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# Trends & Policies in Criminal Justice

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## Assessing 10 Years of Implementation of Civil Participation in Criminal Trials

### CONTENTS

- Overview 02
- Current Status of Jury Trial System 03
- Analysis of Judgments in Jury Trials 04
- Public Perception Survey on Jury Trials 05
- Conclusion 14

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## Abstract

Civil participation in criminal trials (jury trials), considered one of the great feats of judicial reform in the early 2000s, has garnered significant achievements in the last decade. This study aims to conduct a comprehensive evaluation of the jury trial system and propose suggestions for relevant policies and legislative measures. To this end, research was conducted as follows. First, the main issues were identified by analyzing the results of a perception survey, prior studies, media reports, related law amendments, etc., on the introduction and implementation of the jury trial system. Second, the operational status of criminal trials between 2008 and 2018 was ascertained using official statistics from jury trials. Third, the judgments from the first instance trial and appeals trial in jury trials were analyzed. Fourth, in-depth interviews and a survey were conducted targeting the general public, jurors, defendants, and legal experts (judges, prosecutors, and lawyers). Finally, achievements and challenges of the citizen participation system in criminal trials were derived.

## Overview

Civil participation in criminal trials (jury trials) is considered one of the greatest achievements of judicial reform in the early 2000s. As ten years have passed since their implementation, jury trials have been credited for achieving sizeable accomplishments in the advancement of democratic legitimacy and trust in the judicial system. On the other hand, it must be noted that the implementation of jury trials in a legislative framework has yet to be finalized. In this regard, our study aims to suggest policy and legislative measures by assessing the jury trial system. The research was conducted in the following steps. First, the current status and issues of the jury trial system were identified by analyzing various committee data discussing public participation in the justice system, legislative amendments of the National Assembly, previous academic research, results of previous perception surveys related to the introduction and implementation of jury trials, and media reports, etc. Second, the implementation of jury trials from 2008 to 2018 was reviewed using official statistics on jury trials from the Court Administration Office of the Supreme Court as well as from the Institute of Justice. Third, by examining the judgments of the court in the first trial and the appeals court in the jury trials, trial and appeals results were reviewed and categorized. Fourth, as the core empirical part of this study, a large-scale survey was conducted targeting the general public, juries, defendants, and legal experts (judges, prosecutors, and lawyers). Examining the survey results, we conclude with a discussion on the achievements and further challenges of jury trials.

## Current Status of the Jury Trial System

After a series of discussions and resolutions in the Judicial Reform Committee and the Judicial Reform Promotion Committee, the “Civil Participation in Criminal Trials Act” was enacted in June 2007 leading to the introduction of the jury trial system in 2008. Since then, discussions continued surrounding major issues such as a court of competent jurisdiction for jury trials, type of cases subject to the jury trial system, implementation requirements, the determination of exclusion, juror numbers, court structure, effects of jury verdicts, method of jury deliberations and rendering verdicts, and restrictions on appeals by prosecutors. Between the 18th and 20th National Assemblies, multiple bills regarding the aforementioned issues were submitted.

The 18<sup>th</sup> National Assembly expanded the scope of the jury trial system to cases under the jurisdiction of the Criminal Collateral Division and identified specific reasons for the determination of exclusion, such as when victims of sexual violence crimes decide to opt out of jury trials. However, there have been no further amendments to the act of civil participation in criminal trials since then.

The main findings of the “2008–2018 Jury Trials Performance Analysis” published by the Court Administration Office of the Supreme Court are as follows:

