



JUDICIAL COUNCIL OF CALIFORNIA

[www.courts.ca.gov/code-of-civil-procedure-
section-3679-working-group](http://www.courts.ca.gov/code-of-civil-procedure-section-3679-working-group)
367.9workinggroup@jud.ca.gov

JUDICIAL COUNCIL'S CODE OF CIVIL PROCEDURE SECTION 367.9 WORKING GROUP (367.9 WORKING GROUP) OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))
THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS
THIS MEETING IS BEING RECORDED

Date: July 1, 2022
Time: 1 – 3 PM

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

II. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Item 1: AB177 Overview

Overview of AB177 and its specific focus areas.

Presenter: Hon. Marsha G. Slough, Chair

Item 2: Workgroup on Post-Pandemic Initiatives (P3)

Update on P3 and its affiliation with the 367.9 Working Group.

Presenter: Gretchen Nelson, Attorney at Law, working group member

Item 3: Data Collection Report

Update on data collected for the *Data Collection Report (CCP 367.8): Report to the Legislature and Governor on Civil Remote Proceedings*.

Presenters: Leah Rose Goodwin, Manager, Judicial Council Business Management Services
Nick Armstrong, Senior Research Analyst, Judicial Council Office of Court Research

Item 4: User Experience Data with Zoom and ATP

Update on user-experience data and outcomes regarding utilizing Zoom and ATP for remote services.

Presenter: Heather Pettit, Chief Information Officer, Judicial Council Information Technology

Item 5: National Center for State Courts

Update on remote proceedings nationwide.

Presenter: David Slayton, Vice President of Court Consulting Services, National Center for State Courts

III. ADJOURNMENT

Adjourn



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JUDICIAL COUNCIL'S CODE OF CIVIL PROCEDURE SECTION 367.9 WORKING GROUP (367.9 WORKING GROUP)

MINUTES OF OPEN MEETING

July 1, 2022
1:00 – 3:00 p.m.
Via Bluejeans

Working Group Members Present: Hon. Marsha F. Slough (Chair), Hon. Rupert Byrdsong, Hon. Danielle Douglas, Hon. Ann Moorman, Hon. Theodore Zayner, Ms. Sherri Carter, Mr. Kevin Harrigan, Mr. Darrel Parker, Ms. Dorothy Alther, Ms. Laura Arnold, Mr. Saul Bercovitch, Ms. Salena Copeland, Ms. Carolyn Dasher, Mr. Peter Sterling Doody, Mr. Oliver Dunlap, Mr. Michael Fermin, Ms. Leslie Heimov, Ms. Janet Hudec, Ms. Lynn Martinez, Ms. Alyson Messenger, Ms. Gretchen Nelson, Mr. Tyler Nguyen, Mr. Craig Peters, Ms. Amy Skochko, Ms. Robin Sunkees

Working Group Members Absent:

Others Present: Hon. Kyle Brodie, Mr. David Slayton, Ms. Yvonne Fenner, Ms. Shelley Curran, Mr. Cory Jasperson, Ms. Laura Speed, Ms. Heather Pettit, Ms. Leah Rose Goodwin, Ms. Andi Liebenbaum, Ms. Deirdre Benedict, Ms. Michelle Brooke, Mr. James Allen, Ms. Camila Kieliger, Mr. David Scott, Mr. Cyrus Ip, Mr. Ken Kanzaki, Ms. Suzanne Schleder, and Mr. John Yee

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 1:00 p.m. and took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 1-4)

Item 1: AB177 Overview

Presenter: Hon. Marsha G. Slough, Chair

Update: Justice Slough welcomed the members to the first meeting of the 367.9 Working Group and provided an overview of AB177 and its specific focus areas, then shared the projected dates and agenda topics of the upcoming five meetings scheduled for 2022 as well as the August 15th date of the public comment session. Members were charged with reaching out to their respective constituencies and soliciting information as it relates to remote appearances in order to compile

information to present on specific case types in upcoming meetings and to inform the working group's recommendations.

Item 2: Workgroup on Post-Pandemic Initiatives

Presenter: Ms. Gretchen Nelson, Attorney at Law, working group member

Update: Ms. Gretchen Nelson provided an overview of the continuing efforts of the Post-pandemic Initiatives Workgroup (P3) created in March 2021 when the Chief Justice issued a series of statewide emergency orders that related to a variety of issues in response to court closures and how to continue operations during the state of emergency. The P3 working group is charged with identifying, refining, and enhancing the successful court practices that emerged during the COVID-19 pandemic in order to increase access to justice, modernize services, and promote uniformity in practices going forward.

The Chief Justice has requested that the recommendations of this 367.9 Working Group be reported to P3, and P3 will submit the recommendations to the Judicial Council, which is required to transmit the recommendations to the Legislature as required by the statute.

Item 3: National Center for State Courts Presentation

Presenter: Mr. David Slayton, Vice President of Court Consulting Services, National Center for State Courts (NCSC)

Update: Mr. David Slayton presented findings, including nationwide current practices and common themes from the NCSC's Rapid Pandemic Response Team regarding remote hearings.

Item 4: Data Collection Report/Data and User Feedback

Presenters: Ms. Heather Pettit, Chief Information Officer, Judicial Council Information Technology
 Ms. Leah Rose Goodwin, Manager, Judicial Council Business Management Services
 Mr. Nick Armstrong, Senior Research Analyst, Judicial Council Office of Court Research

Update: Presenters updated the working group on information being collected for the *Data Collection Report (CCP 367.8): Report to the Legislature and Governor on Civil Remote Proceedings* and user satisfaction data/feedback on technology efforts. Ms. Heather Pettit began by providing a summary of work done by the courts using funds allocated to the judicial branch by the Governor and Legislature (\$25 million in one-time funding for fiscal years (FY) 2020-21 and 2021-22). Members were presented with innovations in remote proceedings that were the result of that funding.

The FY 22/23 state budget includes ongoing funding and the members were presented with the primary objectives regarding the use of that funding which includes electronic records management; improved remote access to appearances,

proceedings, and records; infrastructure improvements; and future innovative branchwide solutions.

Ms. Leah Rose Goodwin then provided the members an overview on the data collection efforts pertaining to Code of Civil Procedure 367.8 which requires that the Judicial Council, by January 1st, 2023, submit a report to the Legislature and the Governor on the use of remote technology and civil actions by the trial courts. The data collected is done via survey and gathers county-specific data on the number of proceedings conducted with use of remote technology and technology issues affecting remote proceedings.

Mr. Nick Armstrong provided a preview of the ongoing Remote Civil Proceedings Data collection effort and the results obtained between March and May 2022.

Members were presented with an overview of the user experience data within the Zoom and ATP platforms and had the opportunity to ask questions about the ongoing survey efforts.

ADJOURNMENT

There being no further business, the meeting was adjourned at 2:56 p.m.

Approved by the Working Group on [date].

Judicial Council's Code of Civil Procedure Section 367.9 Working Group (367.9 Working Group)

Summary of Materials from Working Group Meeting on July 1, 2022

July 25, 2022

Presented/Provided Item	Source	Description
National Center for State Courts Presentation	Presented and provided by David Slayton, Vice President of Consulting Services, National Center for State Courts	Full PowerPoint presentation delivered by NCSC during the meeting.
Three states' post-pandemic remote hearings policies		
Arizona: <i>Recommended Remote and In-Person Hearings in Arizona State Courts in the Post-Pandemic World</i>	Provided by David Slayton, Vice President of Consulting Services, National Center for State Courts	This recommendation was presented to the Arizona Supreme court February 22, 2022.
Minnesota: Link to Minnesota's Judicial Branch Website	Provided by David Slayton, Vice President of Consulting Services, National Center for State Courts	Information about Minnesota's new Judicial Branch policy, the oneCourtMn Hearings Initiative Policy that lays out the framework for presumed hearing locations going forward from the pandemic.
Maryland: <i>Report of Joint Subcommittee on Post-COVID Judicial Operations</i>	Provided by David Slayton, Vice President of Consulting Services, National Center for State Courts	A 45-page report containing the results of an investigation and recommendations of a subcommittee that was convened in September 2021, at the request of Chief Judge Joseph M. Getty, for the purpose of reviewing the various innovations and adaptations employed throughout the Judiciary during the COVID-19 pandemic to determine which of them should be retained on a permanent basis.
<i>Guiding Principles for Post-Pandemic Court Technology: A pandemic resource from CCI/COSCA</i>	Provided by David Slayton, Vice President of Consulting Services, National Center for State Courts	A pandemic resource from Conference of Chief Justices/Conference of State Court Administrators that recommends that state courts consider six key principles as they embrace technology.
Link to the NCSC Hybrid Hearings Improvement Initiative	Provided by David Slayton, Vice President of Consulting Services, National Center for State Courts	Information about a one-year pilot project that will provide state and local courts an opportunity to learn from and improve upon pandemic-era best practices and to create

Presented/Provided Item	Source	Description
		permanent changes to their hearing practices. (Deadline for pilot sites was July 13, 2022.)
Link to The State of State Courts Opinion Poll	Presented and provided by David Slayton, Vice President of Consulting Services, National Center for State Courts	This website includes a webinar on the poll, the slides from that webinar, and the pollster's deeper dive.
<i>Remote Proceedings: Data and User Feedback, July 1, 2022</i>	Presented and provided by: <ul style="list-style-type: none"> • Heather Pettit, Chief Information Officer, Judicial Council Information Technology • Leah Rose-Goodwin, Manager, Judicial Council Business Management Services • Nick Armstrong, Senior Research Analyst, Judicial Council Office of Court Research, 	Updates related to data collected for the <i>Data Collection Report (CCP 367.8): Report to the Legislature and Governor on Civil Remote Proceedings</i> and user-experience data and outcomes regarding utilizing Zoom and ATP for remote services.

The Basics

Terminology

- In-person Hearing – All participants are physically present in one room.
- Fully Remote/Virtual Hearing – All parties appear via telephone or videoconferencing platform (Zoom, Teams, Webex, etc.).
- Hybrid Hearing – At least one participant is attending from the courtroom using the room's technical infrastructure and at least one participant is attending remotely either via videoconferencing platform or phone, using either audio, video, or both.

RESEARCH

What does the research tell us?

- Remote hearings are being used in every state and every division of court
- Some courts are conducting remote proceedings for pre-trial and trial hearings; others focusing on pre-trial proceedings only.
- By June 2020, the first remote jury trial had taken place in Texas¹
- Not all courts are created equal when it comes to technology
- We are:
 - Doing in-person court well
 - Doing fully remote court well
 - Experiencing challenges with hybrid hearings

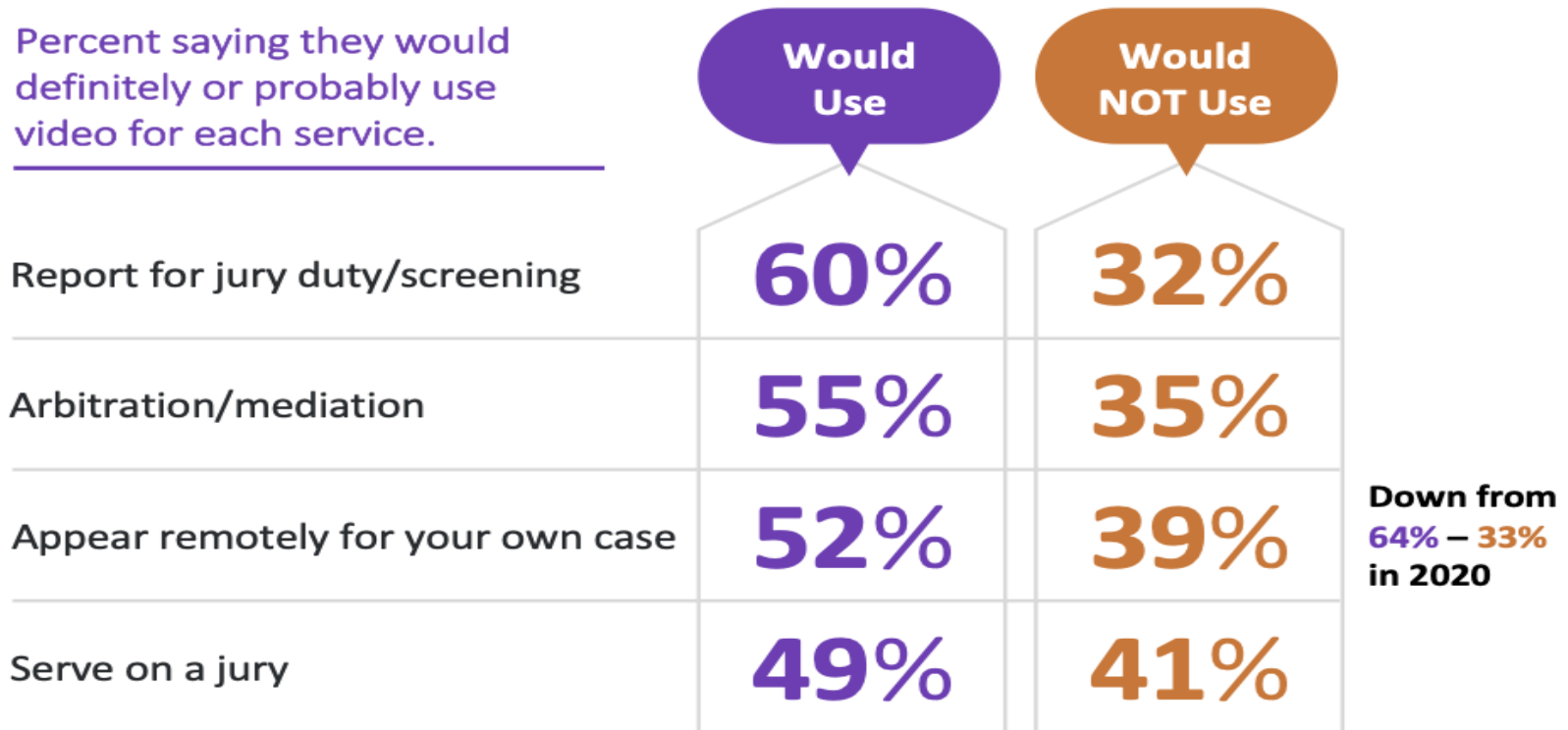
¹<https://www.reuters.com/article/us-health-coronavirus-courts-texas/texas-tries-a-pandemic-first-a-jury-trial-by-zoom-idUSKBN221111>

