



# INCREASING THE JURY POOL:

## IMPACT OF THE EMPLOYER TAX CREDIT

*Prepared for:*  
The Administrative Office of the Courts



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The *Juror Compensation Survey* and this report on its findings comprise the most extensive study of financial hardship associated with jury service ever conducted. As every researcher knows, studies of this magnitude are never undertaken, much less completed, without extensive assistance from a wide variety of people. This study is no exception and a debt of gratitude is owed to the following staff of the Administrative Office of the Courts for logistical support and editorial review: John Larson, Senior Court Services Analyst; Maya Dillard-Smith, Staff Analyst II; and Kristin Nichols, Senior Research Analyst.

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Of course, none of this project would have been possible without the participation of the superior court jury staff that distributed the *Juror Compensation Surveys* and provided additional information about their courts during the study period, and the thousands of Californians who completed these surveys in addition to performing their duties as prospective jurors in the California justice system. It is the sincerest hope that the findings from this report will provide greater understanding of the financial hardships associated with jury service and inspire commitment by California policymakers to implement effective methods to alleviate those hardships.

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## INTRODUCTION

The right to trial by jury, articulated in the Sixth and Seventh Amendments to the federal constitution and in all 50 state constitutions,<sup>1</sup> is one of the bedrock principles of American democracy. It serves several critical roles in the American justice system – as a check against governmental tyranny, as a means to reflect the wisdom and experience of the community in judicial decision-making, as a vehicle for educating the community about the justice system, and as an avenue for legitimizing governmental authority. In a recent national survey, 69% of Americans considered trial by jury the single most important feature of the American justice system.<sup>2</sup> Although few people look forward to jury service, the vast majority who serve report favorably on the experience.<sup>3</sup>

In spite of the historical importance and ongoing public support for the jury system, financial hardship – specifically the loss of income while on jury service – makes it more difficult for a large segment of the population to participate in the jury system in California and elsewhere in the United States.<sup>4</sup> The absence of these individuals has profound implications for the continued viability and credibility of the jury system. It tends to skew the resulting composition of the jury pool to the more affluent

segments of society, potentially violating fair cross section requirements; it distributes the burden of jury service inequitably on those with the financial wherewithal to serve; and it increases the costs associated with administering the jury system.<sup>5</sup>

California has taken a number of steps in recent years to alleviate the financial hardship associated with jury service. In July 1999, California implemented one-day or one-trial terms of jury service to reduce the amount of time citizens must make themselves available for jury service, particularly for those not actually impaneled on a jury.<sup>6</sup> It also increased the daily juror fee from \$5 to \$15, starting on the second day of service, to offset the out-of-pocket expenses (e.g., parking, meals) associated with jury service.<sup>7</sup> Despite these improvements, an estimated 10% of people who report for service are ultimately excused for hardship.<sup>8</sup>

To address this problem, both the California Blue Ribbon Commission on Jury System Improvement and the Task Force on Jury System Improvements proposed implementation of a tax credit to encourage employers to pay the salaries and wages of employees who are summoned for jury service.<sup>9</sup>

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<sup>1</sup> The right to a jury in criminal trials is guaranteed in all 50 states. The right to a jury trial in civil cases may be subject to demand thresholds or other limitations.

<sup>2</sup> AMERICA BAR ASSOCIATION, ... AND JUSTICE FOR ALL: ENSURING PUBLIC TRUST AND CONFIDENCE IN THE JUSTICE SYSTEM 6 (2001).

<sup>3</sup> Shari S. Diamond, *What Jurors Think: Expectations and Reactions of Citizens Who Serve as Jurors*, in VERDICT: ASSESSING THE CIVIL JURY SYSTEM (Robert E. Litan, ed.) at 282 (1993).

<sup>4</sup> A 1991 study of juror fees and terms of service in state and federal courts in 8 jurisdictions found that 27% of employers do not compensate employees while on jury service. The rate in state courts varied from a low of 14% in Seattle, Washington to a high of 34% in Bismarck, North Dakota. JANICE T. MUNSTERMAN et al., THE RELATIONSHIP OF JUROR FEES AND TERMS OF SERVICE TO JURY SYSTEM PERFORMANCE (NCSC March 1991).

<sup>5</sup> A common measure of administrative overhead in jury management is the total cost of jury administration (staff salary and fringe, facilities, capital expenditures) divided by the number of jurors who are qualified *and available* to serve. The greater the number of prospective jurors who are excused for financial hardship, the greater the administrative cost of the jury system on a per juror basis. G. THOMAS MUNSTERMAN, JURY SYSTEM MANAGEMENT 141-44 (1996).

<sup>6</sup> CAL. GOV. CODE § 68550; CAL. RULE OF COURT 861.

<sup>7</sup> CAL. CODE OF CIV. PROC. 215. Jurors begin receiving the \$15 juror fee on the second day of jury service. Jurors receive no fee for the first day of service.

<sup>8</sup> PAULA L. HANNAFORD-AGOR & NICOLE L. WATERS, EXAMINING VOIR DIRE IN CALIFORNIA 12 (2004). Hardship is a broad term that encompasses medical hardship and time conflicts as well as financial hardship.

<sup>9</sup> Report of the Blue Ribbon Commission on Jury System Improvement, Recommendation 3.27 at 45-47 (May 17, 1996); Final Report: Task Force on Jury System Improvements, Recommendation 3.27 at 38-40 (rev. April 2004).

The legislation would create a tax credit available to employers for “up to 50% of the amount paid or incurred as compensation by the tax payer [employer or self-employed person] during the taxable year to an employee for the period that the employee serves on a jury trial.”<sup>10</sup> Although the amount of the credit in any given tax year is limited to the total amount of net tax payable,<sup>11</sup> the credit can be carried over from year to year until it is exhausted.<sup>12</sup> As proposed, the tax credit does not include a limitation on the number of days of employee compensation or a total dollar amount per employee or per taxpayer. If adopted, the tax credit would provide some relief to those employers who make it possible for their employees to serve as trial jurors by continuing to pay their regular wages and salaries while they serve. It also would operate as a decrease in state tax revenues.

To assess the financial impact of the proposal on California employers as well as the state budget, the Administrative Office of the Courts (AOC) undertook the *Juror Compensation Survey* to document the extent to which California employers currently compensate employees while on jury service. This report describes:

- the study methodology;
- findings about the relationship between employer compensation policies and financial hardship associated with jury service;
- estimates of the financial impact of an employer tax credit; and
- recommendations for structural and procedural reforms to the jury system that may reduce the overall financial costs associated with an employer tax credit.