- 1) For 11 years from 2008 to 2018, the number of cases eligible for jury trials was 143,807. 3.96% of them were filed to be tried by jury, with 1.96% actually conducted as a jury trial. Although the number of eligible cases increased significantly when the scope of eligibility was expanded in January 2012, the number of eligible cases has been fluctuating since 2012.
- 2) Recently, the number of jury trials has been decreasing as the rate of exclusion has increased. From 2008 to 2018, the actual rate of jury trials among those requested was 38.4%.
- 3) During the period of 11 years where defendants chose a jury trial, the most common crimes that were tried by jury were murder (20.8%), sexual offense (14.6%), robbery (14.1%), and bodily injury (4.2%).
- 4) When the court decided not to conduct a jury trial, the reasons included: it was deemed not appropriate to do so (74.1%) and the victims of sexual offenses chose not to have their cases tried by jury (19.4%). Measured by the type of crime, the rate of foregoing jury trials was high in sexual offense cases (30.7%).
- 5) From 2008 to 2018, the average rate of the number of withdrawals among the number of applications for jury trials was 40.7%. When viewed by crime type, the withdrawal rate in sex crimes was higher than in any other major crime types (44.7%).
- 6) The average duration from the date of filing of the confirmed intention of a jury trial to the pre-trial date prior to a first trial was 39 days. In comparison, the average trial duration for criminal cases in general was 27.5 days.
- 7) Most cases (90.2%) were completed within one day of the first public trial with the judge rendering

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judgment as well. The average duration of processing from the date of filing to the first public trial day was 107.4 days, which is faster than the average processing duration of 136.8 days by the collegiate court.

- 8) The largest number of jurors was seven (68.3%). When five jurors were selected (4.9%), a majority of cases involved the admission of guilt from the defendant.

## Analysis of Judgments in Jury Trials

Our findings from analyzing court judgments of the first instance trial in jury trials are as follows:

- 1) In 92.5% of jury trials between 2008 and 2018, the jury verdicts and judge's rulings matched. 87.2% of the jury trials showed a close match between the majority opinion in the jury's sentencing deliberation and the judge's rulings.
- 2) Between 2008 and 2018, in the cases tried by jury, the rate of sentencing for imprisonment was 58.4% and the rate of a not guilty verdict was 10.9%. In the cases of jury trial, the rate of appeal was 80.5%, which was significantly higher than the 62% rate of appeal for criminal cases in general. In particular, the prosecutor's appeal rate was about 20% higher than the defendant's appeal rate, which is likely to be correlated with the high not-guilty rate in jury trials.
- 3) Analysis of court rulings indicates that the most significant factor that affected the discrepancy between the jury's not guilty verdicts and the judge's guilty rulings was whether the defendant had admitted to committing a crime by intention or not.
- 4) It is inferred that one factor in particular affecting the discrepancy between the jury's guilty and not guilty verdicts was whether the defendant had admitted to committing a crime.
- 5) Comparisons between the juries' and the judges' judgments in terms of verdicts and sentencing revealed no evidence that juries were more lenient or stricter than judges. However, the sentences recommended and passed seemed to differ depending on the type of crimes committed.

## Public Perception Survey on Jury Trials

In this study, a survey was conducted targeting the general public, jurors, defendants, and legal experts (judges, prosecutors, lawyers).

### Trust in Criminal Trials and Judges

Trust in criminal trials and judges was highest in the order of the judges, followed by juries, prosecutors, lawyers, defendants, and the general public. The general public demonstrated a lower-than “ordinary” level of trust, which was also lower than the level of trust of convicts serving sentences. On the other hand, jurors who participated in jury trials displayed a higher level of trust in criminal trials and judges than legal experts such as prosecutors and lawyers. Assuming that jurors are similar to the general public in their perceptions prior to participating in trials, it can be inferred that serving on a jury contributed to their increased trust in the judicial system.

However, it is possible jurors have a higher trust in the judicial system in the first place. To test this possibility, we surveyed on the general public and calculated the correlation between their trust in judges and their willingness to serve on a jury (Spearman’s  $r = -.109(p) < .001$ ). Survey results illustrated that the higher the trust in the judicial system and the judges, the lower the willingness to participate as a juror. In other words, there was no evidence supporting the claim that jurors who participated in jury trials had more trust in judges than the general public.