RESEARCH

State of the State Courts Poll, October 2021

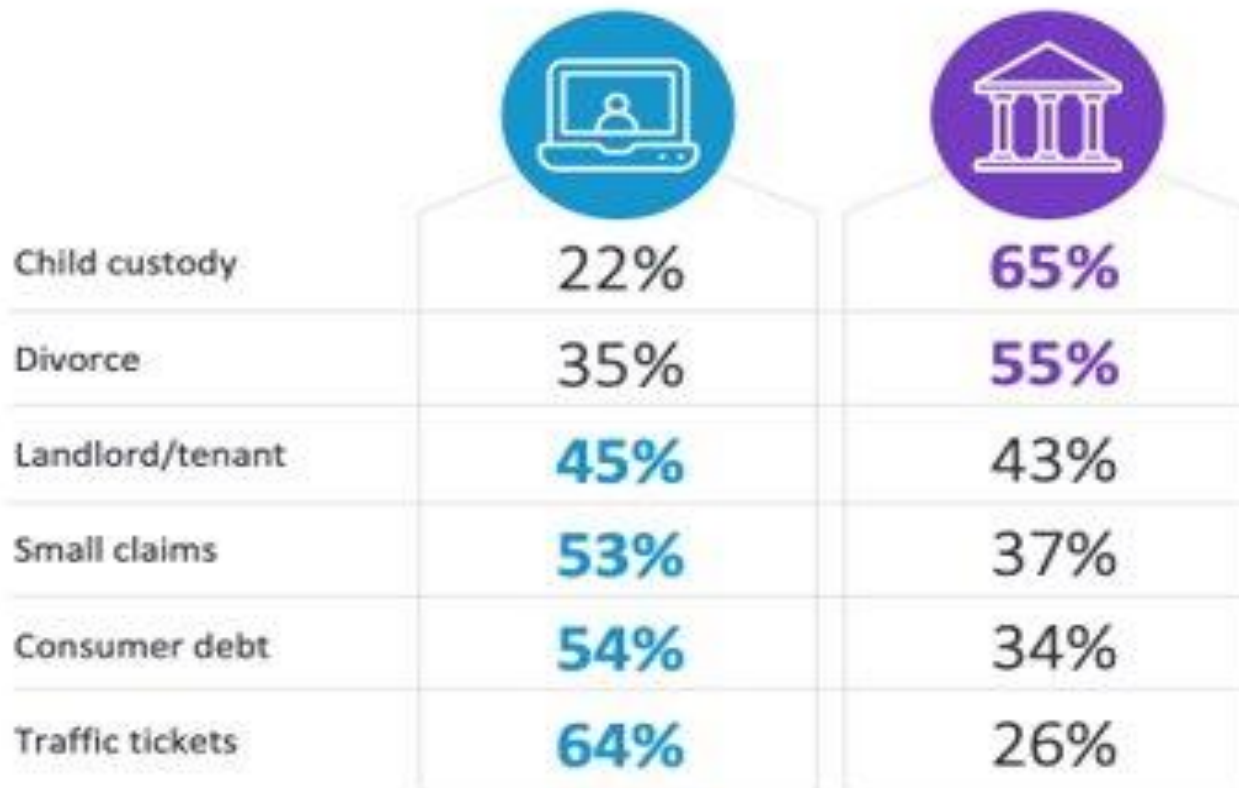
Q: “If you had business with the courts and this service was available online via videoconference...would you use it?”

Percent saying they would definitely or probably use video for each service.



RESEARCH

Q: "If you were part of a court proceeding of this type...would you prefer to handle this type of case remotely by video or phone appearance or by appearing in-person at the courthouse?"



RESEARCH

Q: “What internet service do you subscribe to at home?
Do you have a cell phone?”



Subscribe to internet at home

88%



Own a cell phone

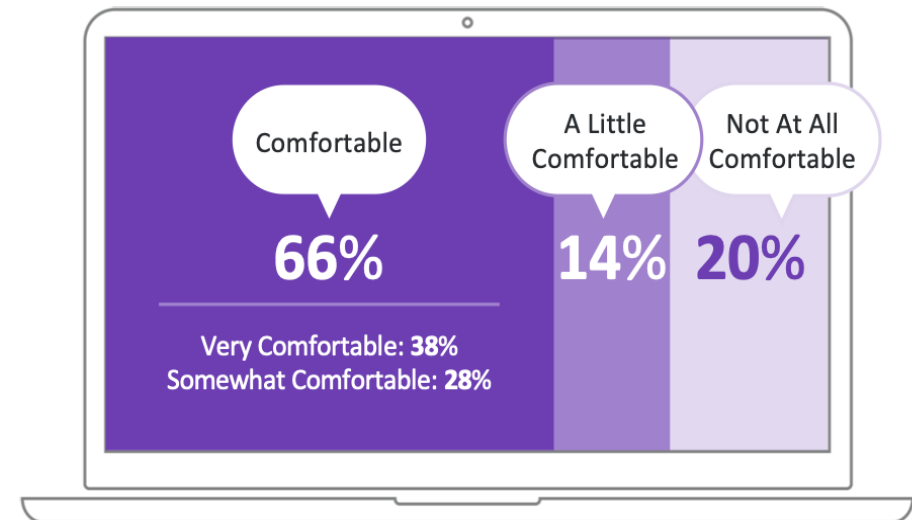
95%



No home internet, no cell phone

1%

Q: “How comfortable do you feel using video conferencing services for meetings or appointments typically held in person?”



RESEARCH

Q: “Which statement comes closest to your own view?”

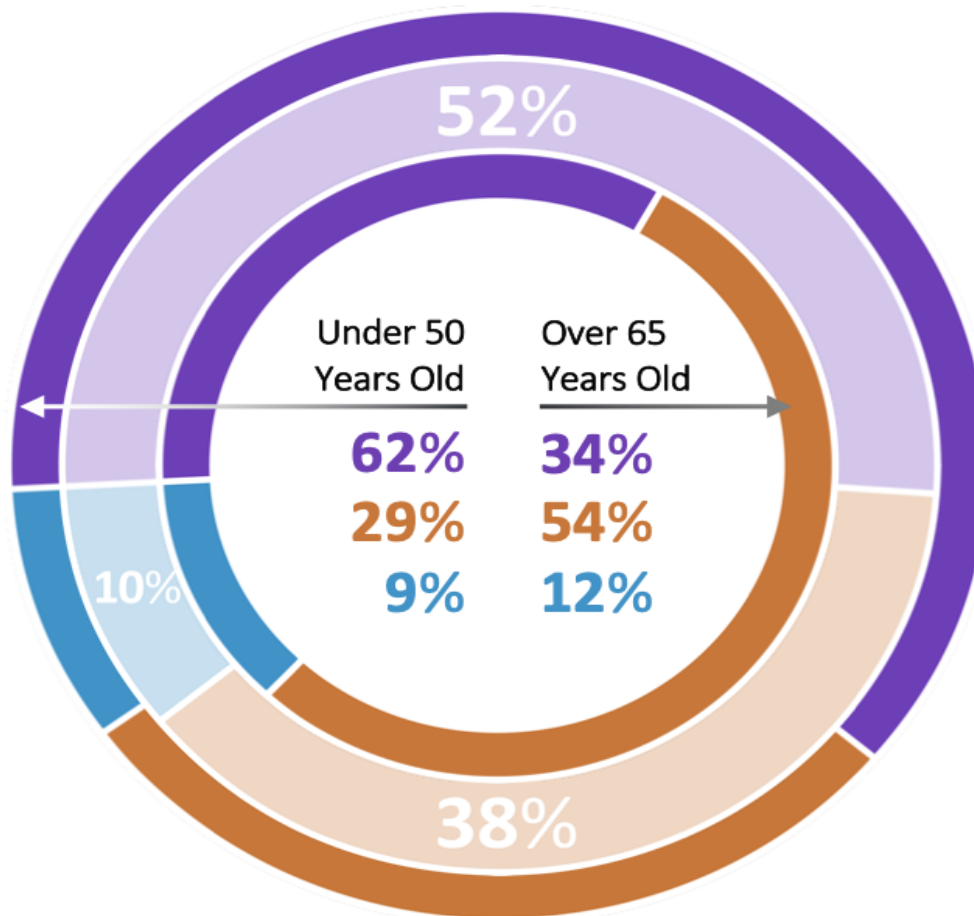
Statement 1

Once the pandemic is over, courts should **continue to hold hearings by video** because it allows them to hear more cases and resolve cases more quickly, and it makes it easier for people to participate without having to travel to a courthouse, take time off work, or find childcare.

Statement 2

Courts should **stop holding hearings by video as soon as possible** because technology problems can disrupt the whole system, not everyone can use this technology, and people are less likely to take video hearings as seriously as if they had to appear in a courtroom in person.

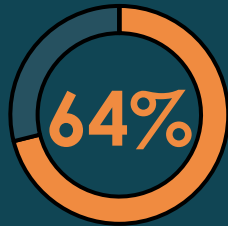
Don't Know



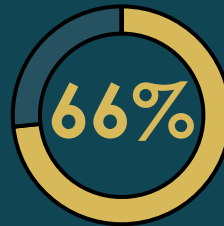
2021 National Survey on Courthouse Space Needs

40 states, 178 Counties, 560 respondents

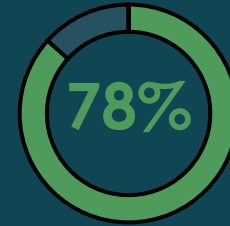
Opportunities: Court And Funding Body



64% Of Respondents Say
Remote Public Viewing
Should Continue

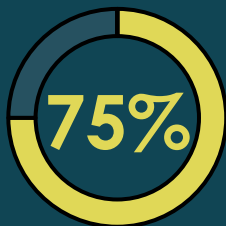


66.3% Of Respondents Say
Video Arraignments
Should Continue

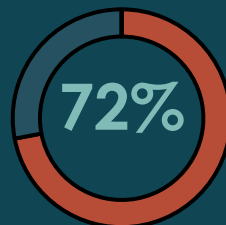


77.9% Of Respondents Say
Virtual Proceedings
Should Continue

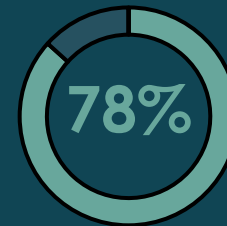
Opportunities: Court Users & Public



75% Of Family Law & Civil
Cases Have
Self-Represented Litigants



72.1% Of Respondents Say
Remote Payments
Should Continue



77.9% Of Respondents Say
Remote Filings
Should Continue

More efficient use of judicial & staff time

Reduced travel time & costs for all

Easier for court customers to appear

Improved courthouse space utilization

Allows for more precise scheduling

Health & safety benefits

Increased transparency and public trust

Courts as a service, not a place

Improved access to justice

REMOTE HEARINGS BENEFITS

CHALLENGES IN A HYBRID OR VIRTUAL ENVIRONMENT

Technology

- Courthouse space challenges
- Audio/Feedback Issues
- Visibility for and of All Parties
- Capturing the Record
- Cost
- Digital divide
- Increased responsibilities for court staff and judges
- Hearings with multiple parties

Operations

- Scheduling, Noticing, Calendars
- Check-In Process/Waiting Room
- Document Management
- Signing orders
- Remote hearing decorum
- Need for increased online services
- Specialized staffing needs
- Providing public access

Solution: Build Quality Into the Process

COSCA/CCJ Supported Principles for Post-Pandemic Court Technology

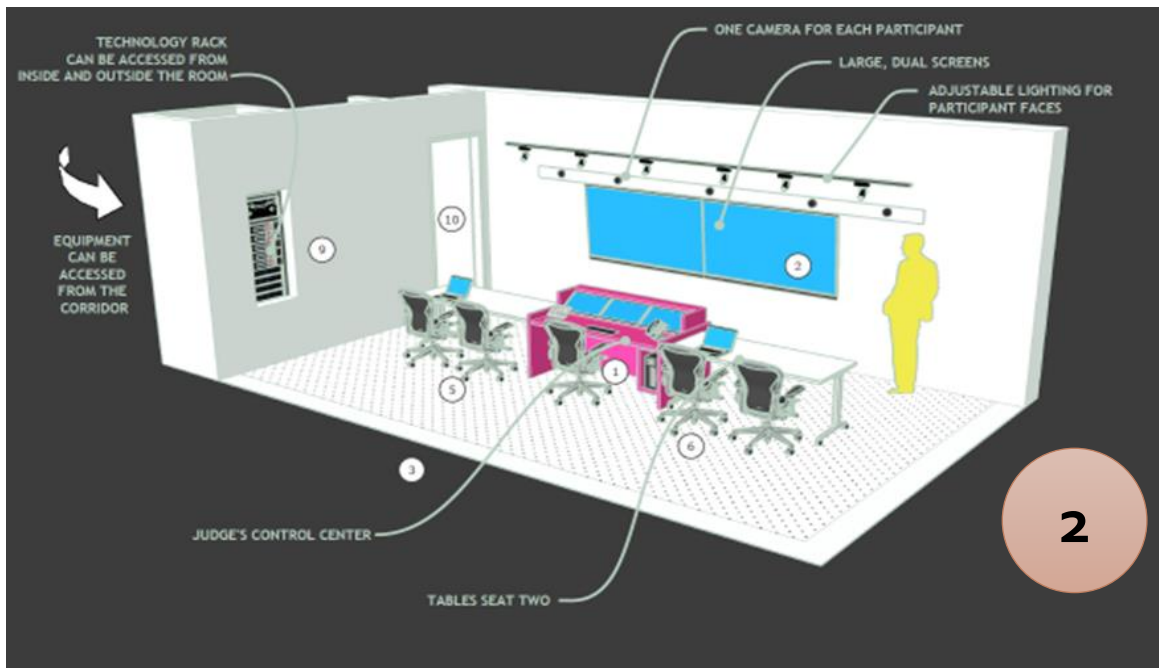
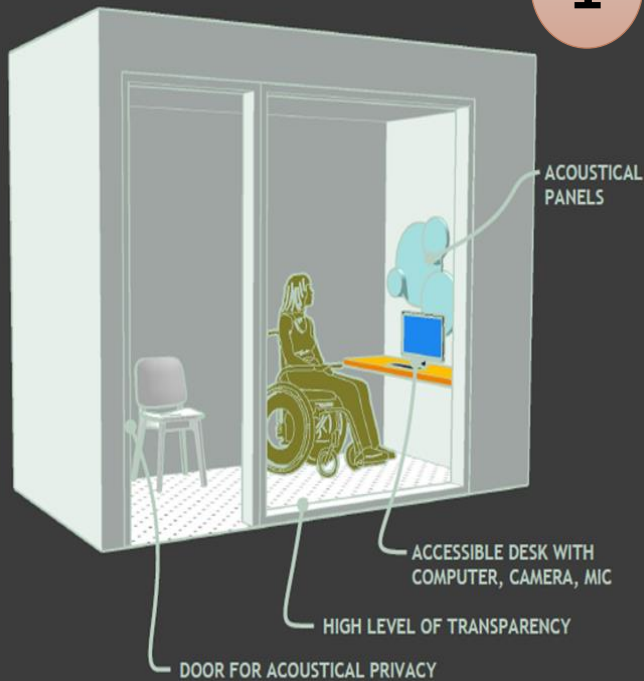
1. Ensure principles of due process, procedural fairness, transparency, and equal access are satisfied when adopting new technologies.
2. Focus on the user experience.
3. Prioritize court-user driven technology.
4. Embrace flexibility and willingness to adapt.
5. Adopt remote-first (or at least remote-friendly) planning, where practicable, to move court processes forward.
6. Take an open, data-driven, and transparent approach to implementing and maintaining court processes and supporting technologies.