## METHODOLOGY

The *Juror Compensation Survey* was administered to people reporting for jury service in 34 counties in February and March 2004. The counties included in the study were selected based on the volume of jury trials conducted in the superior courts each year. See Table 1. Superior courts reporting 20 to 200 jury trials in fiscal year 2002-2003 were requested to distribute the surveys to people who reported for jury service in March 2004; courts reporting more than 200 jury trials annually were requested to distribute the survey to people reporting for jury service for a total of 10 days in February and March 2004.<sup>13</sup>

The survey focused on the relationship between employer-paid compensation during jury service and its financial impact on citizens and employers. It included questions about prospective jurors’ employment status, employer pay policies, jurors’ out-of-pocket expenses, financial hardship experienced as a result of jury service, support for mandatory employer pay policies, and demographic characteristics such as gender, age, and income level. See Appendix A for the *Juror Compensation Survey*. Participation in the survey was voluntary and the overall response rate by prospective jurors was 54% of the 64,879 people who reported for jury service during the survey period in the participating counties.<sup>14</sup>

The completed surveys were forwarded to the National Center for State Courts (NCSC) for data entry and analysis. NCSC staff calculated statistical weights for the resulting dataset to compensate for variations in survey response rates across counties and to provide statewide estimates for counties that did not participate in the survey. See Appendix B for a detailed description of the analysis weights.

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<sup>10</sup> *Id.* at 49-50.

<sup>11</sup> Net tax is defined as the gross tax owed less any applicable tax credits or taxes previously paid.

<sup>12</sup> *Id.*

<sup>13</sup> The specific dates that surveys were distributed were February 9-10, 18-20, 24-25, and March 3-4, 2004.

<sup>14</sup> A total of 750 juries were impaneled in those counties during the survey period.



NCSC also supplemented juror employment characteristics with information about jury operations statewide, including the size of jury panels for felony, misdemeanor, civil and other case types; the length of voir dire and the length of trials according to case type; and the total number of jurors and alternates ultimately impaneled on the jury.

The *Juror Compensation Survey* makes it possible to estimate the current proportion of employers who

compensate employees serving as jurors, but does not indicate the number of employers who would be induced to begin compensating employees while on jury service or to expand existing policies as a result of an employer tax credit. Thus, the study findings that follow provide estimates of the fiscal impact of the proposed legislation at different rates of employer participation.

**Table 1: Juror's Reporting for Duty in 2002-2003, by County**

<b>County</b>	<b>2002-2003 # Jury Trials</b>	<b>Jurors Reporting: March 2004</b>	<b>Surveys Completed by Jurors</b>	<b>Survey Response Rate</b>	<b>Juries Empanelled: March 2004</b>
Alameda	333	934	834	89%	3
Butte	62	459	133	29%	7
Contra Costa	316	1,745	920	53%	22
Fresno	123	4,982	1,026	21%	50
Humboldt	116	886	575	65%	13
Imperial	28	387	82	21%	4
Kern	196	900	239	27%	10
Kings	80	374	252	67%	4
Los Angeles	4,672	5,731	2,196	38%	82
Madera	53	658	602	91%	6
Marin	124	3,411	1,320	39%	27
Mendocino	40	491	457	93%	10
Merced	39	N/A	723	N/A	N/A
Monterey	98	854	739	87%	12
Nevada	32	185	33	18%	3
Orange	916	4,683	2,569	55%	73
Placer	53	545	219	40%	6
Riverside	405	8,128	2,758	34%	86
Sacramento	1,074	3,545	1,165	33%	51
San Bernardino	280	3,179	2,966	93%	38
San Diego	1,056	1,530	859	56%	44
San Francisco	360	2,435	1,965	81%	17
San Joaquin	185	4,030	1,984	49%	19
San Luis Obispo	41	817	257	31%	11
Santa Barbara	125	592	128	22%	10
Santa Clara	612	3,440	1,402	41%	41
Shasta	37	1,070	876	82%	13
Siskiyou	20	62	62	100%	1
Solano	175	1,942	1,642	85%	26
Sonoma	91	714	400	56%	9
Stanislaus	224	667	386	58%	9
Tulare	159	1,500	1,504	100%	23
Tuolumne	29	N/A	183	N/A	N/A
Ventura	265	4,003	3,371	84%	20
<b>Total</b>	<b>12,419</b>	<b>64,879</b>	<b>34,827</b>	<b>53.7%</b>	<b>750</b>

## STUDY FINDINGS

Perhaps not surprisingly, the survey found overwhelming support from jurors for mandatory employer compensation for employees serving as trial jurors. See Table 2. Statewide, 78% of jurors said that employers should be required to pay employees while on jury service. This rate varied somewhat by county, but even in San Luis Obispo, the county with the lowest support for mandatory employer compensation, nearly two of every three jurors (64%) indicated their support. There was little difference in the level of support according

to employment status, but among employed jurors, citizens who were self-employed or who worked for small, private businesses were generally less supportive of mandatory employer compensation than jurors in other employment sectors. Nevertheless, all employment sectors showed at least a majority of jurors supporting mandatory employer compensation for employees on jury service, thus indicating the possible level of support for a tax credit to assist their employers.

**Table 2: Percent of Jurors that Agreed that Employers Should be Required to Pay Employees on Jury Service**

County			
Alameda	82.0%	Riverside	77.3%
Butte	68.3%	Sacramento	79.5%
Contra Costa	78.8%	San Bernardino	80.4%
Fresno	77.9%	San Diego	84.0%
Humboldt	65.1%	San Francisco	84.2%
Imperial	80.6%	San Joaquin	79.4%
Kern	70.8%	San Luis Obispo	64.2%
Kings	71.7%	Santa Barbara	79.2%
Los Angeles	78.2%	Santa Clara	82.0%
Madera	71.1%	Shasta	71.1%
Marin	71.3%	Siskiyou	65.5%
Mendocino	70.6%	Solano	80.6%
Merced	69.2%	Sonoma	68.2%
Monterey	73.9%	Stanislaus	73.6%
Nevada	77.4%	Tulare	70.2%
Orange	74.1%	Tuolumne	74.1%
Placer	76.7%	Ventura	72.9%

The first step in determining the financial impact of possible tax credit legislation involves identifying the number of prospective jurors whose employers would be eligible to claim the tax credit – in this case, all jurors employed in the non-public sector.<sup>15</sup> Based on responses from the *Juror Compensation Survey*, these jurors comprise 62.5% of all people reporting for jury service. See Table 3. Public sector employees comprised 19.8% of all jurors and the remaining segment of the jury pool (17.7%) consisted of students, retirees, and persons not employed (e.g., unemployed, homemaker, disabled).