[Table 1] Confidence in the judicial system and judges by group

	General public	Jurors	Defendants in jury trials	Defendants in general trials	Judges	Prosecutors	Lawyers
Average (Standard deviation)	2.28 (.82)	3.65 (.97)	2.51 (.83)	2.42 (.91)	4.32 (.66)	3.30 (.68)	2.98 (.86)

# Projection and Actual Assessment of Jury Verdicts (General Public and Jurors)

## A. The Degree of Agreement between Jurors

In order for the jury trial system to be successful, trust in jury verdicts and related proceedings is critical. We compared the jury verdict proceedings that the general public expects juries to engage in, and those that juries deem they conduct from their perspective.

The general public believed that only half of juries reached unanimous verdicts and heated exchanges of opinion were commonplace. When compared with the experiences of actual jurors, although statistically insignificant, the degree of agreement among jurors was found to be slightly higher. Specifically, 50.2% of the general public expected that jurors likely split between the verdicts of not guilty and guilty, minutely higher than 49.8% who believed that juries are able to reach unanimous decisions. On the other hand, among the jurors who participated in actual trial proceedings, 57.1% said that unanimous agreements were reached while 42.9% responded that there was contention prior to verdict renditions.

**[Table 3] Projection and actual consensus among jurors in not guilty and guilty verdicts**

(Unit: No. of persons, %)

	Reached	Not reached	Total	(df) $\chi^2$
General public	519 (49.8)	523 (50.2)	1042 (100.0)	(1)
Jurors	64 (57.1)	48 (42.9)	112 (100.0)	2.22, p=.14

No response (jurors): 10

## B. Impact of Judges' Opinions on Jury Verdicts

The general public highly valued the influence of judges' opinion on juries' verdicts compared to the opinions of juries. Specifically, when the responses were divided into "affect" and "don't affect," 86.4% of the general public expected judges to have an influence on jury verdicts, whereas only 74.4% of juries said that their not guilty or guilty jury verdicts were affected by judges.

[Table 4] Perceptions on the influence of judges on jury verdicts

(Unit: No. of persons, %)

	No impact	Little impact	Subtotal (Little to no impact)	Moderate impact	Decisive impact	Subtotal (Moderate to high impact)	Total	(df) $\chi^2$
General public	11 (1.1)	130 (12.5)	141 (13.6)	799 (76.6)	102 (9.8)	901 (86.4)	1042 (100.0)	(1) 11.64
Juries	14 (12.8)	14 (12.8)	28 (25.6)	55 (50.5)	26 (23.9)	81 (74.4)	112 (100.0)	(p<.01)

No response (jurors): 13

## C. Assessment of Jury Deliberations Held Prior to Rendering Verdicts

53.1% of the general public thought that jury discussions will not be sufficient, as opposed to 94.6% of the jurors who believed that they held sufficient deliberations. Contrary to the general public's perception, we found that jurors themselves believed that they held sufficient deliberations before reaching a verdict.

[Table 5] Jury deliberations prior to reaching verdicts

(Unit: No. of persons, %)

	Very insufficient	Slightly insufficient	Subtotal (Insufficient)	Comparatively sufficient	Very sufficient	Subtotal (Sufficient)	Total	(df) $\chi^2$
General public	51 (4.9)	502 (48.2)	553 (53.1)	460 (44.1)	29 (2.8)	489 (46.9)	1042 (100.0)	(1) 77.71
Jurors	0 (0.0)	5 (5.4)	5 (5.4)	47 (50.5)	41 (44.1)	88 (94.6)	93 (100.0)	(p<.01)

No response (jurors): 29

## D. Degree of Opinion Assertion by Juries Prior to Rendering Verdicts

While 77.8% of the general public responded that juries assert their opinions when trying to deliver verdicts, 95.5% of jurors said that they expressed their opinions. In particular, when it comes to opinion assertion, only 6.6% of the general public answered that jurors sufficiently expressed their opinions, but 57.1% of jurors responded that they fully articulated their opinions. We found that jurors are more inclined to believe that their opinion assertion was adequate when reaching a verdict than what is expected by the general public.