NCSC Pandemic Guidance: <https://www.ncsc.org/newsroom/public-health-emergency>

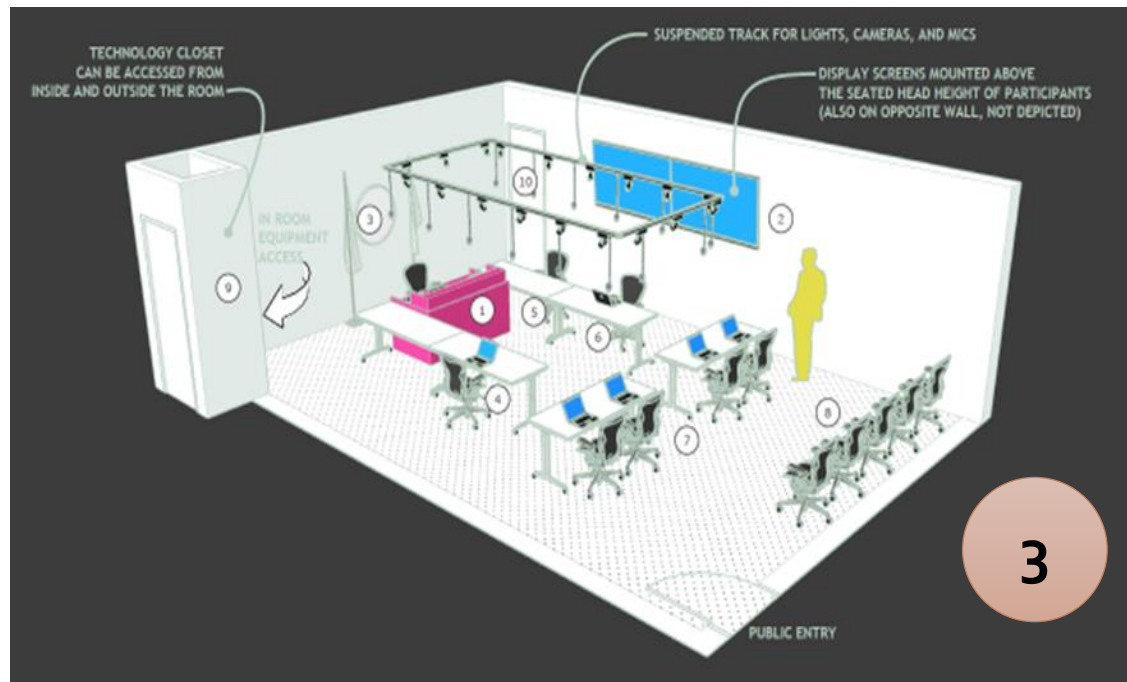
New Adjudication Spaces

80 SF | 300 SF | 700 SF

1



2



3

NCSC Hybrid Hearings Improvement Initiative

- One-year program to evaluate various models of hybrid courts to identify key elements of a successful model and develop best practices
- Applications from state, tribal, and local courts. Federal courts may also apply.
- Selected sites will receive equipment, training, and technical assistance to implement a hybrid solution.
- Applications being accepted through **July 13, 2022.**

www.ncsc.org/hybridhearings

Questions and Needs Assessment

Questions for the Members of the Land Court

- What about your current process is working well?
- What is not working?
- How much technology staff support do you have?
- From how many locations are you ideally hoping to operate?

Recommended Remote and In-Person Hearings in Arizona State Courts in the Post-Pandemic World



Arizona Supreme Court

COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup
February 22, 2022

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COVID-19 Continuity of Court Operations During a
Public Health Emergency Workgroup
(as of February 2022)

Hon. Samuel A. Thumma, Co-Chair

Arizona Court of Appeals, Division One

Mr. Marcus W. Reinkensmeyer, Co-Chair

Deputy Director, Administrative Office of the Courts

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Court Administrator
Superior Court of Arizona in Mohave County

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Honorable Jeff Bergin

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Manistee Justice Court, Maricopa County

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Introduction and Background

The COVID-19 pandemic has required extraordinary change in the courts, including profoundly accelerating the adoption and use of technology. As is true in other jurisdictions, in Arizona's state courts, remote court hearings have been held during the pandemic in many hearing types that, pre-pandemic, typically were in person. This change caused by the pandemic means courts have become more comfortable with remote court hearings, including what hearing types are best suited for remote court hearings.

In this Report, the Arizona Supreme Court's COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup ("Plan B Workgroup") makes recommendations about which court hearing types should be held remotely and which should be held in person in Arizona's state trial courts in the post-pandemic world. These best practice recommendations are set forth in Appendix 1 ("Recommendations") and are intended to account for all hearing types. The Plan B Workgroup asks that these Recommendations be considered, adapted, adopted, and implemented in two steps.

First, that they be considered and approved by Arizona Supreme Court Chief Justice Robert M. Brutinel and the Arizona Judicial Council.

Second, that they then be provided to Arizona's trial court judicial leadership for consideration, adaption, adoption, and implementation. The Presiding Superior Court and City Court Judges, the Presiding Justices of the Peace and, for limited jurisdiction courts that have only one judicial officer, the judicial officer of such court, would then consider these Recommendations, adapt them to account for local court resources and limitations and adopt and implement them in the post-pandemic world by local court administrative order that accounts for local court resources and limitations. Such local court administrative orders should also authorize hearing-specific variation by a judge assigned to a case in which the presumptive manner for holding a hearing is not practical or otherwise in the interest of justice, with notice to the parties.

This Report discusses: (1) the process used to develop these Recommendations; (2) the definition of "remote" court hearing; (3) advantages and challenges of remote court hearings; (4) concepts supporting these Recommendations; (5) suggestions for the approval, adaption, adoption, and implementation of these Recommendations; and (6) the need for feedback and evaluation after implementation.

As has been true throughout the work of the Plan B Workgroup, because knowledge is changing quickly, new information available in the future should be considered in implementing these Recommendations.

I. THE PROCESS USED TO DEVELOP THESE RECOMMENDATIONS

In June 2021, the Plan B Workgroup issued a whitepaper titled *Post-Pandemic Recommendations*. In January 2022, the Workgroup published an expanded version of that whitepaper, including significant annotations and references to new survey data. See *Post-pandemic Recommendations: COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup*, 75 SMU LAW REVIEW FORUM 1 (Jan. 2022), <https://scholar.smu.edu/smulrforum/>. That January 2022 publication includes three significant surveys and responses: (1) a survey of Arizona’s state courts (conducted May 3-14, 2021); (2) a survey of members of the State Bar of Arizona (conducted July 9-23, 2021); and (3) an Arizona public opinion survey (conducted September 27-28, 2021). *Id.* at Appendices 1, 2, & 3 (respectively). The *Post-pandemic Recommendations* provide a foundation for this Report and these Recommendations.

In December 2021, the Plan B Workgroup was asked to consider issues addressed in this Report. Members were added to the Plan B Workgroup where previous members had retired or taken jobs outside the courts and to include additional presiding judges. The members of this reconvened Plan B Workgroup are listed above. The initial reconvening message noted that the Plan B Workgroup was being asked to develop recommendations on the continued availability of remote hearings in various matters in the post-pandemic world. The focus was practical recommendations for each case type and hearing type, drawing on the Plan B Workgroup’s experience as well as past survey work and efforts in other states.

The Plan B Workgroup held six weekly meetings in January and February 2022. The first meeting, on January 12, 2022, featured a discussion with Jeff Shorba, State Court Administrator of the Minnesota Judicial Branch. That discussion focused on the *Recommended Approach to Remote Hearings on the Other Side of the COVID-19 Pandemic*, a June 2021 report to the Minnesota Judicial Council and actions taken as a result. Appendix 2 is a summary chart from that Minnesota Report, with the complete report available online. The Plan B Workgroup meetings that followed discussed various concepts and approaches and considered drafts of these Recommendations and this Report.

This undertaking also was influenced by a statute enacted in 2021 and a legislative proposal in 2022, both directing Arizona courts to conduct remote hearings in certain case types. The statute, enacted effective September 2021, directs remote court appearances for initial appearances in detainer (eviction) actions:

Notwithstanding any other law, in a special detainer or forcible detainer proceeding before the court, any party, including an attorney or witness upon written notice to the court, shall be permitted to participate at the initial appearance remotely by using a telephone or video conference connection. If the court continues a contested matter to a later date, at the discretion of the court, the court may require all parties, attorneys and witnesses to participate in person.

Ariz. Rev. Stat. (A.R.S.) § 22-206. The Arizona Supreme Court promptly implemented this statute by amending the Arizona Rules of Procedure for Eviction Actions, both on an emergency basis and then permanently. See [R-21-0039 PETITION TO AMEND RULES 5, 6, AND 11 AND APPENDIX A \(azcourts.gov\)](#).

Senate Bill 1191, as originally introduced during the 2022 Legislative Session, would have required “in all proceedings related to a civil action” that “any party, including an attorney or witness on written notice of the court, shall be allowed to participate in the proceeding remotely by using a telephone or video conference connection.” As introduced, S.B. 1191 would have added a new section in Title 12 (“Courts and Civil Proceedings”) of the Arizona Revised Statutes and also amended A.R.S. § 22-206. A February 1, 2022 “Strike Everything” amendment changed S.B. 1191 substantially. As a result of that amendment, S.B. 1191 would direct the Arizona Supreme Court to adopt and make effective, before October 1, 2022, rules to allow parties, attorneys, and witnesses to participate in civil proceedings “remotely by telephone or video conference.” S.B. 1191 also would direct that:

Court rules . . . shall presumptively allow for remote participation in the proceedings unless the Supreme Court adopts a rule that remote participation is not practical for a particular case type or proceeding type or otherwise in the interest of justice.

See <https://www.azleg.gov/legtext/55leg/2R/proposed/S.1191PETERSEN.pdf>. S.B. 1191 has not been enacted, but it has influenced these Recommendations and this Report.

II. “REMOTE” COURT HEARING DEFINED

Similar terms have been used as a shorthand for court hearings that use technology to allow one or more individuals to participate without being physically present in a courtroom, including “remote,” “virtual,” “online,” “electronic,” and

“technology-based.” As used in these Recommendations, the term “remote” is intended to broadly include any court hearing where one or more participant uses a technology-based platform, such as Zoom, Teams, WebEx, Skype, GoToMeeting, bridgelines, conference call lines, telephone, or similar technology to participate in the court hearing. This broad definition of “remote” tracks prior Plan B Workgroup usage of the term. See *Post-pandemic Recommendations*, 75 SMU LAW REVIEW FORUM 1, 8, 10, 13, 15, 19, 21, 25, 42-45 (Jan. 2022), <https://scholar.smu.edu/smulrforum/>.

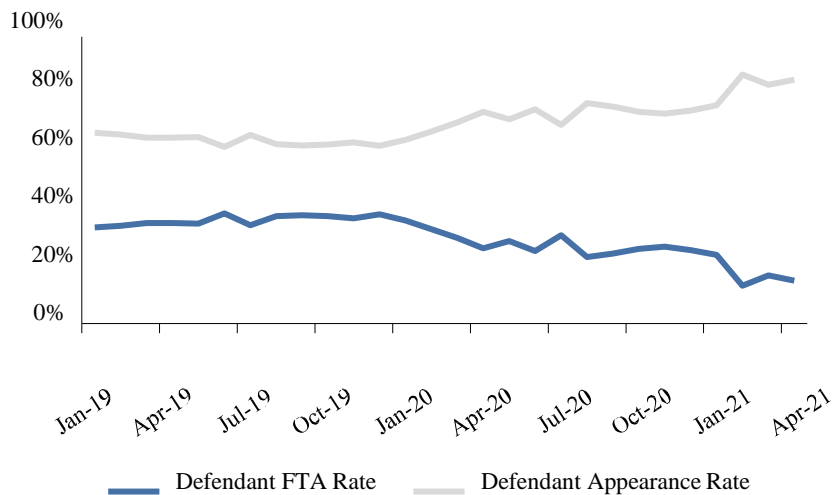
III. ADVANTAGES AND CHALLENGES OF REMOTE COURT HEARINGS

The *Post-pandemic Recommendations* whitepaper addresses in significant detail advantages and challenges of remote court hearings. See 75 SMU LAW REVIEW FORUM 1, 12-47 (Jan. 2022), <https://scholar.smu.edu/smulrforum/>. This Report summarizes the advantages and challenges of remote court hearings, deferring to that publication for substantial additional detail.