Jurors working for large, private business employers (defined on the survey as for-profit businesses with 50 or more employees) comprise approximately half of the non-public sector employees. Other employment sectors in the survey included small, private business (fewer than 50 employees), the self-employed, and non-profit organizations.

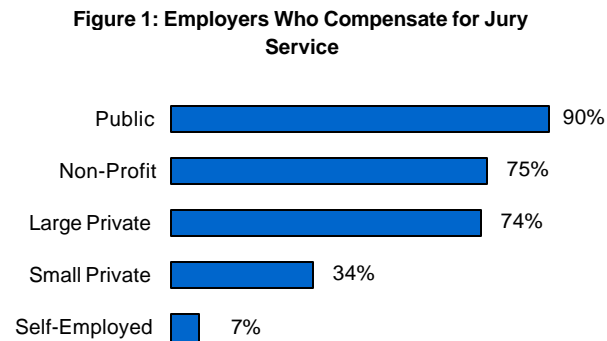
Employment Status		Employment Sector	
Employed	77.5%	Public	87.8%
		Large Private	82.5%
		Small Private	68.1%
		Self-Employed	54.5%
		Non-Profit	81.3%
Employed	77.5%		
Not Employed	82.0%		
Retired	78.7%		
Student	81.3%		

**Table 3: Percentage of Jurors' Employers Eligible for Tax Credit**

Employment Status		Employment Sector		
Employed	82.3	Non-Public 62.5	Self-Employed	10.9
			Large Private	31.3
			Small Private	13.6
			Non-Profit	6.7
		Public	19.8	
Not Employed	7.0			
Retired	9.2			
Student	1.5			

<sup>15</sup> Government entities do not file income tax returns. Consequently, public sector employees were excluded from calculations of the fiscal impact of the employer tax credit. All other employment sectors (including non-profit organizations, which are required to file tax returns) are included in these calculations.

Overall, nearly two-thirds of employers provide some compensation to their employees who are summoned for jury service, although this percentage varies considerably according to employment sector. See Figure 1. In the non-public employment sector, large private business and non-profit employers are the most likely to pay employees. Approximately three-fourths of jurors in these two employment categories indicated that employers paid their wages or salaries while serving. In contrast, only one-third of jurors employed in small, private business and only 7% of self-employed jurors receive compensation from their employers.



Interestingly, over 10% of jurors employed in the public sector reported that they are not paid while on jury service. The majority (62%) of these jurors report annual incomes less than \$25,000, suggesting that they may be part-time employees or contract workers who are not eligible for certain employment benefits including compensation during jury service. In contrast, only 9% of public sector employees who are compensated while on jury service report income less than \$25,000.

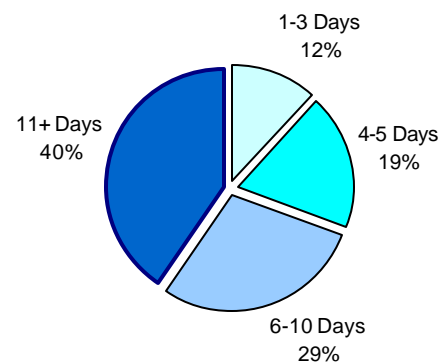
## EMPLOYER POLICIES

The details of employer compensation policies varied considerably both in terms of the number of days of compensation covered for jury service and employer requirements concerning juror fees.

### Compensated Days

The number of days employers compensate jurors affects the ability of employees to serve on longer trials. On average, felony, civil and mental health trials take 8 days to conclude from the beginning of jury selection through return of the verdict; misdemeanor trials take 5 days to conclude.<sup>16</sup> Median trial lengths were somewhat shorter. The median number of days for felony and civil trials was 7 days, for misdemeanor trials was 3 days, and for mental health trials was 2 days. However, nearly one-third of jurors reported that employers covered five or fewer days of jury service, effectively precluding those jurors from serving on longer trials.<sup>17</sup> See Figure 2. Only 40% of employers cover 11 days or more of jury service. Consequently, the burden of longer trials tends to fall disproportionately on jurors working for employers with more generous compensation policies concerning jury service.

Figure 2: Number of Compensated Jury Days

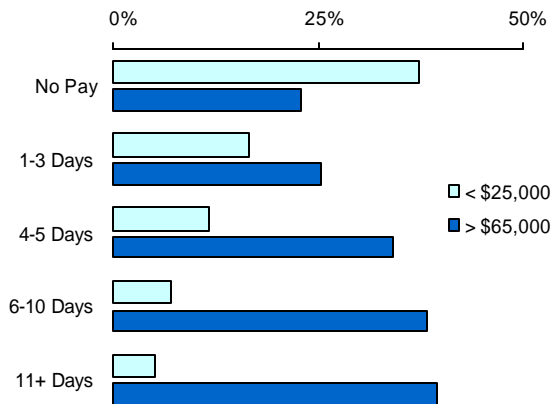


<sup>16</sup> HANNAFORD-AGOR & WATERS, *supra* note 8, at 12.

<sup>17</sup> Over one-third (36.2%) of jurors reported that their employers paid wages or salaries while on jury service, but did not know the precise details of those policies. The statistics reported here reflect the responses of jurors who knew how many days of jury service were covered by their employers' compensation policies.

In addition to the obvious inequities visited on these civic-minded employers, the incomes of their employees tend to be significantly higher than those working for employers with less generous jury service policies, raising questions about how well juries impaneled from those pools reflect a fair cross section of their communities.<sup>18</sup> For example, the average income of employed jurors increases substantially with increases in the number of days of jury service compensated.<sup>19</sup> See Figure 3. As a result, the income distribution in the jury pool differs substantially by the number of days paid by employers. More than one third of jurors who work for employers who do not compensate for jury service earn less than \$25,000 per year, compared to just 5% of jurors who work for employers that pay 11 or more days for jury service. Conversely, less than one-fourth of jurors who work for employers without jury service pay earn \$65,000 or more, compared to nearly 40% of jurors working for employers who pay 11 or more days.

