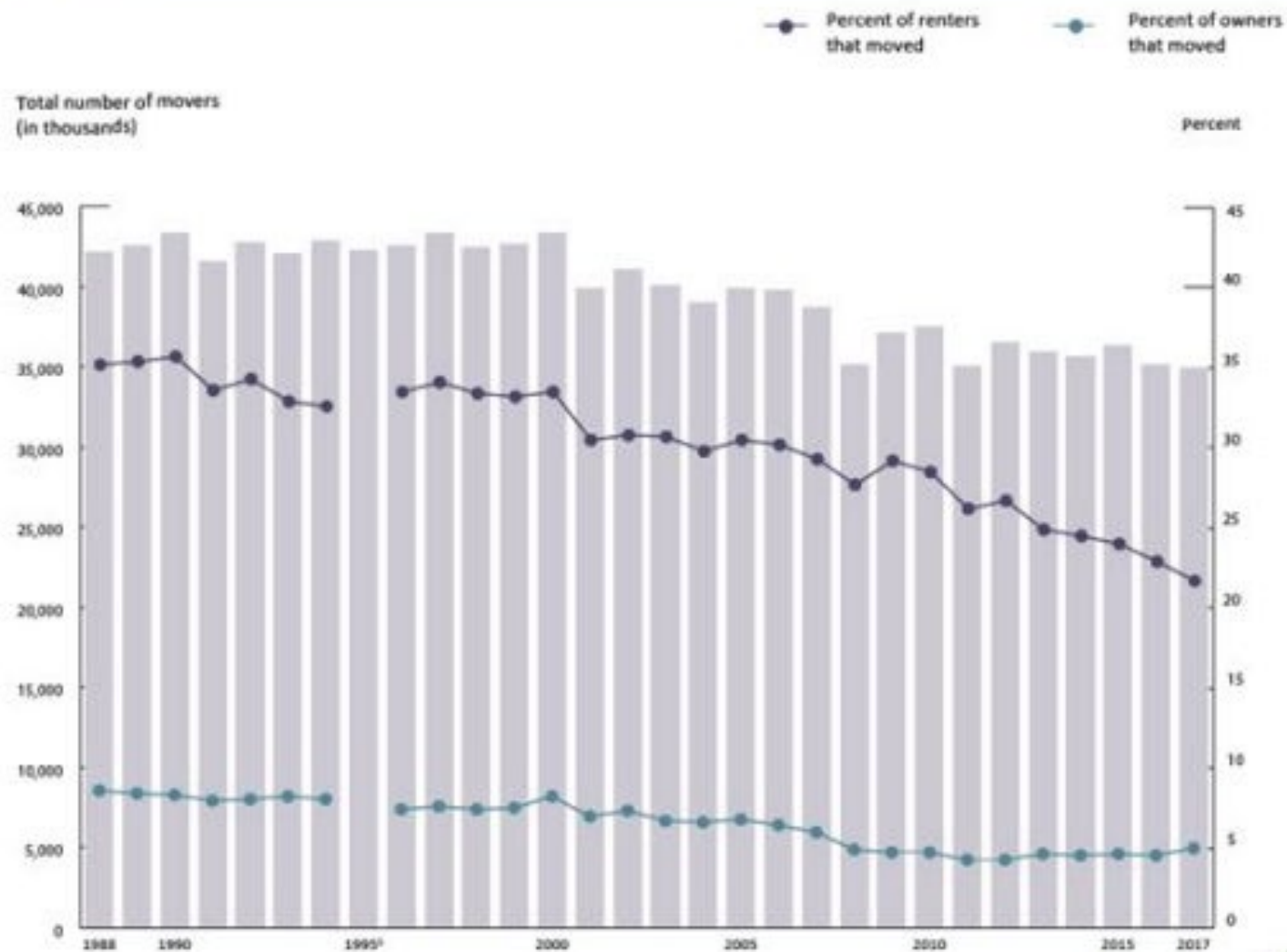
White Non-Hispanic households
in North Carolina

48.2%

Hispanic households
in North Carolina

45.6%

Black households
in North Carolina



← Percent of **renters** who moved

← Percent of **owners** who moved

¹ The one-year migration data by tenure are not available for 1995.

