

SUPREME COURT OF NEW JERSEY

The Supreme Court in State v. Andujar, 247 N.J. 275 (2021), announced a plan “to examine the jury selection process -- with the help of experts, interested stakeholders, the legal community, and members of the public -- and consider additional steps needed to prevent discrimination in the way we select juries.” The Court called for a Judicial Conference on Jury Selection, which convened in November 2021. Informed by Chief Justices of jurisdictions that have reformed jury processes, as well as professors, attorneys, and representatives of the community, the Conference explored ways in which jury selection in New Jersey aligns with -- and differs from -- procedures in other jurisdictions, in order to identify areas for improvement.

For more than a half century, New Jersey state court judges have been responsible to conduct voir dire. See State v. Manley, 54 N.J. 259, 280-83 (1969). As part of the current practice, judges in criminal matters ask jurors nearly 30 mandatory model questions. Attorney involvement is limited to the advance submission of additional open-ended questions and occasional follow-up questions if permitted by the judge.

As discussed at the Judicial Conference, New Jersey is one of only a handful of state court jurisdictions that continue to use a judge-led system of voir dire. Many scholars, jurists, and practitioners advocate for an alternate

approach known as Attorney-Conducted Voir Dire (ACVD). While different forms of ACVD exist, the general model is one in which attorneys question jurors, typically as a group, under the oversight of a judge who intervenes if and as appropriate, including for sidebar discussions and determination of challenges.

Proponents of ACVD contend that the attorney-driven process enables more robust and probing voir dire, which facilitates discovery of relevant information about prospective jurors and informs for-cause challenges. In particular, supporters of ACVD submit that a transition from judge-led voir dire to an attorney-conducted process would reduce the effects of discrimination and bias in jury selection.

Having considered the information shared at the Conference as well as the subsequent work of its Committee, the Court now authorizes a pilot program for Attorney-Conducted Voir Dire to explore its potential benefits. The program will start on or after September 1, 2022, consistent with the attached framework.

For the Court,



Chief Justice

Dated: July 12, 2022

New Jersey Judiciary Pilot Program for Attorney-Conducted Voir Dire – For Implementation on or After September 1, 2022

1. Locations. The pilot program will begin in Bergen, Camden, and Middlesex Vicinages.
2. Eligibility for Participation. At the outset, eligibility for participation in the pilot program will be limited to single-defendant criminal matters.
3. Voluntariness. Participation in the pilot program will be voluntary and will require the consent of both the prosecuting attorney and defense counsel. The court will provide written notice to the attorneys and will meet to explain the protocols and answer questions, including about the process for ACVD and the reduction in available peremptory challenges. The court will conduct a hearing with the defendant as well as counsel to confirm understanding and consent before finalizing a date for jury selection. In addition to that oral discussion, the attached mutual consent and waiver (Attachment A) will be executed before proceeding to jury selection as part of the ACVD pilot program.
4. For cases in the pilot program, jury selection will proceed as follows:
 - a. Random Selection. Consistent with usual practices, jurors will be randomly selected to create a panel that will be assigned to the trial. That panel will be comprised of jurors who have completed the standard qualification process and confirmed their availability to report for service.
 - b. Demographic Information. As part of qualification, and as directed by the Court in State v. Dangcil, 248 N.J. 114 (2021), the Judiciary will collect demographic information as voluntarily provided by jurors during qualification. In the pilot counties, voluntary juror demographic information will also be collected for cases not participating in the pilot program.
 - c. Electronic Written Questionnaires. Before the start of oral voir dire, the panel of jurors at the courthouse will complete an electronic questionnaire, using the attached model with

appropriate customization. See Attachment B. Jurors will submit their responses electronically, using their own technology or Judiciary technology as appropriate, and subject to any ADA or other accommodations. Juror responses will be compiled and provided to the judge and attorneys before the start of oral voir dire.

- d. Pre-Voir Dire Challenges. The court can dismiss a juror for a hardship, or excuse a juror for cause, based on the juror's responses to the written questionnaire. Pre-voir dire dismissals and excusals should occur only in straightforward situations. Any pre-voir dire excusals will be addressed on the record in the presence of at least the attorneys.
- e. Oral Voir Dire. All remaining jurors will proceed to oral voir dire. The preference is for all oral voir dire to be conducted in person in a single large room. However, oral voir dire may be conducted in stages if necessary to empanel a jury.
- f. Expanded Jury Box. An "expanded box" of jurors will be seated in a group. That expanded box will include the total number of jurors to be empaneled plus the total number of peremptory challenges available to the attorneys. Additional jurors will be seated in the courtroom to the extent possible. If necessary, and with the consent of the attorneys, technology can be used to enable additional jurors to see and hear voir dire.
- g. Process of Questioning. Instructions and questions will be posed to the expanded box, except for follow-up and sidebar questions.
 - i. The judge will describe the case and ask the following questions:

Question 1 (qualifications)

In order to be qualified under New Jersey law to serve on a jury, a person must have certain qualifying characteristics. A juror must be age 18 or older; a citizen of the United States; able to read and understand the English language; and a resident of [the summoning] county.