Figure 3: Salary vs. Days Compensated by Employer for Jury Service



<sup>18</sup> Under federal constitutional standards, the juries that are actually impaneled are not required to reflect a fair cross section of the community; only the pool from which those juries are selected must do so. *Taylor v. Louisiana*, 419 U.S. 522 (1975). California law requires random selection of jurors from sources representing a cross section of the population served by the court; if used by the court to summon jurors, the Department of Motor Vehicles (DMV) driver license and identification card lists combined with registered voter lists shall be considered sources that are inclusive of the representative cross section of the population. CAL. CODE OF CIV. PROC. § 197(a)-(b). All California courts use the combined DMV and registered voter lists.

<sup>19</sup> The *Juror Compensation Survey* asked jurors to indicate their annual income in eight categories: less than \$15,000, \$15,000 to \$25,000, \$25,000 to \$35,000, \$35,000 to \$45,000, \$45,000 to \$55,000, \$55,000 to \$65,000, \$65,000 to \$75,000, and greater than \$75,000. For the purpose of calculating mean income, the midpoint of each category was assumed for each juror. Jurors indicating the category “less than \$15,000” and jurors indicating the category “greater than \$75,000” were assumed to earn \$15,000 and \$75,000, respectively.

### Surrendering Fees

Another variation in employer compensation policies involves whether the employer requires employees to surrender their juror fees and/or mileage reimbursement. More than one-third of jurors report their employer’s policy requires them to surrender their juror fees. See Table 4. Twelve percent (12%) of employers also require employees to surrender their mileage reimbursement.

Table 4: Employer Policies Concerning Juror Fees

	Keep Fee	Give Fee to Employer	Waive / Donate Fee
Public	40.3%	50.2%	9.6%
Large Private	71.5%	16.4%	12.1%
Small Private	83.7%	7.2%	9.1%
Self-Employed	86.8%	1.7%	11.5%
Non-Profit	68.4%	19.0%	12.5%
<b>Total Employed</b>	<b>53.4%</b>	<b>34.1%</b>	<b>12.5%</b>

	Keep Mileage	Give Mileage to Employer	Waive / Donate Mileage
Public	68.8%	18.5%	12.8%
Large Private	81.6%	5.6%	12.9%
Small Private	86.4%	2.5%	11.1%
Self-Employed	86.6%	1.1%	12.3%
Non-Profit	79.2%	6.0%	14.8%
<b>Total Employed</b>	<b>73.7%</b>	<b>12.1%</b>	<b>14.2%</b>

These policies, however, vary considerably according to employment sector. Half of all public employees report that they surrender their jury fee compared to 11% of non-public employees. Self-employed jurors were the most likely to keep the fee (87%), followed by jurors working in small, private businesses (84%), large, private businesses (72%), non-profit organizations (68%), and public agencies (40%). Jurors were more likely across all employment sectors to keep their mileage reimbursement rather than surrender it to employers.

Employer policies that require surrender of the juror fee or mileage reimbursement reflect misunderstanding about the underlying purpose of these fees – namely to defray the out-of-pocket expenses associated with jury service, including parking, meals, and other incidental expenses. For the most part, these expenses are fairly modest. Overall, 78% of jurors who reported for jury service paid less than \$5 for parking and 85% paid less than \$10 for lunch. Only 10% of jurors incurred dependent care expenses while on jury service, and the majority of those expenses were less than \$25 per day. Thus, the survey indicates that the \$15 daily juror fee would provide reimbursement for all out-of-pocket expenses, beginning on the second day of service, for three-fourths (75%) of jurors. As this illustrates, the juror fee is not intended to compensate for lost income. Surrendering the fee to employers undermines the purpose of the fees and may contribute to the financial hardship experienced by jurors who report for jury service.

### FINANCIAL HARDSHIP

The majority of employed jurors in the *Juror Compensation Survey* (67.1%) reported that they did not experience financial hardship as a result of jury service.<sup>20</sup> Even so, there was great variation in financial hardship rates among the various employment sectors. See Table 5. Self-employed jurors comprised the segment with the highest rate of financial hardship – 67% – but other segments also reported surprisingly high rates. For example, more than half of the jurors employed by large, private businesses (51%) and close to one-fourth of those employed by small, private businesses (28%) and non-profit organizations (24%) reported financial hardship. Only public sector employees reported relatively low lev-

els of financial hardship (12%), and those that did consisted primarily of employees who are not compensated during jury service.

**Table 5: Percent of Jurors Reporting Financial Hardship by Employment Status and Sector**

Employment Status		Employment Sector	
Employed	32.9%	Public	12.4%
		Self-Employed	67.4%
		Large Private	51.3%
		Small Private	28.2%
		Non-Profit	23.9%
Not Employed	43.9%		
Retired	30.4%		
Student	39.2%		

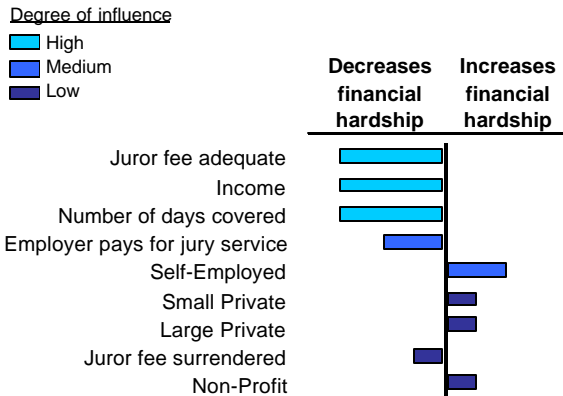
### FACTORS CONTRIBUTING TO FINANCIAL HARDSHIP

As these findings have demonstrated, it is possible to detect measurable differences in responses among the prospective jurors who participated in the *Juror Compensation Survey* based on certain individual characteristics (e.g., gender, income, employment status or sector). But when these differences were examined simultaneously, some characteristics were more useful than others in determining whether that individual experienced financial hardship as a result of jury service. The NCSC used a statistical method called the logistic regression to examine the strength of each factor relative to the others and whether that factor was directly or inversely related to financial hardship. The factors included in the analysis were employment sector, the existence and details of employer compensation policies (e.g., number of days covered, fee surrender policies), juror income, and whether the juror fee was sufficient to

<sup>20</sup> People summoned for jury service for whom the loss of even one day of income would impose a financial hardship are often excused from service without having to report to the courthouse at all. The proportion of people reporting financial hardship may therefore be lower among survey respondents than might appear among all jury-eligible people.

cover all out-of-pocket expenses. In Figure 4, the factors are listed in order of their relative influence on financial hardship.