Advantages of remote court hearings include reducing travel time; taking less time off work for litigants; reducing costs; increasing safety; increasing efficiency for participants and the court; increasing appearance rates and a corresponding decrease in default rates. There was strong support for remote court hearings in all three surveys included in the *Post-pandemic Recommendations* (court, lawyers, and the public). *Id.* at Appendices 1-3. Expanding the use of remote court hearings also provides another means to enhance access to justice. As reported in *Post-pandemic Recommendations*:

The ability of technology to increase access to justice is profound. One data-based example is the appearance rates in eviction actions filed in the Maricopa County Justice Courts. Before the pandemic, in more than one-third of evictions actions, the defendant failed to appear. In 2019, for example, the failure-to-appear rate in such cases ranged from one-third to approaching 40%. After implementing remote appearance options, failure-to-appear rates decreased significantly, to as low as approximately 13% in February 2021. The change in appearance rates is shown below:

Defendant Appearance Rates in Evictions Actions - Maricopa County Justice Courts



Id. at 18-19 (footnotes omitted).

Challenges of remote court hearings include the “Digital Divide” (where some users lack access to Internet or computer hardware needed to facilitate effective participation); the need for training and education of participants and users within and outside the court; a loss of the “human factor” in hearings; the ability to confront witnesses in person; challenges with the use of exhibits; special user needs (including those with visual or hearing limitations, as well as those with behavioral health issues); funding for technology and related costs; accounting for public access to court proceedings, as well as addressing limitations on access to certain types of court proceedings; and the need to accept and account for change. Along with these advantages and challenges, remote court hearings also involve coordination by court staff in a manner that differs from in-person court hearings. The skill set and technical capacity to facilitate remote court hearings also differs for participants, including judicial officers, court staff, attorneys, parties, and others.

Given the significant potential advantages of remote court hearings, in general and where feasible, the Plan B Workgroup supports the adoption and use of remote court hearings for individuals involved in selected court proceedings, including parties, witnesses, and other court participants. The continued use of remote court hearings, post-pandemic, can allow Arizona’s state courts to better serve the public, to enhance access and efficiency, to reduce failure to appear rates, to accommodate the needs of participants in court proceedings, and to more closely reflect the approach taken outside of the courts. The Plan B Workgroup is strongly supportive of retaining, optimizing, and expanding the use of remote court hearings in the post-pandemic world.

Recommended Remote and In-Person Hearings in Arizona State Courts in the Post-Pandemic World

IV. CONCEPTS SUPPORTING THESE RECOMMENDATIONS

These Recommendations are the product of and reflect some general concepts identified by the Plan B Workgroup. Those concepts include the following:

- Court hearings not involving live witness testimony generally are identified as presumptively remote, while court hearings involving live witness testimony generally are identified as presumptively in person. This dichotomy, which is largely reflected in these Recommendations, is designed to reflect the practical ability of holding different types of live witness hearings in different case types and in the interest of justice, including the right of confrontation under the U.S. and Arizona Constitutions for testimonial evidence in criminal proceedings, comparable issues in juvenile delinquency proceedings, exhibit management when hard copy exhibits are used with live witnesses, and other pragmatic issues. Exceptions to this dichotomy in these Recommendations are largely based on experience by Plan B Workgroup members and their respective local courts.
- In these Recommendations, a “hybrid” court hearing, where at least one participant appears in open court and at least one participant appears remotely, is defined as a remote hearing. The reasons for this definition include that a hybrid court hearing has, in many respects, more similarities to a remote court hearing than an in-person court hearing.
- Even if a hearing in a matter is set as a remote hearing, a party who is able and otherwise at liberty to attend that hearing in person, and wishes to do so, should be allowed to attend in person. The Plan B Workgroup feels strongly that the ability of such a party to a case to go to a physical courthouse to participate in person for a hearing in that case should not be limited or prevented by these Recommendations.
- During the pandemic, the Superior Court in some Counties conducted in-person grand jury proceedings while others conducted remote grand jury proceedings. These Recommendations defer to the Presiding Superior Court Judges in the Counties to consider practicalities and the interests of justice to determine whether grand jury proceedings should be in person or remote.
- After a local court adapts and adopts an administrative order setting forth standards tailored to that local court for which hearings should be remote and which hearings should be in person, individual trial judges will need the authority to conduct, on a case-specific basis, hearings that vary from those

standards. Recognizing that there are many possible standards for such a variation,¹ this Report recommends that local administrative orders authorize hearing-specific variation by a judge assigned to a case in which the presumptive manner for holding a hearing is not practical or otherwise in the interest of justice, the standards recommended by the S.B. 1191 “Strike Everything” amendment, with notice to the parties.

This recommendation would mean, for example, that if a local court administrative order directs that, presumptively, a certain hearing type be held remotely, an individual judge presiding over a case would have the authority to hold such a hearing in person if it was not practical to hold a remote hearing or if holding a remote hearing was not otherwise in the interest of justice. Such a determination could be made by the judge without a request or on the request of a party, but with notice to the parties. This flexibility is essential to ensure that individual judges retain the authority to conduct a hearing in the most appropriate manner given the needs of that hearing and case and should not impose a significant burden in varying from the presumption set forth in the applicable administrative order.

V. APPROVAL, ADAPTION, ADOPTION, AND IMPLEMENTATION OF THESE RECOMMENDATIONS

A. Statewide, Coordinated Approach with Local Court Adaptation, Adoption, and Implementation.

The Plan B Workgroup considered recommending statewide standards for adoption uniformly in all of Arizona’s trial courts. There is merit in having a single set of statewide standards for various reasons, including uniformity of practice, certainty, and avoiding confusion. While acknowledging such benefits, this Report recognizes that local trial court judicial leadership is in the best position to consider resources and limitations in determining which types of hearings should be remote and which should be in person.

¹ Minnesota uses “extenuating circumstances,” a standard not widely used in Arizona. Arizona’s rule sets use various other alternatives with some frequency, including “extraordinary circumstances,” see, e.g., Ariz. R. Juv. Ct. P. 55; Ariz. R. Crim. P. 8.1; Ariz. R. Fam. L.P. 47, and “good cause,” see, e.g., Ariz. R. Evict. Act. 10; Ariz. R. Juv. Ct. P. 50.1; Ariz. R. Civ. P. 6(b)(1); Ariz. R. Fam. L.P. 4(b)(1); Ariz. R. Crim. P. 16.1(d).

As a result, the Plan B Workgroup suggests a two-step approach for these Recommendations to be adapted, adopted, and implemented in Arizona's trial courts.

First, these Recommendations are submitted for consideration and approval by Arizona Supreme Court Chief Justice Robert M. Brutinel and the Arizona Judicial Council. The Plan B Workgroup hopes that such action could occur at the March 2022 Arizona Judicial Council meeting.

Second, after approval by the Chief Justice and the Arizona Judicial Council, the Plan B Workgroup asks that the Recommendations then be provided to Arizona's trial court judicial leadership for consideration. The Presiding Superior Court and City Court Judges and the Presiding Justices of the Peace and, for other limited jurisdiction courts that have only one judicial officer, the judicial officer of such court, would then consider these Recommendations, adapt them to account for local court resources and limitations, and adopt and implement them in the post-pandemic world by local court administrative order that accounts for local court resources and limitations. Such local court administrative orders should also authorize hearing-specific variation by a judge assigned to a case in which the presumptive manner for holding a hearing is not practical or otherwise in the interest of justice, with notice to the parties.

B. Adaption, Adoption, and Implementation by Local Courts.

A local court's consideration of the Recommendations should account for resources and limitations of that local court system, including technology hardware and software, the Digital Divide, and staff resources.

Local courts should consider using these Recommendations to identify any gaps in network capacity or other necessary technologies and staffing. Such information can be used for resource acquisition through state and local budget requests, grant proposals, and technology planning with the Administrative Office of the Courts. For example, the needs and resources of densely populated urban trial courts can be different than those of sparsely populated rural trial courts. Court and other facilities and resources also can vary greatly from location to location, meaning the ability of those facilities to accommodate remote proceedings will differ as well.

Ideally, courts serving populations in the same geographic area would adopt and implement the same standards. For example, if practicable, the most beneficial outcome would be if the Superior Court, Justice Courts, and City Courts serving the same geographic area had the same standards. But, for various reasons, adoption and implementation of the same standards for local courts serving the same geographic area may not be possible given resources and limitations of those local courts.

Standards adopted by local courts should be made available publicly in widely-circulated and posted administrative orders, along with forms and instructions, well before their effective date. To ensure that remote court hearings in the post-pandemic world best serve participants, an explanation of why the standards are being put in place, when they will become effective, and how hearings will be conducted is essential. Local courts should provide advance notice to participants for cases eligible for remote hearings and widely publicize information on the court website, along with forms, instructions, and best practices for remote court hearings. *Cf. Post-pandemic Recommendations*, 75 SMU LAW REVIEW FORUM 1, 47-49 (Jan. 2022) (discussing, in a somewhat different context, the need for communication strategies and periodic interaction with various court participants and the public), <https://scholar.smu.edu/smulrforum/>.

It may be that some hearing types would transition to a remote platform before others. Such a phased implementation will not only allow for education by participants, but also allow for feedback and changes to better facilitate future implementations.

Local court implementation of remote court proceedings will need to account for both public access to court proceedings and also how to address limitations on access to certain types of court proceedings. Arizona Supreme Court Administrative Orders Authorizing Limitation of Court Operations During a Public Health Emergency have addressed public access to remote court proceedings, providing that “[w]hen court proceedings are not held in-person or the public is limited from attending in-person proceedings, the presiding superior court judge shall provide public access by video or audio to civil and criminal court proceedings typically open to the public to maximize the public’s ability to observe court proceedings to the extent logistically possible. The presiding superior court judge or single judge of a limited jurisdiction court should make video or audio proceedings, excluding small claims cases, available to the public to the greatest extent possible.” A.O. 2021-87 at 5 (Dec. 14, 2021).

Along with addressing public access, local court implementation of remote court proceedings also will need to account for limitations on access to certain types of court proceedings, such as juvenile matters and ensuring the protection of victim’s rights, to account for legal requirements. Such efforts should comply with and be informed by existing law and measures already undertaken by local courts to account for digital recordings, confidentiality, and other limitations. *See, e.g.,* Ariz. R.P. Juv. Ct. 47; Ariz. R. Crim. P. 39; Ariz. R. Civ. P. 5.4 & 16.1; Ariz. R. Fam. L.P. 13; Ariz. R. Prob. P. 8; Ariz. Supreme Ct. R. 123.

Local court implementation of remote court proceedings should have an effective date that will accommodate sufficient training, education, and testing both for those within the courts and participants in remote court proceedings. Recognizing these

Recommendations are for the post-pandemic world, the Plan B Workgroup recommends that the effective date for implementation be triggered by the Arizona Supreme Court, with sufficient time for Arizona’s trial courts to adapt the Recommendations to account for local court resources and limitations and adopt them as modified well before their effective date for implementation. That effective date trigger could come by order of the Arizona Supreme Court, by the lifting or vacating of Administrative Orders Authorizing Limitation of Court Operations During a Public Health Emergency, most recently evidenced by A.O. 2021-87 (Dec. 14, 2021), or in some other written form.

Implementation and education may be particularly challenging for participants with unique needs, including those with visual or hearing limitations, as well as those with behavioral health issues. Accommodation will also need to be made for individuals who are of limited English proficiency. A local court authorizing remote proceedings should follow its Language Action Plan and provide appropriate services to court participants and account for their needs.

C. Consideration of Efforts to Expand Broadband Internet in Arizona.

There is a substantial effort underway in Arizona to expand highspeed broadband Internet so that it is universally available, from a technical perspective, throughout the state. This effort includes the Arizona Broadband Development Grant Program, enabling local communities to build or improve broadband infrastructure to serve schools, small businesses, and others. From a public access perspective, this effort also includes public libraries and other publicly available locations.

The Arizona Supreme Court is working to expand the availability of highspeed broadband Internet for rural courts, purchasing licenses authorizing use of software to facilitate remote court hearings, and other advances. Courts also should consider making available “Zoom Rooms” or other publicly available space for remote participation or viewing where courthouses and technology can accommodate such access. Those efforts will help enhance the ability of local courts to hold remote court hearings. But even if highspeed broadband Internet becomes universally available throughout Arizona, that will not mean that every local court would have the technology, personnel, and other resources available to allow for most court hearings to be held remotely. Having local courts consider, adapt, and adopt local standards for remote court hearings properly recognizes and allocates authority to Arizona trial court judicial leadership, who can account for those resources and limitations.

D. Consideration of Arizona’s Digital Evidence Portal Project.

Adopting directives for remote court hearings where evidence is being received also may depend on the status of the effort, currently underway by the Arizona Supreme

Court, for a digital evidence portal to provide a standard solution for the submission, management, and storage of exhibits. This development promises to expand the use of remote hearings for evidentiary proceedings in Arizona’s trial courts. See <https://www.azcourts.gov/digitalevidence/>. That effort, however, is a work in progress, and although many courtrooms in Arizona’s trial courts have the ability and technology to display digital evidence, some do not.

Similarly, the need to obtain signatures or fingerprints when required may impact a local court’s ability to hold certain types of court hearings remotely. The capacity of courts to implement the digital evidence portal concept may also be a consideration a local court would need to account for (both in terms of technical abilities and in allocation of personnel) in determining which types of hearings should be held remotely in a local court.

E. Future Planning Considerations.

Adopting directives for remote court hearings should be part of a comprehensive planning effort to address the future. Technology needs and functionality change over time, sometimes quite quickly. Local court directives for remote court hearings should be accompanied by planning considerations for the future, including needs assessments, resources planning, and health, safety, and security protocols for courts and courthouses. See *Post-pandemic Recommendations*, 75 SMU LAW REVIEW FORUM 1, 50-53 (Jan. 2022), <https://scholar.smu.edu/smulrforum/>.

