

Diversity on the Bench

State Court Organization Demographics | December 2022

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Racial Justice in State Courts

The Conference of Chief Justices and the Conference of State Court Administrator's (CCJ/COSCA) 2020 resolution² prioritizes two key efforts: improving racial and ethnic diversity of the bench, law clerks, and court staff, and collecting, maintaining, and

reporting court data on diversity. In accordance with this resolution, states have prioritized the collection and dissemination of race and ethnicity data and worked to improve diversity in courts. Kentucky Chief Justice John D. Minton states,

“As a justice system, we must be willing to recognize our failures. And we must be willing to not only listen, but to actually hear the very valid concerns raised by people who have been marginalized, degraded, or made to feel less than. The court system and the legal profession must continue to advocate for a diverse bench and bar to reflect the communities that we serve. We must continue to improve communication between the courts, justice partners, and court participants. And we must constantly evaluate and address institutional racism and our own implicit biases. I recognize that we—all of us—have a long way to go. But I am pleased with the progress the court system has made over the past few years to provide diversity and cultural collision trainings to all judges, clerks, specialty courts staff, and pretrial staff across the state.”⁸

Impact of a Diverse Bench

Courts strive to ensure diversity on the bench, which is especially important in cases involving historically underrepresented racial, ethnic, or gender groups. While lack of judicial diversity can create the appearance of unfairness, there are many factors that contribute to the differences in representation between populations served and the demographics of the bench. Underrepresentation of people of color in the pipeline to law schools, reduced college access, lack of exposure to the legal field as a career option, dependence on financial aid and student loans, and pass/fail rates on the bar exam all contribute to the lack of diversity on the

bench. Further, judges in elected positions face roadblocks based on socio-political issues and trends.

As state courts prioritize data on judicial diversity, it is important to note that appointment or election of even one judge can vastly affect the demographic makeup of the bench due to the small numbers of judges. This is particularly true in appellate courts, suggesting that small changes can have major effects in improving judicial diversity and enhancing public trust in the court.

Introduction to State Courts

Understanding the structure of state courts provides context for evaluating diversity. State Court Organization (SCO), a product of the Court Statistics Project, collects data from the states on trial and appellate court structure, administration, and organization. To enable comparisons between states, NCSC presents uniform court-level categories and provides information on factors such as method of selection and length of term for chief or presiding judges. For the purposes of data collection and reporting, NCSC classifies trial courts as single-tiered, where all trial court cases are processed in a single trial court, or two-tiered, with general jurisdiction courts and limited jurisdiction courts. Limited jurisdiction courts are lower-level trial courts, where appeals would go to a general jurisdiction court. General jurisdiction courts are the highest trial court in the state for matters that they hear, meaning that appeals of decisions from the general jurisdiction are heard at the appellate court level. Appellate courts can also be separated into two categories. Intermediate appellate courts, commonly known as courts of appeal, typically hear appeals as specified by state law or at the discretion of the court of last resort. Courts of last resort are the highest courts in the state, with final jurisdiction over appeals, and are commonly known as state supreme courts.

Data Highlights

NCSC collects demographic information from states through State Court Organization (SCO), a product of the Court Statistics Project (CSP).

Nationally, there are significantly more judges who identify as men than as women.¹ This is especially true in general jurisdiction courts, where fewer judges identify as women (31% of judges in general jurisdiction courts identify as women, totaling to 36% of the known gender data). Many states and territories, however, show a much different story. For example, Puerto Rico reports that 60% of judges in the state’s general jurisdiction courts are women (not shown).

National Demographics - General Jurisdiction Courts

Judge Gender Composition:



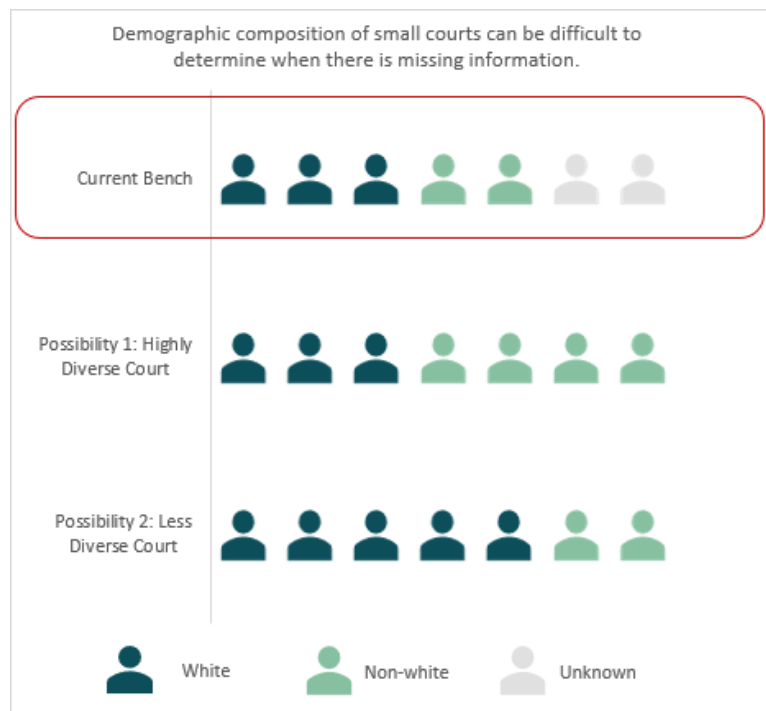
Total Judges - 8,446*

Population Gender Composition:



Transgender, Non-Binary, and Other gender categories were included in State Court Organization survey, but states were either unable to provide these data or reported 0 judges.
*Total only includes states that responded to survey

Looking at race nationally, state courts report largely white judicial populations similar to the population estimates. States report the highest percentage of Black judges in courts of last resort, which may be affected by the small average size of the bench in these courts. For example, the Maryland Court of Appeals has seven judges, five of whom are white (71%) and two of whom are Black (29%).

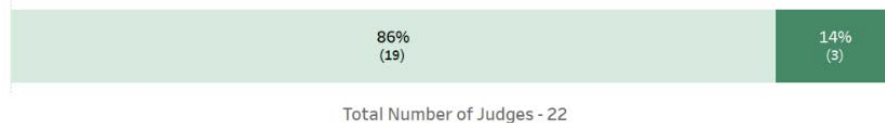


Specifically when looking at race, it is difficult to fully assess diversity when there is missing demographic information. For instance, a court has seven judges, four of whom are white and one of whom is Black. The race of two judges was not reported. Including responses to the non-reported data could entirely alter the demographic proportions of the bench.

NCSC also presents information on the ethnicity of the judiciary. States report the highest percentage of Hispanic and Latinx judges in intermediate appellate courts (10%) compared to other court types. Courts reporting higher percentages of Hispanic or Latinx judges include California’s general jurisdiction courts, the Florida Supreme Court, Arizona’s intermediate appellate courts, and the District of Columbia Superior Court. It is important to note that in states with higher Hispanic and Latinx general populations, such as Arizona, chances are higher that despite the existence of the systemic barriers discussed above, there will be greater percentages of Hispanic and Latinx judges. Collecting quality data on ethnicity can illustrate this comparison.

Arizona - Intermediate Appellate Court(s)

Judge Ethnicity Composition:



State Population Ethnicity Composition:



Not Hispanic or Latinx
 Hispanic or Latinx
 Ethnicity Unknown

Recommendations

NCSC encourages readers to explore the SCO demographics dashboard.⁵ The dashboard includes the highlights mentioned above, but also provides a larger picture of trends and statistics including demographics of court leadership. For states interested in submitting data on the demographics of state court judges and leaders, NCSC provides guidance on how to collect demographic information, monitor trends, and explore opportunities for increased diversity.⁶

NCSC points courts to the use of the standardized racial and ethnic designations as one way to provide fair and accessible justice for all.³ NCSC encourages state courts to utilize their data and improve public trust through data transparency about diversity on the bench. NCSC has a collection of racial justice resources available to the public, including information on education, community engagement, data and analysis, leadership and governance, and court services.⁴

NCSC identified potential actions that state courts can take to improve diversity, including:

- Improving education for members of the bar on judicial appointment processes,
- Creating direct mentorship opportunities for individuals interested in judicial appointment,
- Developing metrics and reporting requirements for each court,
- Sending notices of judicial vacancies to affinity groups,
- Promoting diversity recruitment at local law firms, and
- Promoting the importance of racially and ethnically diverse membership on groups that identify and/or nominate potential judges.⁷

While each state, territory, and jurisdiction will approach solutions differently, increasing diversity on the bench to mirror the population will ultimately enhance public trust and confidence.

Endnotes

¹ NCSC included Transgender, Non-binary, and Other Gender options in its 2020 and 2022 call for data, but states did not report any numbers in these categories.

² https://ccj.ncsc.org/_data/assets/pdf_file/0017/51191/Resolution-1-In-Support-of-Racial-Equality-and-Justice-for-All.pdf

³ https://www.courtstatistics.org/_data/assets/pdf_file/0018/42255/Race_Ethnicity_Data_Collection_2.pdf

⁴ <https://www.ncsc.org/consulting-and-research/areas-of-expertise/racial-justice/resources>

⁵ <https://www.ncsc.org/sco>

⁶ https://www.courtstatistics.org/_data/assets/pdf_file/0018/42255/Race_Ethnicity_Data_Collection_2.pdf

⁷ <https://courts.delaware.gov/forms/download.aspx?id=135148>

⁸ <https://www.ncsc.org/newsroom/state-court-statements-on-racial-justice>