**Figure 4: What factors influence financial hardship?**



Juror income, of course, was highly significant; jurors with higher incomes were less likely to say that they experienced financial hardship as a result of jury service. Even after controlling for income, however, all of the independent variables were significant predictors of jurors' reports of financial hardship.<sup>21</sup>

- Adequate juror fees – that is, juror fees that equaled or exceeded the juror's out-of-pocket expenses – were less likely to result in financial hardship.
- Jurors who were not compensated by their employers while on jury service were more likely to say that they experienced financial hardship.

- The relevant details of employer compensation policies were also found to be significant predictors of financial hardship. Fewer days of employer-compensated jury service increased the likelihood of financial hardship. Ironically, the requirement that employees surrender their juror fees decreased financial hardship.
- Finally, compared to public sector employees, jurors working for non-public employers were more likely to report financial hardship, with self-employed jurors showing the largest overall effect.

### FISCAL IMPACT OF EMPLOYER TAX CREDIT LEGISLATION

To calculate the fiscal impact of an employer tax credit, NCSC staff developed a formula, some of the terms of which require explanation or qualification. Using information about the number of jurors who reported for jury service during the survey period in the 34 court systems that participated in the study and the number of juries that were impaneled from those jury pools, NCSC estimated the number of individual jurors who report for jury service each year and the number of days they serve.<sup>22</sup>

In basic terms, the formula sums the number of “juror days” for jurors and alternates impaneled in felony, misdemeanor, civil, and other trials, for jurors sent to courtrooms for jury selection but who are not selected as trial jurors, and for jurors who are told to report for jury service but are not sent to a courtroom for jury selection.<sup>23</sup> The formula then uses

<sup>21</sup> Chi-square (9) = 3305.079,  $p < .001$ .

<sup>22</sup> NCSC staff summed the number of juries impaneled in the 34 counties (759) in March 2004 and multiplied by 12, which equals 9108, to estimate the number of juries impaneled annually in those counties. That number was then adjusted by a factor of 1.0504, the statistical weight applied to calculate the number of juries impaneled statewide (9,567).

<sup>23</sup> The number of felony, misdemeanor, civil, and other trials was derived from the proportion of each case type in the *2004 Court Statistics Report*. Felony, 50.3%; Misdemeanor, 26.4%; Civil, 23.0%, and Other, 0.5%.

the results of the *Juror Compensation Survey* to calculate the proportion of jurors who are employed in non-public sector jobs and their estimated income.<sup>24</sup> These figures are used to estimate the total dollar value of lost wages or salaries incurred by jurors or their employers during jury service.<sup>25</sup> Finally, this figure is reduced first by 50% to reflect the maximum amount of the tax credit, and then by 37.7% to reflect the proportion of non-public sector employ-

ers who do not currently compensate employees who are summoned for jury service. Table 6 provides the estimated value of the tax credit available to eligible employer taxpayers who currently compensate employees on jury service.

Table 7 provides estimates of the tax credit under increased levels of employer participation (to 100%).<sup>26</sup>

**Table 6: Estimated Cost of Employer Tax Credit at Existing Levels of Employer Participation**

Jurors:	Total Juror Days	% of Juror Days Eligible for Employer Tax Credit (employed, non-public sector jurors) 62.5% of total	Total Compensation Incurred by Employers for the Eligible Juror Days	Total Proposed Compensation Subject to Tax Credit is 50%	% of Employers Who Currently Compensate Employees is 62.3%
Not Sent to Courtroom	243,082	151,843	\$27,468,983	\$13,734,491	\$8,556,588
Sent to Courtroom, Not Selected	876,100	547,261	\$99,001,620	\$49,500,810	\$30,839,005
Selected for Trial	1,023,918	639,598	\$115,926,260	\$57,963,130	\$36,111,030
<b>Total</b>	<b>2,143,100</b>	<b>1,338,702</b>	<b>\$242,396,862</b>	<b>\$121,198,431</b>	<b>\$75,506,623</b>

**Table 7: Estimated Cost of Employer Tax Credit up to 100% Employer Participation**

Jurors:	% of Employers Who Compensate Employees				
	62.3%	70%	80%	90%	100%
Not Sent to Courtroom	\$8,556,588	\$ 9,614,144	\$10,987,593	\$12,361,042	\$13,734,491
Sent to Courtroom, Not Selected	\$30,839,005	\$34,650,567	\$39,600,648	\$44,550,729	\$49,500,810
Selected for Trial	\$36,111,030	\$40,574,191	\$46,370,504	\$52,166,817	\$57,963,130
<b>Total</b>	<b>\$75,506,623</b>	<b>\$84,838,902</b>	<b>\$96,958,745</b>	<b>\$109,078,588</b>	<b>\$121,198,431</b>

<sup>24</sup> The question concerning income was categorized as an ordinal variable. For the purpose of calculating the fiscal impact of the employer tax credit, the formula uses \$15,000 and \$75,000 in the first and last categories, and the midpoint of the middle categories, for jurors' actual income.

<sup>25</sup> The *Juror Compensation Survey* data did not include a variable to indicate the number of days each juror served or whether he or she was ultimately impaneled on a jury. It is not possible, therefore, to calculate the fiscal impact of the employer tax credit while controlling for the likelihood that jurors who are paid while on jury service, and thus do not experience financial hardship, are more likely to be impaneled. The formula assumes a proportionate distribution of employment sector, employer compensation policies, and income level across all categories of jury service.

<sup>26</sup> The AOC has engaged in substantial outreach and education efforts to employers in recent years that, if continued, are likely to result in an increased level of employer compensation policies and consequently, participation in the tax credit.

Tables 8 through 10 provide estimates of alternate tax credit models including placing limits on the percentage of income to which the tax credit can be applied, capping the dollar amount of the

tax credit per employee and capping the number of days of jury service to which the tax credit can be applied.