VI. THE NEED FOR FEEDBACK AND EVALUATION AFTER IMPLEMENTATION

Feedback and evaluation will be essential to determine the effectiveness of the implementation of these Recommendations and to make modifications and improvements as needed. This will be particularly true for types of proceedings that largely move to a remote court hearing.

Data capture will help identify potential efficiencies, including expanding capacity, providing related benefits, and identifying gaps. But, implementation should also include periodic qualitative assessment, including surveying, to obtain feedback from participants in remote court hearings and in applying the standards adopted by local courts.

The survey information obtained by the Plan B Workgroup in 2021 suggests that courts, attorneys, and the public at large strongly support availability and expansion of remote court hearings. See *generally Post-pandemic Recommendations*, 75 SMU LAW REVIEW FORUM 1 & Appendices (Jan. 2022), <https://scholar.smu.edu/smulrforum/>. Periodic

future feedback and survey information from participants (including those with unique needs or limitations) in remote court hearings (along with data capture) will help identify successes and opportunities for improvement.

Throughout its work during nearly two years of the pandemic, the Plan B Workgroup has attempted to encourage creativity by local courts and to help identify additional “tools” for the trial court’s toolbox. The focus on adaption, adoption, implementation, and modification of these Recommendations by local courts will continue to allow for innovation by local courts in their ongoing efforts to best serve participants in Arizona’s state trial courts and the public at large.

Appendix 1: Recommended Remote and In-Person Hearings in the Post-Pandemic World by Case Type and Hearing Type

Case Type	Hearing Type	Remote	In-Person
<i>Proceedings Under the Arizona Rules of Civil Procedure (Including Proceedings Under the Rules of Procedure for Judicial Review of Administrative Decisions; Superior Court Rules of Appellate Procedure - Civil and Criminal and Tax Court Rules of Practice)</i>			
<i>General</i>			
	Temporary Restraining Order	X	
	Preliminary Injunction – Non-witness	X	
	Preliminary Injunction – Witness		X
	Scheduling Conference	X	
	Settlement Conference		X
	Compulsory Arbitration – Non-witness	X	
	Compulsory Arbitration – Witness		X
	Good Faith Settlement Hearing		X
	Pre-trial/Motion – Non-witness	X	
	Pre-trial/Motion – Witness		X
	Jury Selection		X
	Jury Trial		X
	Bench Trial		X
	Default	X	
	Contempt – Non-witness	X	
	Contempt – Witness		X
	Post-Judgment Proceedings – Non-witness	X	
	Post-Judgment Proceedings – Witness		X
	Excess Proceeds	X	
	Transfer of Payment Rights	X	
	Amended Marriage Licenses and Birth Certificates	X	
	Forfeitures	X	
<i>Civil Court Appellate – Civil and Criminal</i>			
	Motion	X	
	Oral Argument	X	

Case Type	Hearing Type	Remote	In-Person
Proceedings Under the Arizona Rules of Criminal Procedure			
	Initial Appearance	X	
	Arraignment	X	
	Grand Jury Proceedings ²		
	Preliminary Hearing – Non-witness	X	
	Preliminary Hearing – Witness		X
	Bail Eligibility Hearing	X	
	Early Disposition Court	X	
	Rule 11 (Competency) – Non-witness	X	
	Rule 11 (Competency) – Witness		X
	Fugitive from Justice		X
	DUI Court		X
	Therapeutic Court		X
	Pre-trial/Motion – Non-witness	X	
	Pre-trial/Motion – Witness		X
	Change of Plea		X
	Submitting Case on Record	X	
	Jury Selection		X
	Jury Trial		X
	Bench Trial		X
	Sentencing		X
	Restitution		X
	Setting Aside a Conviction	X	
	Restoring Civil Rights	X	
	Expungement	X	
	Post-Conviction – Non-witness	X	
	Post-Conviction – Witness		X
	Probation Violation – Initial Appearance	X	
	Probation Violation – Non-witness	X	
	Probation Violation – Witness		X
	Probation Violation Disposition		X
	Bond Forfeiture/Exoneration	X	

² During the pandemic, some Counties conducted in-person grand jury proceedings while others conducted remote grand jury proceedings. These Recommendations defer to the Superior Court in each county to consider practicalities and the interests of justice to determine how grand jury proceedings should be conducted.

Case Type	Hearing Type	Remote	In-Person
<i>Proceedings Under the Arizona Rules of Family Law Procedure</i>			
	Pre-trial/Motion – Non-witness	X	
	Pre-trial/Motion – Witness		X
	Default	X	
	Resolution Management Conference	X	
	Temporary Orders – Non-witness	X	
	Temporary Orders – Witness		X
	Alternative Dispute Resolution – Non-witness	X	
	Alternative Dispute Resolution – Witness		X
	Conciliation Services		X
	Early Resolution Conference	X	
	Scheduling Conference	X	
	Trial		X
	Post-Decree/Post-Judgment – Non-witness	X	
	Post-Decree/Post-Judgment – Witness		X
	Contempt/Civil and Child Support Arrest Warrant – Non-witness	X	
	Contempt/Civil and Child Support Arrest Warrant – Witness		X
	IV-D Hearing – Non-witness	X	
	IV-D Hearing – Witness		X
	Specialty Court		X
	Decree on Demand	X	
	Accountability and Enforcement		X

Case Type	Hearing Type	Remote	In-Person
<i>Proceedings Under the Arizona Rules of Juvenile Court Procedure</i>			
<i>Dependency, Termination, Guardianship and Successor Guardianship</i>			
	Preliminary Protective/Initial Dependency		X
	Pre-adjudication/Motion – Non-witness	X	
	Pre-adjudication/Motion – Witness		X
	Dependency Alternative Program Hearing		X
	Settlement Conference		X
	Dependency Adjudication		X
	Disposition		X
	Review of Temporary Custody/Return of Child		X
	Contested Change of Physical Custody		X
	Review/Permanency	X	
	Initial Termination	X	
	Termination Adjudication		X
	Initial Guardianship	X	
	Guardianship Adjudication		X
	Guardianship Review	X	
<i>Delinquency/Incorrigibility</i>			
	Advisory	X	
	Detention	X	
	Transfer		X
	Pre-adjudication/Motion – Non-witness	X	
	Pre-adjudication/Motion – Witness		X
	Change of Plea		X
	Adjudication		X
	Disposition		X
	Restitution		X
	Probation Violation – Non-witness	X	
	Probation Violation – Witness		X
<i>Adoption/Emancipation</i>	Hearing – Non-witness	X	
	Hearing – Witness		X
<i>Other</i>	Hearing – Non-witness	X	
	Hearing – Witness		X

Case Type	Hearing Type	Remote	In-Person
<i>Proceedings Under the Arizona Rules of Probate Procedure (Including the Arizona Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders) and Name Change Proceedings</i>			
<i>All Case Types (Unless Listed Otherwise)</i>			
	Initial Hearing	X	
	Pretrial/Motion/Conference – Non-witness	X	
	Pretrial/Motion/Conference – Witness		X
	Alternative Dispute Resolution – Non-witness	X	
	Alternative Dispute Resolution – Witness		X
	Settlement Conference		X
	Evidentiary Hearing		X
	Order to Show Cause/Compliance Hearing		X
	Jury Selection		X
	Jury Trial		X
	Bench Trial		X
<i>Guardianship/Conservatorship/Decedent Estates</i>			
	Final Accounting – Uncontested	X	
	Final Accounting – Contested		X
	Settlement of Claims for Minors and Adults in Need of Protection/Distributions to Persons Under Disability – Non-witness	X	
	Settlement of Claims for Minors and Adults in Need of Protection/Distributions to Persons Under Disability – Witness		X
<i>Mental Health/Civil Commitment</i>			
	Pre-trial/Motion – Non-witness	X	
	Pre-trial/Motion – Witness		X
	Evidentiary Hearing (including on recommitment)		X
<i>Name Change</i>	Non-witness	X	
	Witness		X
<i>Adult Adoption</i>	Non-witness	X	
	Witness		X

Case Type	Hearing Type	Remote	In-Person
<i>Proceedings Under Arizona Rules of Protective Order Procedure</i>			
	Ex Parte Hearing	X	
	Contested Protective Order [Evidentiary] Hearing		X
	Other	X	
<i>Proceedings Under the Arizona Rules of Procedure for Eviction Actions</i>			
	Initial Appearance	X ³	
	Jury Selection		X
	Jury Trial		X
	Bench Trial	X	
	Writ of Restitution	X	
	Post-Judgment	X	
<i>Proceedings Under the Arizona Rules of Small Claims Procedure</i>			
	Hearing	X	
	Alternative Dispute Resolution	X	
<i>Proceedings Under the Arizona Justice Court Rules of Civil Procedure</i>			
	Pre-trial/Motion – Non-witness	X	
	Pre-trial/Motion – Witness		X
	Mediation Conference	X	
	Settlement Conference	X	
	Jury Selection		X
	Jury Trial		X
	Bench Trial	X	
	Other	X	

³ By statute:

Notwithstanding any other law, in a special detainer or forcible detainer proceeding before the court, any party, including an attorney or witness upon written notice to the court, shall be permitted to participate at the initial appearance remotely by using a telephone or video conference connection. If the court continues a contested matter to a later date, at the discretion of the court, the court may require all parties, attorneys and witnesses to participate in person.

Ariz. Rev. Stat. § 22-206.

Appendix 2: "Case Types and Hearing Types Presumed Remote and In-person" from Minnesota Judicial Branch Other Side Workgroup, July 2021 Report to Minnesota Judicial Council

This table includes case categories and major case types, where notable for the hearing types to be held remote or in-person. Not all case types are listed in this document. If they are not listed, presume the general case category recommendations for that case type (e.g. Family case category applies to "Family Other" MNCIS case type).

Case Category and Case Type	Hearing Type	Remote	In-Person
<i>Criminal:</i>			
	Hearing Officer Appointments	X	
<i>Petty Misdemeanors</i>	Petty Arraignments	X	
	Petty Court Trials	X	
<i>Minor Criminal¹</i>	Arraignment	X	
	Bail Hearing	X	
	Court Trial		X
	Jury Trial		X
	Motions		X
	Pre-Trials	X	
	Probation Violation		X
	Revocation		X
	Restitution		X
	Sentencing		X
	Settlement Conference		X
<i>Major Criminal²</i>	Bail Hearing	X	
	Court Trial		X
	Contested Omnibus/Evidentiary motions		X
	Omnibus (waiver)	X	
	First Appearance	X	
	Jury Trial		X
	Motions	X	
	Pre-Trials	X	
	Probation Violation		X
	Revocation		X
	Restitution		X
	Sentencing		X
	Settlement Conference		X
<i>Family:</i>			
<i>Dissolution, Custody, etc.</i>	Court Trial		X
	Defaults	X	
	Evidentiary		X

¹ Minor criminal includes DWI, domestic assault, and mandatory court appearances. This also includes if the defendant has already schedule a hearing officer appointment and they wish to go to court.

² Major criminal cases includes all Gross Misdemeanor and felony level cases.

Appendix 2

Case Category and Case Type	Hearing Type	Remote	In-Person
	ICMC	X	
	Motions	X	
	Pre-Trial Conference	X	
	Scheduling Conference	X	
<i>Domestic Abuse</i>	Evidentiary	X	
	Motions	X	
	Order for Protection-Initial appearance	X	
<i>Expedited Process</i>	Contempt	X	
	Hearing	X	
	Review	X	
<i>Paternity</i>	Hearing	X	
	Court Trial		X
	Evidentiary		X
<i>Adoption</i>	Adoption		X
Civil:			
<i>Harassment</i>	Evidentiary	X	
	Harassment	X	
	Motions	X	
<i>Minor Civil³</i>	Conciliation	X	
	Eviction (Unlawful Detainer)	X	
	Hearing	X	
	Implied Consent	X	
	Motions	X	
<i>Major Civil⁴</i>	Arbitration	X	
	Contempt		X
	Court Trial		X
	Default	X	
	Hearing	X	
	Jury Trial		X
	Motions	X	
	Scheduling Conference	X	
	Settlement Conference	X	
	Temporary	X	
Juvenile:			
<i>Juvenile Protection</i>	Admit/Deny		X
	Court Trial		X
	EPC		X
	IDH	X	
	Permanency Progress Review		X
	Post-Permanency Review	X	
	Pre-Trial	X	
<i>Juvenile Delinquency⁵</i>	Arraignment	X	
	Court Trial		X

³ Minor civil case types include implied consent, unlawful detainer, conciliation cases, and minor civil judgments.

⁴ Major civil case types includes all other case types that are not classified in minor civil types.

⁵ Juvenile Delinquency includes all juvenile criminal case types such as petty offenses and traffic.

Appendix 2

Case Category and Case Type	Hearing Type	Remote	In-Person
	Detention	X	
	Disposition		X
	EJJ		X
	Motions	X	
	Pre-Trial	X	
	Restitution		X
	Revocation		X
Probate/Mental Health:			
<i>Guardianship/Conservatorship</i>	Account	X	
	Final Account	X	
	Hearing	X	
	Order to Show Cause		X
	Probate	X	
<i>Civil Commitment</i>	Commitment	X	
	Jarvis	X	
	Motions	X	
	Preliminary	X	
	Re-Commitment	X	
<i>Informal Probate</i>	Probate	X	
<i>Formal Probate</i>	Order to Show Cause		X
	Probate	X	

Original Material Omitted

**Report of Joint Subcommittee on
Post-COVID Judicial Operations**



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Introduction

We are pleased to present this Report of the Joint Subcommittee on Post COVID-19 Judicial Operations (the “Subcommittee”). The Subcommittee was convened in September 2021, at the request of Chief Judge Joseph M. Getty, for the purpose of reviewing the various innovations and adaptations employed throughout the Judiciary during the COVID-19 pandemic to determine which of them should be retained on a permanent basis. This Report contains the results of the Subcommittee’s investigation and recommendations.