Also, a juror must not have been convicted of any indictable offense in any state or federal court and must not have any physical or mental disability that would prevent the person from properly serving as a juror. Note that the Judiciary will provide reasonable accommodations consistent with the Americans with Disabilities Act.

Does anyone not meet those requirements?

Question 2 (availability and hardship)

a. This trial is expected to last for [duration]. Is there anything about the length or scheduling of the trial that would interfere with your ability to serve?

b. Do you have any medical, personal or financial problem that would prevent you from serving on this jury?

c. Do any of you have a special need or require a reasonable accommodation to help you in listening, paying attention, reading printed materials, deliberating, or otherwise participating as a fair juror? The court will provide reasonable accommodations to your special needs, but I will only be aware of any such needs if you let me know about them. My only purpose in asking you these circumstances relates to your ability to serve as a juror. If you have any such request, please raise your hand and I will speak to you at sidebar.

Question 3 (knowledge of counsel and parties)

The judge will introduce the lawyers and the parties and then ask the group:

Do any of you know either/any of the lawyers?

Has either/any of them or anyone in their office ever represented you or brought any action against you?

Do you know (names of parties)?

Question 4 (knowledge of witnesses)

The judge will read names of potential witnesses and then ask the group: Do you know any of the potential witnesses?

Question 5 (knowledge of other jurors)

Do you know anyone else in the jury box other than as a result of reporting here today?

ii. The judge will also ask the following:

I have already briefly described the case. Do you know anything about this case from any source other than what I've just told you?

The attorneys may follow up with further questions about juror knowledge of the case.

iii. Except as listed above, the model voir dire questions incorporated in the [Judiciary Bench Manual on Jury Selection](#) will not be required or recommended. Instead, the attorneys will cover relevant topics through use of the electronic questionnaire and during oral voir dire.

iv. The judge will introduce legal principles and juror responsibilities as determined in consultation with counsel before trial. While the judge will explain the law, attorneys can and should pose follow-up questions to the jurors.

h. Flexibility and Scope of ACVD. Attorney-conducted voir dire is a flexible and fluid process. Accordingly, there is no requirement to pose questions in a specific sequence or wording. Consent and waiver to participate in the pilot program includes waiver of use of the model voir dire questions. Attorneys will ask questions, both independently and to follow up on juror responses. No relevant questions or topics are off-limits during ACVD.

- i. Challenges for Cause. Consistent with the Court’s July 12, 2022 Order, the court will apply a liberal standard in dismissing jurors for cause.
 - j. Number of Peremptory Challenges. As a condition of participation in the pilot program, the State and defense will agree to reduce peremptory challenges as follows:
 - i. The State will have **6** peremptory challenges, and the defense will have **8** peremptory challenges, for criminal matters in which the defendant has been indicted for kidnapping, murder, aggravated manslaughter, manslaughter, aggravated assault, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, aggravated arson, arson, burglary, robbery, forgery if it constitutes a crime of the third degree as defined by N.J.S.A. 2C:21-1(b), or perjury; and
 - ii. In all other criminal actions, the State and defense will each have **5** peremptory challenges.
 - k. Exercise of Peremptory Challenges. Peremptory challenges will be exercised after the completion of questioning by the judge and attorneys. Consistent with Rule 1:8-3(e)(2), the court will establish the order of challenges, which will be set forth on the record before the start of the jury selection process. If some peremptory challenges are not exercised, then jurors will be selected based on seating or at random to reduce the panel to the number for empanelment.
 - l. Objections to Peremptory Challenges (Batson/Gilmore Standard). For cases that opt into the pilot program, Rule 1:8-3 is relaxed and supplemented so that objections to peremptory challenges will be handled consistent with the provisions of new Rule 1:8-3A.
5. Data Collection. The Judiciary will continue to collect standard data as to jurors and jury trials. To evaluate ACVD, the Judiciary will also collect and publish data as to those cases that participate in the program, as well as other cases in the pilot counties that do not

participate in the pilot. That initial report is expected to include, among other data points, the following information: numbers and percentages of cases that choose to participate in the pilot program; size of jury panels; voir dire duration; and data as to the timing and volume of dismissals for hardships, challenges for cause, and peremptory challenges. To the extent practicable, that report will also contain aggregate demographic data, including as to the composition of seated juries in the pilot and non-pilot cases.