**Table 8: Estimated Cost of Employer Tax Credit up to 100% of Total Employee Compensation**

Jurors:	Total Compensation Subject to Tax Credit					
	50%	60%	70%	80%	90%	100%
Not Sent to Courtroom	\$ 8,556,588	\$ 10,267,906	\$ 11,979,223	\$ 13,690,541	\$ 15,401,859	\$ 17,113,176
Sent to Courtroom, Not Selected	\$ 30,839,005	\$ 37,006,805	\$ 43,174,606	\$ 49,342,407	\$ 55,510,208	\$ 61,678,009
Selected for Trial	\$ 36,111,030	\$ 43,333,236	\$ 50,555,442	\$ 57,777,648	\$ 64,999,854	\$ 72,222,060
<b>Total</b>	<b>\$ 75,506,623</b>	<b>\$ 90,607,947</b>	<b>\$105,709,271</b>	<b>\$120,810,596</b>	<b>\$135,911,921</b>	<b>\$151,013,245</b>

Note: Assumes current employer participation at 62.3%

**Table 9: Estimated Costs of Employer Tax Credit Capped at Various Amounts per Employee per Day**

Jurors:	Total Tax Credit - Per Day Cap Per Employee			
	\$100	\$150	\$250	\$350
Not Sent to Courtroom	\$15,591,727	\$ 6,252,119	\$ 8,359,475	\$ 8,790,625
Sent to Courtroom, Not Selected	\$16,285,738	\$21,689,914	\$29,285,089	\$30,839,005
Selected for Trial	\$19,033,562	\$25,349,560	\$34,226,236	\$36,042,337
<b>Total</b>	<b>\$50,911,027</b>	<b>\$53,291,593</b>	<b>\$71,870,800</b>	<b>\$75,671,967</b>

Note: Income Eligible for Tax Credit Limited to 50%, 62.5% Non-Public Sector Employers Participating

Note: \$350 Cap includes all income up to \$75,000 per year

**Table 10: Estimated Cost of Employer Tax Credit with Caps on Number of Days of Compensation per Employee**

Jurors:	Total Tax Credit - Maximum Days of Compensation		
	3	5	10
Not Sent to Courtroom	\$ 8,790,625	\$ 8,790,625	\$ 8,790,625
Sent to Courtroom, Not Selected	\$30,839,005	\$30,838,852	\$30,838,852
Selected for Trial	\$14,906,900	\$24,844,777	\$36,042,337
<b>Total</b>	<b>\$54,536,529</b>	<b>\$64,474,254</b>	<b>\$75,671,814</b>



## RECOMMENDATIONS FOR REDUCING FISCAL IMPACT OF EMPLOYER TAX CREDIT

Many of the factors that contribute to the overall cost of the employer tax credit are beyond the immediate control of the justice system. Some, such as the proportion of jurors in the jury pool that are employed and their respective income levels, are external factors. Others, such as the number of jury trials conducted each year and the amount of time needed to conclude those trials, are fairly resistant to administrative change. There are, however, several ways that the court system can improve its utilization of the jury pool to minimize the number of “wasted jurors” – that is, people who are told to report for jury service, but are not needed to impanel a jury. The time that these excess jurors spend waiting is, through no fault of their own, a dead-weight loss not only to the judicial system, but also to their employers, families, and customers. With implementation of an employer tax credit, some portion of this dead-weight loss would be extended to California taxpayers as well in the form of tax revenue losses to the state treasury.

This section describes current inefficiencies observed in existing jury operations and estimates the potential savings in the employer tax credit from jury system improvements. Recommendations focus on three areas in particular: the number of people told to report for jury service, but not sent to a courtroom for jury selection; the number of people sent to a courtroom for jury selection, but not questioned before the jury for that trial is impaneled; and the number of days needed by judges and lawyers to select and swear a jury for trial.

### *Number of Jurors Told to Report*

More than three quarters of a million people report to California courthouses for jury service each year in response to approximately 10 million summonses mailed. In conducting the *Juror Compensation Survey*, NCSC staff were surprised

at the number of juror surveys returned from certain counties given the number of jury trials that were expected in those courts and the estimated panel size from which juries were selected. After verifying the actual number of juries impaneled, the NCSC found that some counties appear to call in many more people for jury service than are actually needed to serve in those courts. Overall, the NCSC estimates that nearly a quarter of a million citizens report to the courthouse for jury service but are not sent to a courtroom for jury selection each year, at a total cost of \$27.5 million in lost income for jurors or their employers.<sup>27</sup> Under the proposed employer tax credit, the revenue loss to the state treasury would be \$8.6 million. Although not quantifiable in monetary terms, poor utilization of jurors’ time also imposes an indirect cost on public trust and confidence in the courts.

Typically, the problem of having an excess number of jurors report for service is related to a lack of certainty about the number of trials likely to go forward, usually due to late plea agreements or settlements entered after jurors have been told to report. Although it is difficult, if not impossible, to prevent all such occurrences, effective judicial pretrial practices can keep those events to a minimum. Moreover, jury staff generally can anticipate the proportion of trials that are likely to fall through and adjust the size of the jury pool told to report accordingly. Reducing the number of people told to report will also permit a commensurate reduction in the number of summonses mailed, thus saving printing, postage, and administrative staff costs.

### *Jurors Not Questioned During Voir Dire*

Another area of potential savings involves reducing the number of citizens who are sent to a courtroom for jury selection, but who are “not reached” – that is, not questioned by the judge or attorneys before the jury is impaneled. In *Examining Voir Dire in California*, NCSC staff found

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<sup>27</sup> See Table 6, line 1, *supra*.

that, on average, 21 people were not reached on felony panels, 17 people on misdemeanor panels, 19 people on civil panels, and 17 people on other panels.<sup>28</sup> The net result is nearly 200,000 people each—approximately 24% of all jurors reporting—who are ultimately not needed to select a jury in those cases. In fewer than 6% of cases is the entire jury panel exhausted – that is, all prospective jurors are questioned before the jury is selected.

The unique characteristics of each case make it difficult to accurately predict the exact number of prospective jurors needed to impanel a jury, and it is often inefficient, awkward, and time consuming to send supplemental panels to the courtroom to complete jury selection. Nevertheless, it is clear that the vast majority of panels sent to courtrooms exceeds the needed amount of prospective jurors by a considerable margin. Reducing the panel size to leave a margin of even five jurors “not reached” would reduce this number by nearly 150,000 annually, with an estimated savings of nearly \$16.5 million in lost income for employed people. Under the proposed employer tax credit legislation, the revenue savings would be approximately \$5.1 million.

#### *Time Spent on Voir Dire*

A final area of potential improvement in jury utilization involves the amount of time needed to select juries for trial. In *Examining Voir Dire in California*, the NCSC found that the vast majority of trials required two or more days to select a jury. Only two of the 18 trials observed by project

staff were able to impanel a jury in a single day. The longest voir dire – a misdemeanor – took five days.