**[Table 6] Degree of opinion assertion by jurors when trying to reach a verdict**

(Unit: No. of persons, %)

	No assertion	Little assertion	Subtotal (Little to no opinion assertion)	Assertion to some extent	Sufficient assertion	Subtotal (Moderate to sufficient assertion)	Total	(df) $\chi^2$
General public	11 (1.1)	220 (21.1)	231 (22.2)	742 (71.2)	69 (6.6)	808 (77.8)	1042 (100.0)	(1) 19.58
Jurors	0 (0.0)	5 (4.5)	5 (4.5)	43 (38.4)	64 (57.1)	107 (95.5)	112 (100.0)	(p<.01)

No response (jurors): 10

## E Difficulties in Reaching Verdicts

While 79.2% of the general public answered that it would be difficult for juries to deliver verdicts of not guilty or guilty, only 65.2% of jurors responded that they experienced difficulties.

**[Table 7] Difficulty in reaching verdicts of not guilty or guilty (general public and jurors)**

(Unit: No. of persons, %)

	Will be very difficult	Will be slightly difficult	Subtotal (Will be difficult)	It won't be too difficult	It won't be difficult at all	Subtotal (It won't be difficult)	Total	(df) $\chi^2$
General public	133 (12.8)	692 (66.4)	825 (79.2)	204 (19.6)	13 (1.2)	217 (20.8)	1042 (100.0)	(1) 27.23
Jurors	26 (23.2)	47 (42.0)	73 (65.2)	27 (24.1)	12 (10.7)	39 (34.8)	112 (100.0)	(p<.01)

No response (jurors): 10

## F. Non-Legal Factors Affecting Jury Verdicts

We compared the responses of jurors with the expectations of the general public and the defendants regarding the impact of non-legal factors on jury verdicts. The general public anticipated the influence of external factors to be greater than jurors and defendants did. Jurors responded that they are most affected by public opinion.

Specifically, as for cronyism (partiality towards those from the same school or region), 69.6% of the general public and 41.6% of the defendants with jury trial experience expected juries to be affected, as opposed to only 31.1% of jurors responding that they were affected. As for “monetary or political influence,” 65.5% of the general public and 54.3% of defendants answered that juries are likely affected, as opposed to only 25.4% of jurors who answered that they were affected by it. In the case of “public opinion,” 83.8% of the general public and 78.3% of defendants believed juries to be affected, as opposed to 65.6% of jurors who answered that they were influenced by it. As for “one’s prejudice or bias,” 63.9% of jurors answered that they were affected, which was higher than the 56.2% expected by defendants. Jurors responded that they were more swayed by personal bias or prejudice than defendants expected.

[Table 8] Non-legal factors influencing jury verdicts (general public, jurors, defendants)

Question	Respondents (%)						
	Not affected at all	Not really affected	Subtotal (Unaffected)	Slightly affected	Affected greatly	Subtotal (Affected)	
Cronyism	General public	42 (4.0)	275 (26.4)	317 (30.4)	574 (55.1)	151 (14.5)	725 (69.6)
	Juries		–			38 (31.1)	
	Defendants with experience	7 (14.6)	21 (43.8)	28 (58.4)	16 (33.3)	4 (8.3)	20 (41.6)
	Defendants without experience	117 (12.8)	290 (31.6)	407 (44.4)	377 (41.1)	133 (14.5)	510 (55.6)
Financial or political influence	General public	70 (6.7)	289 (27.8)	359 (24.5)	463 (44.4)	220 (21.1)	683 (65.5)
	Juries		–			31 (25.4)	
	Defendants with experience	7 (15.2)	14 (30.4)	21 (45.6)	18 (39.1)	7 (15.2)	25 (54.3)
	Defendants without experience	132 (14.5)	286 (31.3)	418 (45.8)	354 (38.8)	141 (15.4)	495 (54.2)