Note: Renter refers to all people (1 year old and over) living in the rented unit, not just the person/persons on the lease. The term owner refers to all people (1 year old and over) living in the owned unit, not just the person/persons on the deed or mortgage.

Overall
2017 U.S.
Mover Rate
11.0%



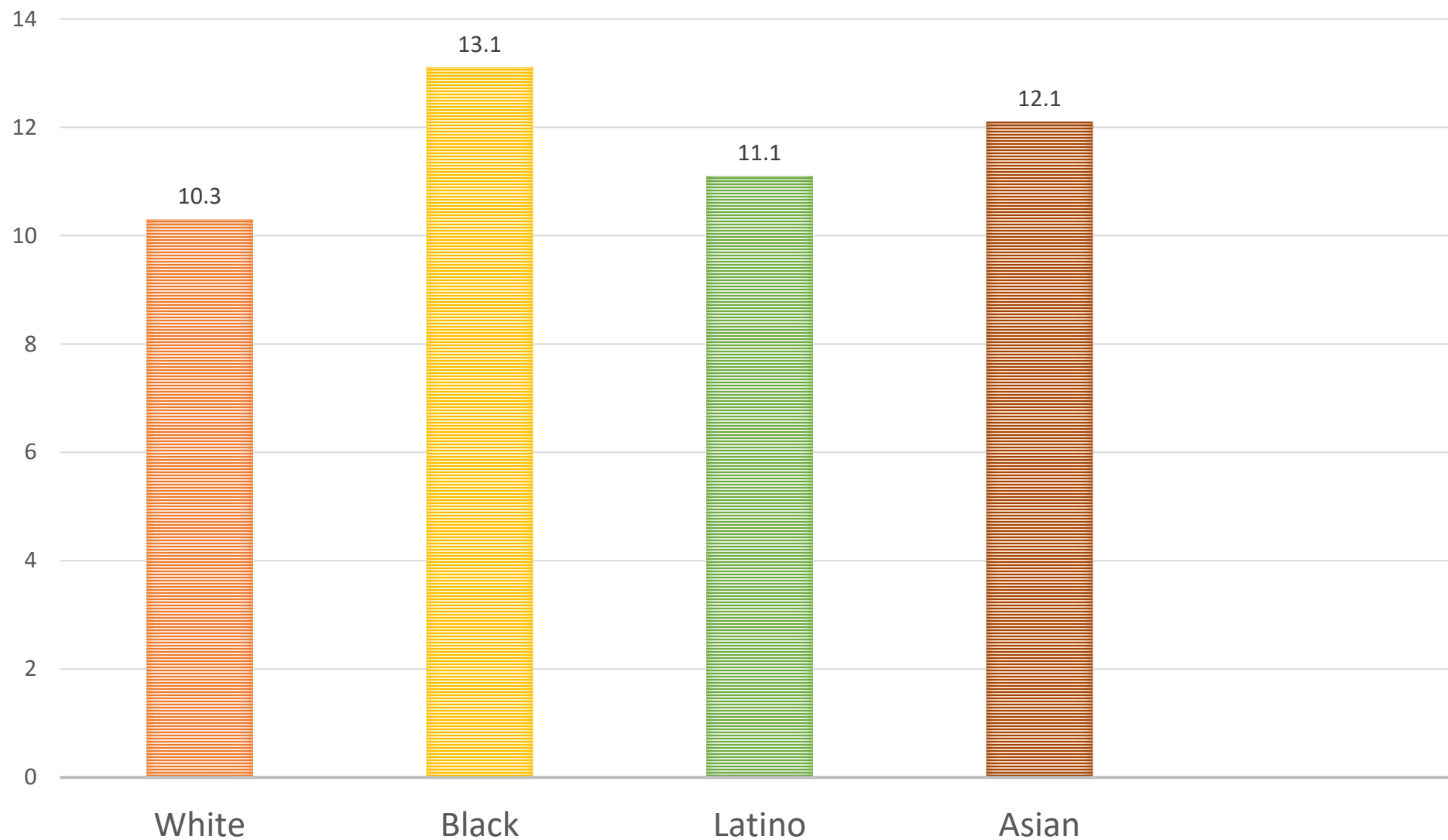
United States[™]
Census
Bureau

U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU
[census.gov](https://www.census.gov)