In her Message from the Chief Judge at the outset of the [Judiciary’s 2020 Strategic Plan Update](#), former Chief Judge Mary Ellen Barbera observed that during the COVID-19 pandemic, “the Maryland Judiciary has worked tirelessly to provide access to justice while safeguarding the health and safety of court visitors, personnel, and justice partners.” The 2020 Strategic Plan Update provided a summary of many of those efforts, including employing new technologies the Judiciary had not previously used, making greater use of existing technologies, conducting judicial proceedings and other events remotely, altering courthouse security and safety protocols, altering scheduling and docket management practices, providing training and education on new technologies and practices, providing training and education on traditional subjects in new ways, and offering increased flexibility in workplace arrangements.

Although some of the innovations and adaptations the Judiciary adopted during the pandemic have already been discontinued and others will follow when it is safe and appropriate to do so, others have proven sufficiently useful that they should become a regular feature of the Judiciary’s operations going forward because they further the Judiciary’s mission of providing fair, efficient, and effective justice for all. In arriving at the recommendations contained in this Report, the Subcommittee considered the effect any particular innovation or adaptation has or may have on, or be impacted by, the constitutional and statutory rights of litigants, access to justice considerations, the efficiency and effectiveness of judicial operations, the efficiency and effectiveness of the operations of judicial partners and stakeholders, the Judiciary’s ability to respond to changing needs and circumstances, differences in operations and conditions across the State, the availability of resources in the Judiciary and in the communities we serve, and judicial accountability.

The membership of the Subcommittee included judges, clerks, administrators, a magistrate, a commissioner, and technology professionals from different levels of courts and geographic regions across the Judiciary. In addition to its membership, the Subcommittee gathered information to inform its recommendations from multiple sources, including:

- Circulating an internal survey to all Judiciary personnel by sending the survey to the email group *MDCOURTS Everyone*. Complete, or nearly complete, surveys

were submitted by 1,810 employees from across all segments of the Judiciary. The survey solicited information about use of technology during the pandemic, participation in specific types of remote proceedings and events, participation in remote meetings and trainings/education, knowledge concerning other COVID-related innovations or changes in procedures, and views on whether such innovations and adaptations should continue post-pandemic.

- Circulating an external survey to identified stakeholders, including State, local, and specialty bar associations; law enforcement agencies; representatives of prosecutors and defense counsel; government agencies; public interest organizations; and advocacy groups. Complete, or nearly complete, surveys were submitted by 94 respondents. The survey solicited information about use of technology during the pandemic, participation in remote proceedings and events, other changes in Judiciary operations, and views on whether such innovations and adaptations should continue post-pandemic.
- The Subcommittee hosted listening sessions on the evenings of December 6 and 8 for members of the public to provide additional input. Nineteen members of the public weighed in with comments during the two sessions. Most of the commenters identified remote proceedings as improving access to justice and were strongly supportive of the continued use of remote proceedings for at least certain types of hearings post-pandemic. Several speakers also voiced support for the continuation of livestreaming court proceedings post-pandemic.
- The Subcommittee convened four workgroups to address technology, remote proceedings and events, courthouse safety and security, and other operations issues. In formulating their recommendations, the workgroups invited participation from others, including the Judiciary's Access to Justice Department, Judiciary security, the Judicial College, a sheriff's office, and a representative of the Judiciary's Mediation and Conflict Resolution Office.
- Members of the Subcommittee made presentations at various meetings of Judiciary personnel to solicit input, including at the 2021 Joint Conference of Court Administrators, Clerks of Court, and District Court Administrative Clerks; the 2021 Magistrate's Conference; and a meeting of the Conference of Circuit Judges.

The Subcommittee has broken its Report into the following categories: Technology, Remote Proceedings and Events, Courthouse Security and Safety, Alternative Work Arrangements, Courthouse Scheduling and Docket Management, Judicial College of Maryland, Meetings, and Non-Judicial Functions. Each section begins with a brief description of pandemic operations, identifies the Subcommittee's general approach to

each category, and provides the Subcommittee's recommendations.¹ We note that, by necessity, the descriptions of pandemic operations contained in this Report scratch only the surface of the efforts Judiciary personnel made to provide continued services to the people of Maryland during the pandemic, and the sections identifying the Subcommittee's considerations in each category covered address only general, high-level considerations. The Subcommittee has nonetheless reviewed in detail all of the input provided by internal and external stakeholders and has taken that input into account in formulating its recommendations. The Subcommittee is very appreciative of the time and effort taken by so many Judiciary and external stakeholders.

¹ Notably, the Subcommittee was not tasked with determining when the Judiciary should emerge partly or fully from its current COVID-19 related protocols. The Subcommittee's task was to look only at what innovations or adaptations initially addressed to COVID-related challenges should survive once the COVID pandemic has subsided.

I. Technology

A. Pandemic Operations Background

Pre-pandemic, and over time, Judicial Information Systems (“JIS”) has progressed toward a more connected, electronic, and web-based system infrastructure to conduct court and business operations. In the pre-pandemic world, several JIS systems were electronic and available to support court and business office functions both on and off the network. Systems that were critical to the success of the Judiciary’s transition to remote operations included:

- MDEC File and Serve for Electronic Filing
- MDEC Odyssey Electronic Case Management System
- Microsoft Office 365 Email
- Virtual Desktop Infrastructure (VDI) for Remote Access
- Document Sharing via ShareFile
- eWarrant (Adobe Sign)
- Enterprise-wide Human Resources Management System (CONNECT)
- Court Recordings (CourtSmart/FTR)
- Courtroom Audio/Visual units (Polycom) for certain use cases (e.g., Video Remote Bail with Detention Centers)
- Text Notification Program²
- Information Security Awareness and Education Training Program
- Skype for Business
- Security Event Monitoring

Following the sudden onset of the pandemic in March 2020, the Judiciary’s implementation of restricted operations required JIS to reprioritize ongoing projects and initiatives and focus on implementing, enhancing, and maintaining technology and processes to facilitate remote proceedings and business operations. Technology innovations and adaptations included:

- Zoom for Government for remote hearings
- Digital Recording: Automatic importing from Zoom

² The Text Messaging Pilot Program started in December 2018. The Phase I Program allowed the District Court Commissioners to subscribe defendants for criminal cases. Phase I concluded in April 2020 and the program was authorized to continue on a permanent basis. Phase II went live on December 1, 2021 and expanded the criminal defendant registration process for text notifications to include District Court and Circuit Court clerks using the new “Text Messaging Dashboard.” Phase II is limited to defendants in District and Circuit Court Criminal and incarcerable Traffic cases, and for MDEC cases only.

- MDEC updates to pull in Zoom for Government details for remote hearings and create a process for pre-filing exhibits in remote hearings.
- Zoom Webinars for the Judicial College
- Audio only livestreaming
- Increased reliance on remote access technologies (VDI) and extension of VDI capabilities.
- Skype transition to Microsoft Teams for internal collaboration
- Courtroom Audio/Visual units to support remote hearings
 - Standard equipment (Polycom) setup in all courtrooms for remote proceedings
 - One touch dial to join Zoom meetings
- Digital recording system enhancements to support remote hearings
- Desktop equipment to support remote operations
- Multi-factor Authentication
- Simplified eWarrant process via transition to DocuSign
- Security Information and Event Management (SIEM)
- Security update enhancements for remote devices

In May 2020, the Judicial Council's Court Technology Committee formed the Remote Hearings Workgroup to develop processes and best practices for the conduct of remote court proceedings. On June 11, 2020, the Judicial Council approved the recommendation of the Remote Hearings Workgroup to adopt Zoom for Government as the Judiciary's remote video platform. Thereafter, in September 2020, the Remote Hearings Workgroup provided guidance for judges in conducting remote proceedings. In an effort to inform members of the Judiciary and the public about the use of Zoom for Government, the Judiciary established a [Remote Hearings webpage](#) on the MDCourts.gov website and created a [Remote Hearing Toolkit](#). The Judicial College created other resource materials, including webinars, and quick reference guides.

B. Considerations

The Judiciary employs technology to further its mission of providing fair, efficient, and effective justice for all. Considerations specific to certain technologies are identified in other sections of this Report, particularly Remote Proceedings and Events. Other considerations are addressed in the recommendations section specific to individual technologies. We observe, however, that one of the most important tools in the Judiciary's pandemic operations was not a pandemic-related innovation or adaptation but the continued use and deployment of MDEC, which had been implemented in 21 of the State's 24 jurisdictions before the pandemic and recently added Montgomery County on October 25, 2021. The last two jurisdictions that need to implement MDEC are Prince George's County and Baltimore City. The Subcommittee supports the Judiciary's efforts

to implement MDEC in those two jurisdictions as soon as possible and to standardize processes and reporting across all jurisdictions.

C. Recommendations

1. Discontinued Technology

During the pandemic, the Judiciary discontinued use of two technologies it had used previously: eWarrants with Adobe Sign and Skype for Business. Both were replaced by upgraded platforms: eWarrants with DocuSign and Microsoft Teams. The Subcommittee does not recommend discontinuing use of any other technologies currently in use.

2. Pandemic Technology Innovations or Adaptations that Should Be Continued

In accord with recommendations from JIS, the Subcommittee recommends that the Judiciary continue its use of the following technologies that the Judiciary adopted or enhanced its use of during the pandemic:

Zoom for Government. Deployed during the summer of 2020, Zoom for Government was introduced to provide a superior video conferencing platform that supported many of the features frequently requested by the courts. The Judiciary currently utilizes Zoom's secure FedRAMP certified platform. The benefits of the continued use of Zoom for Government are discussed in detail in other sections of this Report. The Subcommittee recommends that the Judiciary assess whether it has sufficient Zoom for Government licenses to enable the efficient use of that platform throughout the Judiciary for remote proceedings, meetings, and education activities.³

MDEC Enhancements for Remote Hearings. Updates to MDEC forms and reports were introduced to pull in Zoom for Government details for remote hearings. In addition, a process for pre-filing exhibits in remote hearings was implemented, however capturing Zoom information on the case still requires manual entry and processes for pre-filing of exhibits were not uniform. The Subcommittee recommends that JIS continue efforts to establish a tighter integration between Odyssey and virtual conferencing platforms and work with the

³ Zoom licenses were initially procured for Judges, Magistrates, those who schedule court proceedings on behalf of Judges and Magistrates, and certain administrative staff, due to their need for more advanced features (i.e., breakout rooms, interpreter channels, etc.) that were, at the time of procurement, uniquely available to Zoom for Government. All other Judiciary staff were directed to use Microsoft Teams, which was already available to staff via Office 365 licensing. The Subcommittee recommends re-assessing that decision now that the Judiciary has returned to Phase V operations.

Remote Hearings Workgroup of the Court Technology Committee to support implementation of best practices in remote hearings.

Microsoft Office 365. Deployed in 2016, Microsoft Office 365 introduced a suite of remotely accessible productivity tools and email. Judiciary employees are able to access these tools from any internet connected device, either via a web browser on a PC or apps on a mobile device. During the pandemic, this allowed employees without mobile Judiciary devices to remain productive during remote operations.

Virtual Desktop Infrastructure (“VDI”). Deployed in 2017, VDI provides remote access to a virtual desktop running a Windows operating system and Judiciary applications. Using an internet connected device, employees are able to quickly connect to this virtual desktop to access Judiciary applications that are available only on the Judiciary’s private network. Over 2,000 employees utilized this service to remotely access applications such as Odyssey, GEARS, and court recording systems. VDI is a key underlining technology for continuity of operations.

ShareFile. Deployed in 2014, ShareFile is a remotely accessible file sharing and storage service. ShareFile enables employees to securely request, send, or share a file with others. During the pandemic, ShareFile was leveraged by some courts for digital evidence submission. The Subcommittee recommends exploring further use of ShareFile, or another program with significant file-size capacity, for that purpose.

Court Recordings. The Judiciary’s court recording systems, CourtSmart and FTR, store audio (and video for some jurisdictions) of court proceedings. In 2018, an archival service was introduced that allowed courts to archive older recordings to a secure cloud-based service.

Court of Appeals Live Broadcast. Initially introduced in 2006, and upgraded in 2015, the Court of Appeals live broadcast service is used to broadcast and provide archived copies of in person oral arguments to the public via mdcourts.gov. During the pandemic, the service was quickly transitioned to live broadcast remote oral arguments hosted via Zoom and expanded to include Court of Special Appeals remote oral arguments as well. As of December 2021, the Court of Special Appeals began to live broadcast in-person arguments as well.

eWarrants with DocuSign. The eWarrants solution was enhanced in 2020, in an effort to reduce the complexity of the existing solution, by the use of DocuSign. Officers now send a warrant via email, and Judges use the DocuSign app built into

their mail client to sign and return the completed warrant. Warrants can now be signed in seconds, rather than minutes.

Microsoft Teams. Introduced in 2020, Microsoft Teams replaced Skype for internal meetings and collaboration. Microsoft Teams allows groups of people (both internal employees and external participants) to send instant messages, collaborate on documents, share information via posts, and meet via video conferencing. Several survey respondents questioned the need for the Judiciary to use both Teams and Zoom for Government and most expressed preferences for the latter.⁴

Courtroom Audio/Visual (A/V). Courtroom A/V is primarily delivered by Polycom and court recording systems. These systems allow for hybrid hearings, where some of the participants are present in the courtroom and other participants are remote using Zoom for Government. Polycom systems are able to join Zoom for Government meetings, allow hearing participants to see each other, and are connected to court recording systems. Before the onset of the pandemic, roughly 25% of the Judiciary's courtrooms were outfitted with Audio/Visual (A/V) systems. Today, more than 80% of courtrooms have A/V systems installed.