Question		Respondents (%)					
		Not affected at all	Not really affected	Subtotal (Unaffected)	Slightly affected	Affected greatly	Subtotal (Affected)
Public opinion (Press releases, social media, etc.)	General public	34 (3.3)	134 (12.9)	168 (16.2)	537 (51.5)	337 (32.3)	874 (83.8)
	Juries		-			80 (65.6)	
	Defendants with experience	2 (4.3)	8 (17.4)	10 (21.7)	19 (41.3)	17 (37.0)	36 (78.3)
	Defendants without experience	70 (7.6)	192 (20.7)	262 (28.3)	379 (40.9)	285 (30.8)	664 (71.7)
Personal (Religious) prejudice or bias	General public	43 (4.1)	192 (18.4)	235 (22.5)	578 (55.5)	229 (22.0)	807 (77.5)
	Juries		-			78 (63.9)	
	Defendants with experience	4 (8.3)	17 (35.4)	21 (43.7)	16 (33.3)	11 (22.9)	27 (56.2)
	Defendants without experience	99 (10.9)	291 (32.0)	390 (42.9)	363 (39.9)	157 (17.3)	520 (57.2)

## G. Factors Affecting Jury Verdicts (General Public and Jurors)

We asked respondents to identify other factors affecting verdicts of not guilty or guilty besides evidence, allowing multiple choices. The results indicate that while the general public expected juries to be affected by “the opinion of specific jurors,” “sympathy towards the defendant,” and “feelings or prejudice,” the jurors responded that they were not significantly affected by these factors.

Specifically, the general public believed that “opinions of and deliberations with other jurors” have the most impact which accounts for 46.1%. This was followed by “degree of damage sustained by the victim” and “sympathy towards the defendant”, and the rates were 44.0% and 35.1%, respectively. Similarly, jurors believed that they would be most affected by “opinions of and deliberations with other jurors” at 55.7%. This was followed by “degree of damage sustained by the victim” and “feelings or prejudice,” and the rates were 34.4% and 12.3%, respectively. Both groups expected and assessed that “fear of retaliation from the defendant” would have the lowest impact on jury verdicts of not guilty or guilty, but the response rates differed significantly at 24.0% and 1.6%, respectively.

[Table 9] Factors affecting jury verdicts

(Unit: No. of persons, %)

Type	General public	Jurors
Opinions of and deliberations with other jurors	480 (46.1)	68 (55.7)
Opinion of a particular leading member of the jury	295 (28.3)	8 (6.5)
Sympathy toward the defendant	366 (35.1)	13 (10.6)
Fear of retaliation from the defendant	250 (24.0)	2(1.6)
Degree of damage sustained by the victim	459 (44.0)	42 (34.4)
Feelings or prejudice	353 (33.9)	15 (12.3)

## Recommendation of Jury Trials to Others (General Public, Jurors, and Defendants)

Asking whether trials by jury should be recommended to others is an indirect indicator of how trials by jury are perceived. While the general public and jurors recommend trials by jury proactively, there were more defendants who did not recommend others jury trials.

Specifically, both the general public and the jurors answered that they are “Willing to recommend” at 80.4% and 86.9% respectively. On the other hand, 45.1% of defendants with jury trial experience and 45.4% of those without experience replied that they would recommend jury trials.

Considering that current jury trials are conducted pursuant to requests by defendants, reasons cited by defendants for not recommending jury trials, despite positive reviews from the general public, warrant further analysis.

[Table 10] Whether to recommend a jury trial to others (general public, jurors, defendants)

(Unit: No. of persons, %)

Type	Do not want to recommend at all	Do not want to recommend so much	Subtotal (Do not want to recommend)	Want to recommend a little	Definitely want to recommend	Subtotal (Want to recommend)	Total
General public	15 (1.4)	190 (18.2)	205 (19.6)	729 (70.0)	108 (10.4)	837 (80.4)	1042 (100.0)
Jurors	2 (1.6)	14 (11.5)	16 (13.1)	52 (42.6)	54 (44.3)	106 (86.9)	122 (100.0)

Type	Do not want to recommend at all	Do not want to recommend so much	Subtotal (Do not want to recommend)	Want to recommend a little	Definitely want to recommend	Subtotal (Want to recommend)	Total
Defendants with experience		28 (54.9)			23 (45.1)		51 (100.0)
Defendants without experience		514 (54.6)			427 (45.4)		941 (100.0)

No response: 1 (Defendant with experience), 23 (defendants without experience)

## Reasons for Jury Trial Request (General Public and Defendants)

The general public had an accurate projection as to why defendants would request to be tried by jury. Three reasons most cited for requesting jury trials were “likely to be given more opportunities to explain,” “juries seem more impartial than judges,” and “likely to be put in a better position to be found not guilty.”