There is little comparative data on the length of the voir dire process. The only national study to capture this type of information was the 2001 Civil Justice Survey of State Courts, conducted jointly by the NCSC and the Bureau of Justice Statistics.<sup>29</sup> In 90% of 4,776 civil jury trials for which the length of voir dire was known<sup>30</sup> the jury was selected in 1 day or less. An additional 6% of those juries were picked in 2 days. It is particularly striking to note that the Superior Courts of nine counties in California participated in the 2001 Civil Justice Survey of State Courts, contributing a total of 742 jury trials or 15% of the total dataset. Of the California trials,<sup>31</sup> however, only 64% picked a jury in one day or less. Twenty-seven percent (27%) required two days, and 8% required three or more days for jury selection.

An earlier study of trial length in nine trial courts (3 each in New Jersey, Colorado, and California) found that jury selection in civil trials lasted on average 3 hours and 13 minutes (excluding recesses) in the California courts, compared to 2 hours and 11 minutes in Colorado and just 50 minutes in New Jersey.<sup>32</sup> In criminal trials, this disparity was even greater. The three California courts averaged 5 hours and 11 minutes to select a criminal jury, compared to 2 hours and 56 minutes in Colorado and 1 hour and 25 minutes in New Jersey.<sup>33</sup> In short, the voir dire process takes considerably longer in California than elsewhere in the country.<sup>34</sup>

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<sup>28</sup> HANNAFORD-AGOR & WATERS, *supra* note 8, at 13.

<sup>29</sup> The Civil Justice Survey of State Courts is a periodic study of civil litigation that examines case and litigant characteristics in bench and jury trials in 46 large, urban courts in the United States.

<sup>30</sup> Information on the length of voir dire was missing in 24.8% of all jury trials in the 2001 Civil Justice Survey of State Courts.

<sup>31</sup> Forty-three percent (43%) of the data on voir dire length was missing from the California trials.

<sup>32</sup> DALE ANNE SIPES et al., ON TRIAL: THE LENGTH OF CIVIL AND CRIMINAL TRIALS 14 (1988).

<sup>33</sup> *Id.* at 19. Neither the 2001 Civil Justice Survey of State Courts nor any other known study has examined the relationship between the length of voir dire and the outcome of jury trials. It is not known, consequently, whether the verdicts delivered by California juries are substantially more accurate or are the product of a less biased decision-making process as a result of these comparatively long voir dire times.

<sup>34</sup> Neither the 2001 Civil Justice Survey of State Courts nor any other known study has examined the relationship between the length of voir dire and the outcome of jury trials. It is not known, consequently, whether the verdicts delivered by California juries are substantially more accurate or are the product of a less biased decision-making process as a result of these comparatively long voir dire times.

There are significant costs associated with longer voir dire times, both for jurors and their employers as well as for the courts. With respect to the latter, California law provides for jurors to begin receiving the \$15 daily juror fee after the first day of service. Consequently, the court incurs these costs for a large proportion of jurors who are not ultimately selected for trial. A lengthy voir dire also extends the total length of the trial, resulting in expenses for judges, courtroom staff (bailiffs, court clerks, court interpreters), and trial lawyers and their clients.<sup>35</sup> With respect to jurors and their employers, the estimated cost for each extra day of voir dire is over \$65 million in lost income incurred by employers or by the jurors themselves. Based on the existing proportion of employers who pay employees while on jury service and the proposed employer tax credit, reducing the average length of voir dire to one day translates to over \$20 million in potential revenue savings for the state.

If all three areas of potential improvement in juror utilization were implemented, the total revenue savings from the proposed employer tax credit would be \$33.7 million or approximately 45% of the total estimated cost of the employer tax credit legislation. Moreover, the court could potentially save \$14.5 million in direct and jury administration costs alone.<sup>36</sup> In short, the savings from these improvements would make up a substantial portion of the tax revenues lost due to the proposed tax credit.

## CONCLUSIONS

The loss of earned income for citizens serving as trial jurors is a major cause of financial hardship that interferes with broad citizen participation in the jury system. For courts, this presents significant issues both in terms of the diversity of the jury pool and the administrative efficiency of the jury system. For citizens, it distributes the burden of jury service inequitably among the jury-eligible population.

To address this issue, the Blue Ribbon Commission and the Task Force have investigated the possibility of an employer tax credit designed to reduce the financial impact of employee absences due to jury service. In doing so, the proposed legislation is designed to encourage even more employers to compensate their employees at sufficient levels to permit their full participation in the jury system when needed. As proposed, the state revenues lost as a result of this legislation are estimated at \$75.5 million under existing levels of non-public sector employer participation. These costs increase to \$121.2 million if all non-public sector employers participate in the employer tax credit by providing full compensation for employees serving as trial jurors.

In studying the fiscal impact of the proposed legislation, the Judicial Council also found areas of potential improvement in juror utilization that may

Improved Juror Utilization Fiscal Impact (\$ millions)				
	Savings To Businesses	Reduction in Cost of Tax Legislation	Savings by the Court	Actions to Consider
Reduced # of Jurors Told to Report	\$ 28	\$ 9	\$ 4	Improve prediction rate of pre-trial pleas and settlements
Jurors Not Questioned During Voir Dire	\$ 17	\$ 5	\$ 2	Reduce panel size to leave margin of five jurors "not reached"
Time Spent on Voir Dire	\$ 65	\$20	\$ 9	Reduce average time spent on voir dire by one day
<b>Total Savings</b>	<b>\$110</b>	<b>\$34</b>	<b>\$15</b>	

<sup>35</sup> In the study of trial length, jury selection accounted for 15% of trial length in civil trials and 30% of trial length in criminal trials. DALE A. SIPES et al., *supra* note 28, at 14, 19.

<sup>36</sup> This figure reflects approximately \$8.7 million in jury fees plus estimated administrative and overhead costs of \$5.8 million based on \$15 per juror reporting for service, which is a benchmark amount for jury administration/overhead costs in a reasonably efficient court environment.

reduce the fiscal impact of the legislation by as much as \$33.7 million. In particular, improved calendar management to better calibrate the number of jurors told to report with the number of trials likely to begin, reduced panel sizes, and shorter voir dire would decrease the revenue losses due to the employer tax credit as well as the direct and indirect costs on the courts and on jurors themselves.