6. Training for Judges and Attorneys. Meaningful training will be provided to judges and attorneys in order to support a successful pilot exploration of ACVD. Such training will be coordinated with key stakeholders, including the Attorney General, the Public Defender, the New Jersey State Bar Association, the County Prosecutors Association, and the Association of Criminal Defense Lawyers.

Attachment A: Consent and Waiver

Please note that this form is intended to be dynamic, the highlighted items will be entered via text or drop down.

INSERT CAPTION

The Supreme Court in its July 12, 2022 Order has approved the Attorney-Conducted Voir Dire (“ACVD”) Pilot Program (“ACVD Pilot”). In ACVD, the attorneys (rather than the judge) take the lead in questioning jurors, without the use of mandatory voir dire questions.

In the above-captioned matter, the State, represented by PROSECUTOR, and the defendant, NAME, represented by DEFENSE ATTY, (collectively “the parties”) consent to participate in the ACVD Pilot. Participation in the ACVD Pilot requires the parties’ knowing consent to waive a certain number of peremptory challenges, and to proceed with a new approach to handling an objection to a proposed peremptory challenge, as detailed below.

The defendant, NAME, has been indicted and charged with the following:

The parties acknowledge and understand the following:

- The ACVD Pilot program will give the parties a greater role in questioning prospective jurors directly.
- The parties may participate in the selection of jurors and use of peremptory challenges in this matter.
- A peremptory challenge allows the parties to excuse a potential juror without giving any explanation or reason for doing so, although a reason may be required in the event of a challenge.
- Under N.J.S.A. 2B:23-13 and the Rule 1:8-3(d), in cases of this type the State is entitled to [12/10] peremptory challenges and the Defendant is entitled to [20/10] peremptory challenges based upon the indictment in this matter.

- Participation in the ACVD Pilot will reduce the number of peremptory challenges otherwise allotted to each party.
- The State may exercise [6/5] peremptory challenges in the ACVD Pilot.
- The Defendant may exercise [8/5] peremptory challenges in the ACVD Pilot.

Having had an opportunity to consult with counsel, the parties knowingly and voluntarily waive their right to the full number of peremptory challenges provided by law and request to participate in the ACVD Pilot. The parties and their attorneys have discussed the advantages and disadvantages of participation in the ACVD Pilot and agree to a reduced number of peremptory challenges in this matter. The parties further agree that any objection to a peremptory challenge will be handled consistent with the provisions of new Rule 1:8-3A (“Reduction of Bias in the Exercise of Peremptory Challenges”). The Supreme Court in its July 12, 2022 Order has adopted new Rule 1:8-3A to be effective statewide as of January 1, 2023. The Court has relaxed the Court Rules to extend the provisions of Rule 1:8-3A to cases in the ACVD Pilot.

The parties understand that a jury verdict in this case in the ACVD Pilot will have the same force and effect as a jury verdict in a case not in the pilot program.

The parties acknowledge that the participation in ACVD without use of mandatory voir dire questions, as well as consent and waiver of a certain number of peremptory challenges, and agreement to a new approach to objections to peremptory challenges, is being made freely and voluntarily and that they have not been subject to any threats, pressure or coercion to induce their participation nor have they been assured of any leniency or expectations of reward in consideration of their participation.

Dated: _____

 Defendant

Dated: _____

 Defense Counsel

Dated: _____

 Prosecutor

Dated: _____

Approved by: _____, J.S.C.

Attachment B: Model Criminal Questionnaire

(to be completed electronically before oral voir dire)

We are using your answers to this questionnaire to get information directly from you to help us pick trial jurors who can be completely fair to both sides for this particular case.

Your answers to the following questions are very important to the proceedings in this case. Please answer each question honestly and completely.

We all have attitudes, feelings, opinions, and life experiences that can affect the way we consider the testimony of a witness or how we evaluate evidence. It is okay to admit and talk about these feelings, opinions, and life experiences, and we need you to do so to ensure justice is served in this case.

Please do not withhold information. Please make sure your answers are as complete as possible. Complete answers are more helpful and will likely shorten the time it takes to select a jury. Do not be concerned with whether your answers are “right” or “wrong”; this is not any sort of test. Just be honest and candid in your answers.

You are not allowed to do any research or investigation regarding this case. You may not look up the parties or the lawyers. As a trial juror you must decide the case based on the evidence presented during trial.

The information you provide will be reviewed only by the court, the lawyers, and the parties in this case. For purposes of the public record, your name and identifying information will be deleted.

If you have trouble reading, understanding, or filling out this questionnaire, please [insert how you want the juror to seek help].