Source: 1988-2017 Current Population Survey
www.census.gov/programs-surveys/cps

2017 data

NATIONAL MOVER RATES BY RACE & ETHNICITY





Less frequent
updates →
more inaccurate
addresses

Less diverse
juries

More jury
diversity



Update addresses more often



Jury
diversity

**NORTH CAROLINA
TASK FORCE FOR
RACIAL EQUITY IN
CRIMINAL JUSTICE**

**REPORT 2020
EXECUTIVE SUMMARY**

**“TREC recommends updating
master jury pool lists
at least annually,
rather than every two years, and
correcting addresses to reduce
undeliverable summonses.”**

**American Bar
Association
Commission
on the Jury:
Principles for
Juries & Jury
Trials**

Principle 10(A)(1):
source lists should
be updated
**at least
annually**

“Courts that are located in states or metropolitan areas with higher than average migration rates should consider creating or updating their master jury lists even more frequently (e.g., semi-annually or quarterly) if feasible.”

National Center for State Courts

Jury Managers' Toolbox

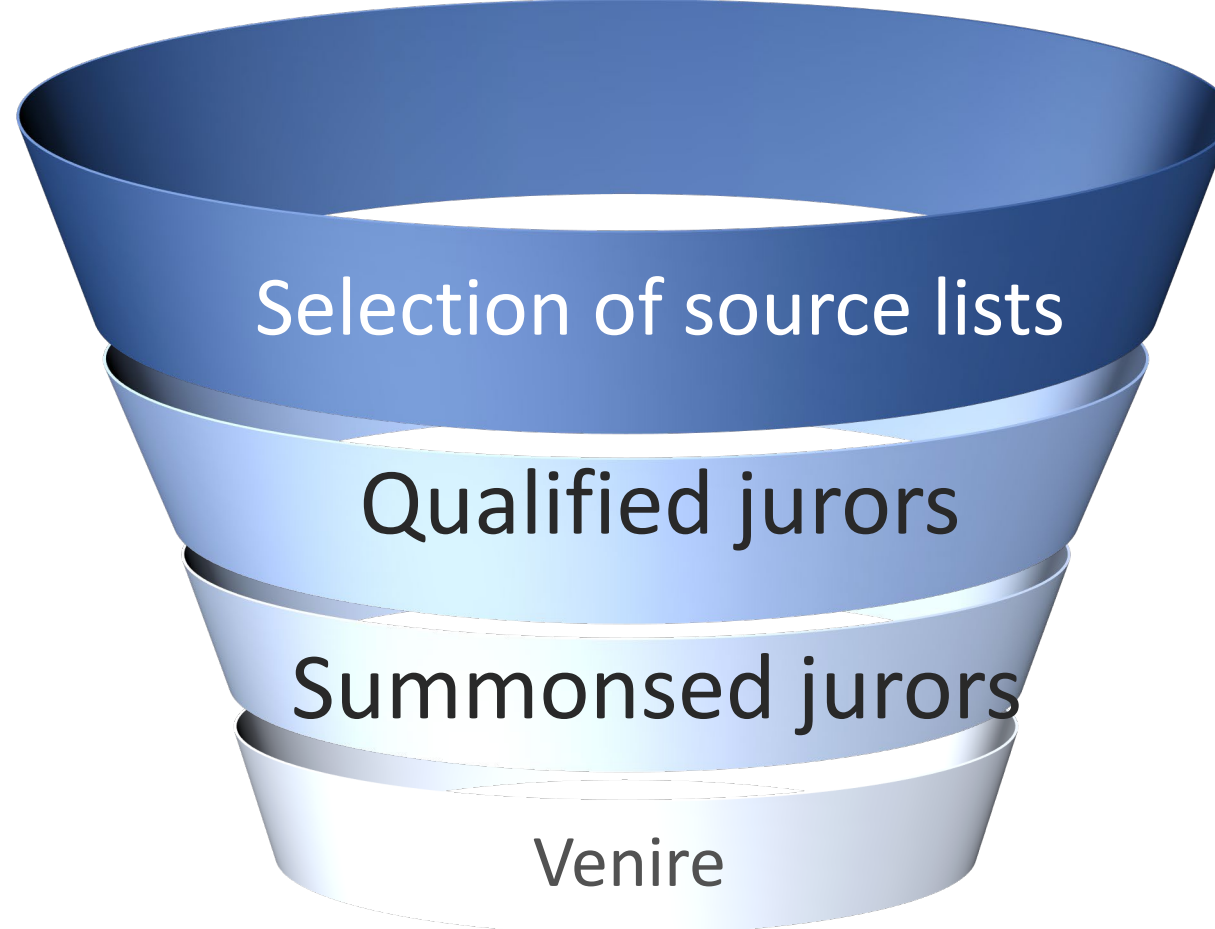
Best Practices to Decrease Undeliverable Rates