## APPENDIX A

The Administrative Office of the California Courts is interested in the financial impact of jury service on jurors and their employers. We ask you help in this research project by answering the following survey questions. Your responses are anonymous. Answer each question to the best of your ability.

1. What is your employment status?
  - A. Employed
  - B. Not employed (*Skip to Question 6*)
  - C. Retired (*Skip to Question 6*)
  - D. Student (*Skip to Question 6*)
2. If you are employed, please indicate the type of employment:
  - A. Self-employed
  - B. Public sector (federal, state, county or municipal government, public education, etc.)
  - C. Private business (less than 50 employees)
  - D. Private business (50 employees or more)
  - E. Private, non-profit organization
3. If you are employed, does your employer pay you while you are on jury service?
  - A. No (*Skip to Question 6*)
  - B. Yes, my employer pays my full salary or wages
  - C. Yes, my employer pays partial salary or wages
  - D. Yes, my employer pays the difference between my salary or wages and the jury service payment
4. For how many days does your employer pay your salary while you are in jury service?
  - A. 0 days
  - B. 1-3 days
  - C. 4-5 days
  - D. 6 to 10 days
  - E. 11 days to unlimited
  - F. Don't know
5. What do you do with your payment for jury service?
  - A. Keep it
  - B. Give it to my employer
  - C. Waive or donate payment
6. What do you do with your mileage reimbursement?
  - A. Keep it
  - B. Give it to employer
  - C. Waive or donate payment
7. Should employers be required by law to pay jurors' salaries during jury service?
  - A. Yes
  - B. No
8. How much were parking expenses during your jury service?
  - A. \$5.00 or less
  - B. \$5.01 - \$10.00
  - C. \$10.01 - \$15.00
  - D. More than \$15.00
9. What is the average daily amount you spent for lunch during your jury service?
  - A. \$5.00 or less
  - B. \$5.01 - \$10.00
  - C. \$10.01 - \$15.00
  - D. More than \$15.00
10. Did you have additional expenses for daily dependent care because of jury service?
  - A. No
  - B. Yes, \$25.00 or less
  - C. Yes, \$25.01 - \$50.00
  - D. Yes, \$50.01 - \$75.00
  - E. Yes, more than \$75.00
11. Did jury service impose a financial hardship on you?
  - A. Yes
  - B. No
12. What is your annual income or pay?
  - A. Less than \$15,000
  - B. \$15,000 to \$24,999
  - C. \$25,000 to \$34,999
  - D. \$35,000 to \$44,999
  - E. \$45,000 to \$54,999
  - F. \$55,000 to \$64,999
  - G. \$65,000 to \$74,999
  - H. \$75,000 or more
13. Please indicate your gender:
  - A. Male
  - B. Female
14. Please indicate your age:
  - A. 18-24
  - B. 25-34
  - C. 35-44
  - D. 45-54
  - E. 55 or older

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## APPENDIX B

Analysis weights to provide statewide estimates were derived as follows:

- 1) The number of jury trials conducted in each of the participating counties, and for the entire state, in 2002-2003 was obtained from Table 3a of the 2004 Court Statistics Report. If the 2004 Court Statistics Report indicated that the data for 2002-2003 were incomplete, the number of jury trials for 2001-2002, or the number of jury trials for 2000-2001, was used (whichever was higher).
- 2) The percent of county jury trials is based on the number of jury trials for each county as a proportion of the total statewide jury trials.
- 3) County weights were derived by dividing the percentage of county jury trials by the percentage of surveys for each county entered in the *Juror Compensation Survey* dataset. The county weights compensate for different survey response rates and jury management practices across counties.
- 4) State weights were derived by multiplying each county weight by a factor of 1.0504 to adjust for the proportion of jury trials conducted in each county as a proportion of the entire state.

County	Surveys Received		Jury Trials (2002-2003)		County Weights	State Weights
	Frequency	Percent	Frequency	Percent		
Alameda	834	2.31	333	2.55	1.1071	1.1629
Butte	133	.37	62	.48	1.2925	1.3577
Contra Costa	1,827	5.05	316	2.42	0.4796	0.5037
Fresno**	1,026	2.84	123	.94	0.3324	0.3491
Humboldt	575	1.59	116	.89	0.5593	0.5875
Imperial	517	1.43	28	.21	0.1502	0.1577
Kern	239	.66	196	1.50	2.2738	2.3884
Kings**	252	.70	80	.61	0.8802	0.9246
Los Angeles	2,196	6.07	4,672	35.81	5.8988	6.1961
Madera	602	1.66	53	.41	0.2441	0.2564
Marin	1,320	3.65	124	.95	0.2605	0.2736
Mendocino	457	1.26	40	.31	0.2427	0.2549
Merced	723	2.00	39	.30	0.1496	0.1571
Monterey	739	2.04	98	.75	0.3677	0.3862
Nevada	33	.09	32	.25	2.6886	2.8241
Orange**	2,569	7.10	916	7.02	0.9886	1.0384
Placer	219	.61	53	.41	0.6710	0.7048
Riverside	2,758	7.63	405	3.10	0.4071	0.4277
Sacramento*	1,165	3.22	1,074	8.23	2.5561	2.6849
San Bernardino	2,966	8.20	280	2.15	0.2617	0.2749
San Diego	859	2.37	1,056	8.10	3.4085	3.5803
San Francisco**	1,965	5.43	360	2.76	0.5080	0.5336
San Joaquin	1,984	5.49	185	1.42	0.2585	0.2716
San Luis Obispo	257	.71	41	.31	0.4423	0.4646
Santa Barbara*	128	.35	125	.96	2.7076	2.8441
Santa Clara	1,402	3.88	612	4.69	1.2103	1.2713
Shasta	876	2.42	37	.28	0.1171	0.123
Siskiyou	62	.17	20	.15	0.8944	0.9395
Solano*	1,642	4.54	175	1.34	0.2955	0.3104
Sonoma	400	1.11	91	.70	0.6308	0.6626
Stanislaus	386	1.07	224	1.72	1.6090	1.6901
Tulare	1,504	4.16	159	1.22	0.2931	0.3079
Tuolumne	183	.51	29	.22	0.4394	0.4615
Ventura**	3,371	9.32	265	2.03	0.2180	0.2289
<b>Total Participating</b>						
Counties	36,169	100.00	12,419	100.00	1.0000	1.0504
Total Statewide			13,045			

\*Incomplete - highest reported 2000-2001, 2001-2002

\*\*Incomplete in 2001-2002, Figures reflect 2000-2001