1. Juror Number
2. Name
3. Are you a resident of X County?
 Yes No

4. Are you a citizen of the United States?
 Yes No
5. Have you been convicted of an indictable offense?
 Yes No
6. Do you have difficulty understanding or reading English?
 Yes No
7. Do you have any difficulty seeing or hearing, or have any other medical problems that may affect your ability to serve as a juror?
 Yes No
8. This section provides you with information about the case.
Have you seen, heard, or read anything about this case?
 Yes No
9. Have you, or any members of your close family or friends, ever been involved in a case with facts similar to this?
 Yes No Unsure

{If the juror answers yes or unsure to this or other questions,
a narrative filed would be provided, as shown.}

10. Please explain.
11. Is there anything about the nature of this case that might cause you to favor one side over the other?
 Yes No Unsure
12. What caused you to answer “Yes” or “Unsure” to the prior question?
13. The following people may testify at trial: [insert names of potential witnesses]. Do you think you might know any of these people?
 Yes No Unsure
14. The law requires the State to prove that a Defendant is guilty beyond a reasonable doubt. A Defendant in a criminal case is presumed by law

to be innocent until proven guilty beyond a reasonable doubt. The law does not require a Defendant to testify or present any evidence. Can you accept these principles of law?

Yes No Unsure

15. [This question would be included unless waived by the Defendant.] A Defendant has a constitutional right to remain silent. Would your opinion of the Defendant's guilt or innocence be affected by a Defendant's decision to remain silent?

Yes No Unsure

16. Do you think you would hold a Defendant's decision to remain silent against them?

Yes No Unsure

17. The judge will instruct you on the law in this case. Sometimes people have beliefs about what they wished the law was, or they believe that certain conduct should be legal. Do you believe you will be able to apply the facts to a law you disagree with?

Yes No Unsure

18. Do you have any opinions about law enforcement officers that might cause you to favor one side over the other? [This question would not generate a narrative box.]

Yes No Unsure

19. Have you, or any members of your family or close friends, ever served as a law enforcement officer?

Yes No Unsure

20. Have you, a family member, or close friend ever been arrested, charged, or convicted of a crime other than a minor traffic offense?

Yes No Unsure

21. Have you, a close relative, or close friend ever been the victim of a crime?

Yes No Unsure

22. Was it you or someone you know?
 Me Someone I know Both me and someone I know
23. What offense(s)?
24. Briefly describe what happened.
25. Would this cause you to favor one side?
 Yes No Unsure
26. Have you ever witnessed a crime?
 Yes No
27. This trial is scheduled to start XX and continue until XX. The daily schedule will be Monday through Thursday, from XX a.m. to 4:30 p.m., with no trial on Fridays. There is a lunch break from noon until 1:00 p.m., and usually one mid-morning and one mid-afternoon break. The law provides that a juror can be excused from service only if their absence from work would impose an undue hardship on the juror. Is there anything about our anticipated trial schedule that presents an undue hardship for you?
 Yes No Unsure
28. Have you ever been called as a witness in court?
 Yes No
29. Have you ever served on a jury?
 Yes No
30. What type of case was it or what was it about?
31. Were you the foreperson of the jury?
 Yes No Unsure
32. Have you ever served on a grand jury?
 Yes No
33. Age:

34. What is the highest level of education you completed? [options]
35. Are you currently attending college or another educational program?
 Yes No Unsure
36. What is your current employment status?
 Employed full time
 Employed part time
 Retired
 Student
 Unemployed looking for work
 Unemployed not looking for work
 Caregiver or homemaker
 Other [with narrative field]
37. Do you know anyone who works at the XX County Attorney's Office?
 Yes No
38. Have you had any interaction with or experience with law enforcement officers from [investigating agency]?
 Yes No
39. Is there anything that would make you unable to come to a verdict in this case?
 Yes No Unsure
40. Is there anything else you think we should know about your ability to be a juror in this case?
41. [Defendant] has made the decision to represent themselves at this trial. Defendants have the right to represent themselves during trial. Do you have an opinion about a person's decision to represent themselves?
 Yes No Unsure
42. [Insert language] will be spoken or used during this trial and the [Defendant/victim/witness] will use an interpreter because they are more comfortable hearing or viewing what is communicated in [insert

language]. Do you have an opinion about the use of interpreters during trial?

Yes No Unsure

43. Do you speak, sign, or understand [insert language] in any way?

Yes No

44. You are required to consider the statements of the interpreter rather than your own understanding of what has been communicated in [insert language]. Would you have any difficulty in doing this?

Yes No Unsure

45. By typing my name, I swear or affirm the answers given in this questionnaire are true.