Overview

Nationally, an average of 12% of qualification questionnaires and jury summonses are returned by the U.S. Postal Service marked “undeliverable as addressed.”¹ Undeliverable rates are the single largest factor contributing to decreased jury yields. In most instances, the qualification questionnaire or summons was returned because the person moved to a new address since the master jury list was last created or updated. In other instances, the juror's address may be incorrect from the source list or the U.S. Postal Service may have returned the qualification questionnaire or jury summons in error. While it may not be possible

Based on these figures, a court that began the year with a perfectly accurate master jury list annually could expect an undeliverable rate of up to 17% by the end of the year just due to local migration rates. The process of creating the master jury list typically takes one to three months, so some records will be out-of-date even before the court begins summoning and qualifying from a new list. For this reason, the NCSC recommends that courts create a new master jury list, or update their existing list, at least annually. Courts that are located in states or metropolitan areas with higher than average migration rates should consider creating or updating their master jury lists more frequently.

**Invisible
stages**



A close-up photograph of a person's hands holding an open, empty black wallet. The wallet is laid flat, revealing its interior compartments, which are devoid of any cash or cards. The background is a warm, out-of-focus wooden surface. The text "ECONOMIC HARDSHIP" is overlaid in white, bold, sans-serif capital letters on the left side of the image.

ECONOMIC HARDSHIP



**\$12 for
first day**

Live below the official poverty line in NC	
	\$12
White	9.8%
Black	21.1%
Latino	24.8%
American Indians	20.1%

More jury
diversity



Increase jury pay



Jury
diversity

	BEFORE	AFTER
PAY	\$6.00	\$40.00
PARTICIPATION RATE	22%	46%

San Francisco Juror Pay Pilot Program



“a pilot program to analyze and determine whether paying certain low-income trial jurors \$100 per day for each day they are required to report for service as a trial juror in a criminal case promotes a more economically and racially diverse trial jury panel that more accurately reflects the demographics of the community”

**NORTH CAROLINA
TASK FORCE FOR
RACIAL EQUITY IN
CRIMINAL JUSTICE**

**REPORT 2020
EXECUTIVE SUMMARY**

**“Increasing juror pay
and considering offering
childcare for jurors at the
courthouse.”**

American Bar
Association
Commission
on the Jury:
Principles for
Juries & Jury
Trials

Principle 2(F)(1):

Persons called for jury service should be paid a reasonable fee that will, at a minimum, defray routine expenses such as travel, parking, meals and child-care.

Comment: excuses from jury service because of economic hardship . . . reduces the representativeness of the jury pool

Recognizes “relationship
between the
amount of juror fees . . .
and minority representation
in the jury pool”.”

National
Center for
State Courts



1

**Why jury
diversity
matters**

2

**Legal
standard:
fair cross
section
right**

3

**Invisible
stages
interfere
with fair
cross
section**

4

**Possible
next
steps for
North
Carolina**

Representative source lists

Limit felony exclusion to incarceration

Include lawful permanent residents

Update addresses more often

Increase jury pay



Jury
diversity

*Which of these policy
changes should be our
top priority?*





THANK YOU