[Table 11] Reasons for jury trial request (general public, defendants)

(Unit: No. of persons, %)

Question	General public	Defendants with experience
Likely to be given more opportunities to be found not guilty	336 (32.2)	16(33.3)
To receive a more lenient sentence	134 (12.9)	5 (9.4)
Vague expectations	230 (22.1)	7(15.2)
Attorney advice	77 (7.4)	2(3.8)
Juries seem more impartial than judges	493 (47.3)	16(33.3)
Recommendation of fellow inmates	30 (2.9)	2(3.8)
Likely to be given more opportunities to explain oneself	564 (54.1)	17 (32.0)
Representation by a public defender	93 (8.9)	5 (9.4)
Others	1(0.7)	-

## Comparison of Proof Beyond a Reasonable Doubt (General Public, Jurors, Judges, Prosecutors, and Lawyers)

We inquired about the degree of conviction necessary to conclude that a defendant is guilty ‘beyond all reasonable doubt’ before rendering a guilty verdict. Median and average values of responses between groups indicate that the general public and jurors deemed the required degree of proof beyond a reasonable doubt lower than that of legal experts. Such responses may be attributable to a gap in education as to what constitutes “a reasonable doubt”, but it is also possible that lay people may see the need for a lesser degree of conviction in rendering a guilty verdict.

[Table 12] Comparison of proof beyond a reasonable doubt (general public, jurors, defendants)

(Unit: No. of persons, %)

Responses Type	50%	60%	70%	80%	90%	100%	Others	All	Average	Median
General public	64 (6.1)	100 (9.6)	257 (24.7)	240 (23.0)	272 (26.1)	105 (10.1)	4 (0.4)	1042 (100.0)	78.39	80
Jurors	3 (2.6)	12 (10.5)	13 (11.4)	44 (38.6)	20 (26.3)	12 (10.5)	-	114 (100.0)	79.80	80
Judges	0 (0.0)	0 (0.0)	2 (3.4)	15 (25.9)	33 (56.9)	One (1.7)	7 (12.1)	58 (100.0)	86.47	90
Prosecutors	0 (0.0)	0 (0.0)	5 (10.0)	23 (46.0)	18 (36.0)	One (2.0)	3 (6.0)	50 (100.0)	83.19	90
Lawyers	One (0.4)	4 (1.7)	13 (5.4)	81 (33.8)	116 (48.3)	14 (5.8)	11 (4.6)	240 (100.0)	85.24	90

No response: 8 (jurors), 3 (judges), 2 (prosecutors), 1 (lawyer)

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## Conclusion

The concerns raised prior to the implementation of the jury trial system included the partiality of jurors, the low level of understanding of cases and laws, and the public's distrust in juries. However, as the study results indicate, the majority of judges agreed with jury verdicts and jury verdicts were generally consistent with judges' rulings. Jury trials were introduced as an effective measure to ensure the democratic legitimacy of the judicial system and enhance people's trust in the judiciary. Its implementation has been generally helpful in creating a court-oriented trial system, improving the trial experience of citizens strengthening the trial skills of legal experts, and incorporating public sentiment and common sense.

On the other hand, because the final legislative format for the jury trial system which was introduced as a pilot program, has not been determined and the number and rate of jury trials are still low, inherent limitations exist in the system that prevent meaningful effects. In particular, there are continued concerns regarding low awareness of jury trials, negative perceptions from legal experts, and the lack of confidence in the juror selection process, which warrants further research for improving and stabilizing the jury trial system.



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