Audio Only Livestreaming. Audio only livestreaming was introduced in 2020 to provide public access to judicial proceedings during the pandemic. This audio-only broadcast allows for remote listening to courtroom proceedings over the internet via an audio player hosted on the Maryland Judiciary's public website, mdcourts.gov. Access via livestreaming is preferred for public access, rather than including members of the public in the meeting session itself, to avoid possible disruptions. Some advocates have requested that livestreaming (audio and video) be used post-pandemic to broadcast in-person proceedings in open courtrooms, both to permit greater access for individuals unable to attend proceedings in person and to enhance transparency and accountability. The Subcommittee recommends that, post-pandemic, audio only livestreaming be continued for remote proceedings that would otherwise occur in an open courtroom. The Subcommittee also recommends that the Technology Committee's Audio Livestream Workgroup continue to consider whether and under what circumstances livestreaming should be implemented for in-person proceedings in open courtrooms, including recommending specific case types or proceedings that are and are not appropriate for livestreaming.

⁴ Microsoft Teams is intended to be utilized as a collaboration tool, as well as a video conferencing platform for small scale internal meetings. Zoom for Government is intended to be used solely as a video conferencing platform, due to its simplified user experience, for meetings with external participants or large-scale meetings.

3. Further Technology Enhancements the Subcommittee Supports

JIS has informed the Subcommittee of several technology enhancements it is developing or exploring that the Subcommittee supports to further enhance the Judiciary's post-pandemic operations. These include:

Text Notification Service Enhancements. The text notification service will be enhanced to allow clerks to subscribe parties to the service via an updated text messaging portal/dashboard. Additional enhancements being considered include a public facing portal allowing individuals to register for notifications relating to court services, such as a virtual queue management solution to reduce wait lines in courthouses, and the ability to send remote hearing links and other information digitally.

E-payment. The Judiciary has an architecture capable of integration with third party payment processors such that the Judiciary can begin to accept digital payments (e.g., on-line credit cards, bank payments, Venmo, PayPal, pay-via-text, etc.) for court and licensing fees and fines, which would substantially improve the convenience of court payment transactions. The Judiciary is also considering the placement of payment kiosks within courthouses.

Remote Interpretation (VRI). Remote interpretation was introduced shortly after the onset of the pandemic via use of Zoom's interpreter functionality. That functionality provides simultaneous interpretation, which, when working properly, greatly reduces hearing times. VRI will be expanded to permit use in both hybrid and in-person hearings, facilitated by Zoom-capable tablets that will be placed in courtrooms. Because interpreters will not need to be present in the courtroom, this will bring a broader range of language services to all courts in Maryland.

Voice over Internet Protocol (VoIP). VoIP will replace the Judiciary's existing phone system and enhance the mobility of telephone service for Judiciary employees. In addition, the new VoIP system will permit the Maryland Court Help Center to discontinue the use of Amazon Connect currently used to facilitate the handling of phone calls to the Center from attorneys logged in from any location. The VoIP system will include a contact center application that will permit the Center to replace the current live chat provider and integrate the handling of calls and chats, permitting a more efficient use of staffing, and facilitating the integration of pro bono attorneys when available. The VoIP system will also permit the development of chatbots to enhance the user experience of the Judiciary website and to handle simpler inquiries to the help centers.

Network Enhancements long term. JIS is working on a network redesign to enhance the Judiciary's wide area network by increasing service availability while

maintaining network security controls. Enhancements would enable sites to continue operations in the event of a network outage at the Judiciary's datacenter, enhance wireless offerings at courthouses, and allow for higher bandwidth limits.

Online Dispute Resolution. Online Dispute Resolution will be a new service, currently in the visioning and requirements definition stage, which will provide a public facing portal allowing virtual settlement of three initial case types: Small claims, traffic (guilty with an explanation), and child support enforcement.

Enhanced Workforce Mobility. Enhancing the Judiciary's existing remote access capabilities, JIS will be introducing a service that automatically and securely connects off network Judiciary laptops to the Judiciary's private network provided the laptops have an active internet connection. This means that regardless of where a Judiciary laptop is located it will always have access to internal Judiciary applications and resources.

Digital Evidence Submission and Presentation. A new digital evidence submission and presentation platform is being considered which would simplify the submission process for attorneys and self-represented litigants, as well as the approval, organization, and management of digital evidence for court staff. Further, digital evidence presentation will be expanded and enhanced to include additional use in cases, such as evidence review during juror deliberations.

II. Remote Proceedings and Events

A. Pandemic Operations Background

Before the pandemic, with few exceptions, the Judiciary did not make use of remote technology to conduct proceedings and events other than bail reviews. During the pandemic, the Judiciary quickly adopted remote technology that all courts used to conduct many types of proceedings and events and that some courts used to conduct nearly all types of proceedings and events other than jury trials. It would not be possible or fruitful here to identify all the innovations and adaptations that were required to successfully implement that transition, but among the larger groupings of innovations and adaptations were:

Technology. At the outset of the pandemic, many courts explored different remote technologies to conduct remote proceedings and events, some that were supported (to greater or lesser extent) by JIS and others that were not. Those technologies differ significantly in their capabilities and security. Eventually, the Judiciary adopted Zoom for Government as its preferred technology for the conduct of remote proceedings and events. JIS then undertook to integrate other technologies with Zoom for Government to support remote proceedings and events, including MDEC, Polycom, and CourtSmart. *See* Technology Section above.

Rules Changes. In March 2020, the Court of Appeals adopted Rules 16-1001 – 1003, which provided the Chief Judge of the Court of Appeals broad authority to alter or supplement the Maryland Rules during an emergency declared by the Governor or another event that “significantly affect[s] access to or the operations of one or more courts or other judicial facilities of the State or the ability of the Maryland Judiciary to operate effectively.” Md. Rule 16-1001(a), (b). Pursuant to that authority, Chief Judge Barbera issued a series of administrative orders that permitted courts to operate remotely during the COVID-19 emergency.

Education. Zoom for Government and other remote technologies used to conduct remote proceedings and events during the pandemic were entirely or mostly new to most members of the Judiciary. With the support of JIS, the Judicial College, the Judicial Council’s Court Technology Committee, the Court Technology Committee’s Remote Hearings Workgroup, and others, the Judiciary provided training and support to all members of the Judiciary, as well as attorneys and members of the public, to leverage new technology to conduct remote proceedings and events. Key parts of that effort included the development and dissemination of guidance for judges in conducting remote proceedings and the [Remote Hearing Toolkit](#).

Livestreaming. To provide required public access to remote proceedings, the Judiciary livestreamed audio of many public proceedings. Livestreaming is discussed further above in the Technology Section.

Remote Interpretation. The Judiciary was able to use remote interpretation technology to provide adequate access to language interpretation for Limited-English-Proficient individuals. Remote interpretation, while not free of technology challenges, generally provides an efficient and effective way to provide language services for proceedings when in-person interpreters are not available in a cost-effective manner, which can be especially challenging in the State’s rural jurisdictions. During the pandemic, the Judiciary Court Interpreter Program staff from the Access to Justice Department provided extensive training and support to ensure all court staff and interpreters were skilled at using the interpretation features of Zoom for Government. Notably, although the Zoom for Government interpreter feature is available in all jurisdictions and is not limited by cost, it must be activated at the time a proceeding is scheduled and cannot be added later.

The Judiciary’s swift transition to the use of remote technologies during the pandemic was, overall, a remarkable success that permitted courts to continue to function at high levels of service throughout the pandemic while providing for the safety of litigants, attorneys, members of the public, and Judiciary staff. From deployment of the service through September 2021, the Judiciary held 164,018 “meetings” with 1,214,229 participants comprising 55,673,933 minutes using Zoom for Government.

The use of remote proceedings and events turned out to have many additional benefits beyond those associated with the continuation of operations during the pandemic. The use of remote proceedings and events also presented challenges, many of which stemmed from (1) the adoption of remote technologies on an emergency basis without the advance planning that typically would be associated with such an endeavor, and (2) baseline differences in access to the resources necessary to take advantage of the benefits of remote proceedings.

B. Considerations

The Judiciary’s transition to the use of remote proceedings and events was critical to its ability to perform its essential functions during the pandemic while providing for the safety of litigants, attorneys, members of the public, and Judiciary staff. Remote proceedings also had many additional benefits that merit consideration of their continued use once pandemic exigencies are past, including:

- The ability of litigants to attend court proceedings from where they are located. For many litigants, attending court proceedings in person can be challenging, especially when doing so involves a need to take time off of work, arrange for

childcare, travel significant distances, or travel even moderate distances where public transportation is unavailable or very time consuming. Especially for litigants of limited means, these challenges can force choices between undesirable options, exacerbate existing economic challenges, and discourage participation. Such challenges are exacerbated when the proceedings at issue are likely to be brief or even postponed or canceled without warning. The ability to attend proceedings from work or home can alleviate many of the challenges and adverse consequences of requiring litigants to appear in person at certain types of proceedings.

- The ability of attorneys to attend court proceedings from where they are located. Attorneys who practice in courts that are not located near their offices can spend a significant amount of time and expense traveling to, and waiting in, court for proceedings that are brief or that are likely to be postponed or canceled. When proceedings are held remotely, clients are not required to pay for an attorney's time spent traveling or waiting in court and attorneys have more time to perform other productive work.
- The ability of some witnesses and parties to participate in proceedings who otherwise would not be able to do so. That is particularly true of: (1) witnesses located outside the jurisdiction of the court; (2) witnesses and parties in expedited proceedings, such as shelter care/CINA or certain guardianship proceedings, who could not otherwise arrange work or travel schedules to appear in person on short notice; and (3) certain expert witnesses.
- Expert witness testimony, especially from experts who do not reside near the courthouse, can be provided at substantially less expense to the parties.
- The use of remote interpretation allowed the Judiciary to recruit interpreters from a broader pool, including out-of-state, using the reciprocal certification process established by the National Center for State Courts. That has enabled the Judiciary to more easily recruit interpreters for rare languages.
- Attorneys from jurisdictions outside the State's urban cores have been willing to serve as panel counsel in criminal and CINA/TPR cases when proceedings will be held remotely in circumstances in which they would not have participated in in-person proceedings. The availability of a larger counsel pool also helps eliminate scheduling conflicts that make it more difficult for courts to meet statutory time constraints and case time standards.
- Complainants in domestic violence and abuse cases are not required to be in the same physical space with their alleged abusers in proceedings that do not implicate due process and confrontation concerns.

- The burden on corrections and law enforcement staff to transport prisoners for hearings and house them in temporary locations, with attendant safety concerns and expense, are significantly reduced.

Based on these and other considerations, feedback from external stakeholders in surveys and in listening sessions was almost universally supportive of the continuation of remote proceedings for at least certain types of proceedings and events.

On the other hand, remote proceedings and events also present numerous challenges that are not present during in person proceedings, including:

- It is more difficult for a finder of fact to adequately assess the credibility of witnesses using existing remote technology.
- Although remote proceedings can promote greater access to justice for many, as discussed above, there is also a risk that the so-called digital divide can exacerbate existing inequalities. Litigants of limited means and litigants unfamiliar with technology, especially if they are self-represented, may not be able to participate fully in remote proceedings and events without assistance.
- Some areas of the State, especially rural areas, presently lack consistently reliable and available Internet access to support remote proceedings.⁵
- Absent knowing and voluntary consent, remote proceedings may not satisfy the due process, confrontation, or other statutory or rules-based rights of defendants in criminal cases, victims in criminal cases, and respondents in certain other types of cases, such as TPR and certain commitment proceedings.
- Even where remote proceedings are more efficient than in-person proceedings for litigants and attorneys, they can be less efficient from the perspective of at least some courts. Internal survey respondents pointed especially to: (1) the need to manually send notices with meeting links and notify participants of scheduling changes; and (2) the need to monitor and move participants in and out of the electronic meetings and waiting rooms, which is often performed by judges, magistrates, or other personnel who have other responsibilities during the proceedings.

⁵ The Attorney General's COVID-19 Access to Justice Task Force created a [Civil Justice Dashboard](#) that includes geographic and technical details related to the digital divide in Maryland.

- Survey responses indicated that self-represented individuals in particular were often unable to participate effectively in remote proceedings involving the use or sharing of exhibits.
- Depending on the technology employed in any particular court proceeding, all participants were not always able to see and hear all other participants.
- With existing technology, hybrid hearings in which one or more litigants or attorneys appear in person and one or more other litigants or attorneys appear remotely present special challenges, inefficiencies, and disparities. That does not necessarily apply when all litigants and attorneys appear in person and one or more witnesses appear remotely.
- Many survey responses expressed concerns arising from the absence of a controlled environment around witnesses and parties. Perhaps the most serious concern is the inability to see what is taking place around a person, including possible coaching of testimony or, in domestic violence cases, intimidation. Respondents also complained about a lack of decorum among participants, some people attempting to participate while distracted by other activities, and a general sense of a loss of the dignity and solemnity of proceedings that is inherent in proceedings in a courtroom. It is also difficult to prevent participants from recording remote proceedings.

Access to Justice. From an access to justice perspective, remote proceedings offer both advantages and disadvantages. During the pandemic, the Judiciary made significant investments in resources to help the courts conduct proceedings remotely. The ability of litigants and attorneys to participate in remote proceedings generally depended on their own access to technology and the technology infrastructure in their area. For litigants of limited means who are able to take advantage of remote proceedings, the ability to do so can greatly reduce the barriers to effective participation in judicial proceedings. Internal and external survey responses and speakers at listening sessions extolled the many benefits of remote proceedings for litigants of limited means who are able to use them. On the other hand, for litigants of limited means without the resources to participate effectively in remote proceedings, such proceedings can exacerbate existing disparities. Unequal access to technology, reliable and affordable connectivity, and training all present potential barriers to the effective use of remote proceedings.

Uniformity versus flexibility. There is a tension between the benefits of uniformity in the conduct of remote proceedings across the state and the need for flexibility to account for differences in resources, the perceived benefits of remote proceedings in different jurisdictions, and local preference. The Subcommittee believes that an appropriate balance can be achieved by: (1) ensuring that all courts throughout the State have the personnel, training, and similar technology infrastructure to provide for efficient and effective remote proceedings; (2) developing and maintaining resources to support

litigants who may want to take advantage of remote proceedings and events but do not themselves have access to the technology to do so; (3) establishing a uniform set of best practices for courts to employ in scheduling, setting up, and conducting remote proceedings so that there is consistency in remote proceedings when held throughout the State, no loss in efficiency of judicial operations, and the Judiciary is better able to provide support and training for remote proceedings; and (4) encouraging the use of remote technology when doing so presents substantial benefits to litigants and attorneys without adversely affecting the interests of any participants or the efficiency of court operations.

Accessibility. Remote proceedings present special challenges or benefits for certain participants. Although the use of remote interpretation technology for non-English speakers or those with limited English proficiency was generally successful during the pandemic, some significant concerns were identified in survey responses, including challenges with the flow of proceedings and a substantial increase in disruption occasioned by unreliable connectivity.⁶ It is also the case that when an interpreter is speaking on the interpreter channel during a fully remote hearing, the content is not recorded on CourtSmart. That, however, is also true of simultaneous translation during in-person proceedings. Differently abled, hearing or visually impaired participants may also require accommodations to participate in remote proceedings.

C. Recommendations

1. The Remote Hearings Workgroup of the Court Technology Committee should undertake a study of best practices in the scheduling and conduct of remote hearings to identify ways to improve the efficiency and effectiveness of remote hearings, including the most efficient methods for scheduling and managing remote proceedings, the roles to be played by all participants in remote proceedings, and whether current personnel staffing is adequate. The goal should be to develop best practices and procedures to make all aspects of remote proceedings at least as efficient as in-person hearings for the Judiciary as well as for external participants.
 - a. Along with this study, the Court Technology Committee and JIS should consult with Zoom to develop minimum equipment standards to maximize the connection to Zoom and performance of the audio and video equipment, including recommended microphone and camera standards. Any standards should be used as guidelines and participants should be encouraged to

⁶ The Judiciary Access to Justice Department believes that many of the concerns identified with remote interpretation were the result of a lack of awareness of the interpreter channel and how to use it. The Department, in collaboration with the Judicial College and the Technology Education Department, is planning an educational and support campaign to address that problem.

comply. However, the Judiciary will need to continue to support other equipment and must ensure that the guidelines do not disadvantage those who cannot comply.

2. The Judiciary should task the Remote Hearings Workgroup of the Court Technology Committee to assess the technological barriers to the fair, efficient, and effective conduct of remote proceedings across the State and to assess the feasibility of options to overcome those barriers.⁷ Possible options that should be assessed include:
 - a. Exploring and promoting public-private partnerships or programs that offer reduced or no cost internet access to eligible users.
 - b. In locations where reliable or affordable connectivity is a problem, exploring avenues of connectivity in or adjacent to court facilities through local partnerships.
 - c. Exploring ways to make electronic devices available for public use in courthouses, at locations near courthouses, in collaboration with justice partners, or at self-service kiosks in surrounding community locations.
3. The Judiciary should continue to update and publicize the Judiciary's [Remote Hearing Toolkit](#). Consideration should be given to establishing a YouTube training channel to instruct participants on various applications and hosting periodic 'try it out' sessions for the public to interact with the applications. These and other instructional tools should be publicized on websites of courts and Clerks' offices and when notices of remote proceedings are distributed.
4. **Recommendations for specific types of proceedings.**⁸ Based on the considerations identified above, the experience of the Judiciary with remote proceedings to date, and substantial input from external and internal stakeholders, the Subcommittee has distilled the following principles to guide its recommendations concerning specific types of proceedings:

⁷ The Subcommittee is aware that an analysis is currently being conducted of the Judiciary's public wireless infrastructure for expansions and enhancements to account for the growing needs of the public and those having business before the court.

⁸ In general, our references to remote proceedings in this section apply to proceedings in which all or most participants appear using remote technology. That is to be distinguished from both: (1) hybrid proceedings, in which there is a mix of in-person and remote participation; and (2) proceedings that are attended in person by most participants but one or a small number of non-core participants, such as non-party witnesses, participate virtually.

- Other than during emergency circumstances, remote proceedings are generally not recommended when a finder of fact needs to assess the credibility of evidence. Remote proceedings may nonetheless be appropriate in circumstances in which the parties consent or the case needs to be heard on an expedited basis and proceeding remotely will facilitate the participation of individuals who may have difficulty attending an in-person proceeding (e.g., juvenile, shelter care, guardianship).
- Remote proceedings are generally appropriate for any proceeding involving only procedural matters, uncontested facts, or legal argument.
- The longer and more involved a proceeding is, and the more participants who will be involved, the less amenable it is to being held remotely.
- For any proceeding involving an incarcerated individual whose in-person presence is not required to satisfy a constitutional or other legal requirement, a remote proceeding should be strongly encouraged.⁹
- Barring advances in technology, hybrid proceedings in which one or more parties or attorneys appear in person and one or more appear remotely present greater challenges in complex proceedings than proceedings that are fully remote or fully in-person. That should not inhibit the use of remote technology for the appearance of non-party witnesses, especially expert witnesses or witnesses appearing for limited purposes, in the discretion of the judicial officer.
- Where a judicial officer has discretion to hold or decline to hold a proceeding remotely in whole or in part, the Subcommittee recommends consideration of the following factors, to the extent applicable: (1) preference of the parties; (2) whether the proceeding involves the presentation of contested evidence and, if so, the type of evidence; (3) whether a finder of fact will need to assess witness credibility; (4) whether the availability of possible participants in the proceeding will be affected by the decision; (5) whether there is a substantial risk that witnesses appearing remotely will be coached or intimidated during their testimony; (6) whether participants are likely to have access to technology and connectivity that will permit them to participate fully if the proceeding is held using remote technology; (7) the length and complexity of the proceeding and the number of participants; (8) the burden on the parties and the court of proceeding either in-person or remotely; (9) whether permitting remote participation will cause substantial prejudice to any party or adversely affect

⁹ The Subcommittee received input from multiple stakeholders concerning the cost and burden of transporting incarcerated individuals to court for in-person proceedings.

the fairness of the proceeding; and (10) any other factors the judicial officer considers relevant.

Based on those principles, current technological capabilities, and subject to evolving considerations:

- a. The Subcommittee recommends that the following types of proceedings be treated as presumptively inappropriate for remote proceedings under normal operating conditions:
 - i. Criminal or civil jury trials.
- b. The Subcommittee recommends that the following types of proceedings be treated as presumptively inappropriate for remote proceedings under normal operating conditions, subject to exception on a case-by-case basis:
 - i. Criminal non-jury evidentiary proceedings,¹⁰ including bench trials, preliminary hearings, hearings on petitions for violation of probation, post-conviction hearings, juvenile delinquency adjudications, criminal responsibility determinations, competency determination proceedings, and motions to suppress or other motions involving presentation of evidence. The Subcommittee recommends that the Rules Committee be asked to consider a proposed rule to allow for the conduct of certain criminal non-jury evidentiary proceedings using remote technology upon knowing and voluntary consent and appropriate waivers from defendants.
 - ii. Final protective and peace order hearings and motions to modify or rescind a protective or peace order.
- c. The Subcommittee recommends that the following types of proceedings be treated as presumptively appropriate for remote proceedings under normal operating conditions, where appropriate based on local conditions, at the discretion of the presiding judicial officer:
 - i. Criminal sentencings, three-judge panel sentence reviews, plea agreements not likely to result in incarceration or where the

¹⁰ In the Judiciary's internal survey results, 46.8% of judicial officers responded that remote criminal non-jury evidentiary hearings should not continue post-pandemic, 43.9% responded that they should be optional, and 9.4% responded that they should be standard.

defendant is already incarcerated, and discharge of counsel hearings, with the defendant's knowing and voluntary consent.¹¹

- ii. Minor traffic matters
 - iii. Civil non-jury contested evidentiary proceedings,¹² including shorter bench trials, qualification of experts, de novo District Court appeals, injunctions, mechanic's liens, restraining orders, administrative agency appeals, mandamus actions, declaratory relief hearings, landlord/tenant matters, forfeiture hearings, sale in lieu of partition hearings, oral examination and show cause hearings, and special immigrant juvenile status hearings.
 - iv. Mediation, settlement, and ADR events.
- d. The Subcommittee recommends that the following types of proceedings be treated as presumptively appropriate for remote proceedings under normal operating conditions, where appropriate based on local conditions, and that courts consider either holding such proceedings remotely by default, subject to exceptions on a case-by-case basis, or making remote proceedings an available option for parties to request:
- i. Criminal non-evidentiary proceedings (other than sentencings, three-judge panel sentence reviews, and discharge of counsel hearings),¹³ including postponement/*Hicks* hearings, advice of rights arraignment for detained defendants, return of bench warrants, bail reviews, expungement hearings, juvenile detention hearings, and motions hearings not involving the presentation of evidence.
 - ii. Civil non-jury uncontested evidentiary proceedings.

¹¹ For remote proceedings, the Subcommittee suggests that laminated copies of standard forms such as advice of post-trial rights and blank probation orders/contracts should be made available at detention facilities so that defendants can follow along. Such proceedings should ensure a mechanism is available for providing real time access between attorneys and clients, such as Zoom breakout rooms. The Technology Committee may consider other options as well.

¹² In the Judiciary's internal survey results, 27.9% of judicial officers responded that remote civil non-jury evidentiary hearings should not continue post-pandemic, 60.0% responded that they should be optional, and 12.1% responded that they should be standard.

¹³ In the Judiciary's internal survey results, 31% of judicial officers responded that remote criminal non-jury non-evidentiary hearings should not continue post-pandemic, 48.6% responded that they should be optional, and 20.4% responded that they should be standard.

- iii. Civil non-evidentiary proceedings,¹⁴ including discovery hearings, exceptions hearings, on-the-record District Court appeals, dispositive motions hearings, disposition hearings, pretrial motions, UCCJEA motions, and service issues.
 - iv. Guardianship proceedings.
 - v. All scheduling, status, and pretrial conferences.
 - e. The Subcommittee recommends further exploration of holding interim and temporary protective order hearings remotely post-pandemic. Multiple stakeholders identified the value of remote hearings in avoiding the need for a victim to be in the same room with an alleged abuser, especially shortly following an abusive incident. On the other hand, some judicial officers expressed concern about their ability to evaluate applications in remote proceedings and others identified logistical concerns in proceeding remotely given that applications currently must be filed in person and hearings follow the same day. The Subcommittee recommends that this matter be considered further by the Remote Hearings Workgroup of the Court Technology Committee and the Domestic Law Committee.
5. The Subcommittee recommends that the Judiciary continue to make use of remote interpretation technology, including expanding the use of such technology in in-person proceedings where feasible. To facilitate that, the Subcommittee supports JIS's plan to purchase and implement tablet computers at counsel tables, at the witness stand, and in the jury box.

¹⁴ In the Judiciary's internal survey results, 15.6% of judicial officers responded that remote civil non-evidentiary hearings should not continue post-pandemic, 54.5% responded that they should be optional, and 29.9% responded that they should be standard.

III. Courthouse Security and Safety

A. Pandemic Operations Background

Measures adopted by courts included the following: requirements that persons wear masks in the courthouse; screening protocols for entry to courthouse including temperature checks and health questions, either by verbal inquiry or written questionnaire; physical distancing in courthouse spaces, including courtrooms, jury spaces or court offices. In addition to these entry protocols, other measures were taken to reduce the number of people in courthouses and courtrooms at any particular time. These include staggering of start times for court proceedings and conducting proceedings remotely or in hybrid fashion. These measures are the subject of reports from other workgroups and are not discussed in this section.

B. Considerations

The entry protocols adopted during the pandemic all are intended to address concerns related to transmission of communicable diseases. Consequently, it would not be expected that such measures would be retained in a post-COVID environment once the conditions that led to their adoption cease to exist. They may be necessary in the future if conditions arise that generate similar concerns; in addition to a future resurgence of COVID type illness, such conditions might include the prospect of other widespread transmissible diseases, such as flu. However, there is no reason to consider the continuation of such measures on a permanent ongoing basis.

C. Recommendations

While the entry protocols themselves are not the subject of a recommendation for continuation, the following are suggestions for post-pandemic action that warrant consideration in preparation for potential future health emergencies:

1. Entry protocols should reflect local health conditions and any constraints of court facilities. Courts will need to consider entry protocols that maintain, to the degree permitted by local conditions, uniformity across the Judiciary while also reflecting local court location leadership. Some stakeholders expressed concerns during external stakeholder listening sessions and surveys that it was difficult to follow conflicting policies according to court location. In light of local differences, uniformity is not required, but action should be taken to promote clear messaging available to all stakeholders about the requirements in different localities.
2. Although entry protocols should be locally determined, the Judiciary should adopt a set of standard procedures to assist courts in fashioning entry protocols and provide assistance in resolving issues of control with Executive branch agencies with whom they share space.

3. The Judiciary should examine ways to ensure that all courts and units of the Judiciary develop, maintain, and keep current their Continuity of Operations (COOP) Plans, including by providing technical assistance for that purpose.
4. The Judiciary should convene a workgroup to identify best practices for maintaining safe courthouses and other Judiciary facilities, including the use of technological aids to screen visitors and the efficacy of temperature screening.¹⁵

¹⁵ Temperature screening has been a universal component of entry protocols during the pandemic, and continues to be recommended by the Centers for Disease Control as part of their [COVID-19 Employer Information for Office Buildings](#), and courthouse security personnel provided feedback that they would follow CDC guidance. At the same time, other studies suggests that temperature screening may not be reliable and further may not be a reliable indicator of the presence of infection. *See, e.g.*, Dollard P, Griffin I, Berro A, et al. Risk Assessment and Management of COVID-19 Among Travelers Arriving at Designated U.S. Airports, January 17–September 13, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:1681–1685. DOI: <http://dx.doi.org/10.15585/mmwr.mm6945a4external icon>; Feasibility and effectiveness of daily temperature screening to detect COVID-19 in a prospective cohort at a large public university (*BMC Public Health* volume 21, Article number: 1693 (2021)); Shelley N. Facente, Lauren A. Hunter, Laura J. Packel, Yi Li, Anna Harte, Guy Nicolette, Shana McDevitt, Maya Petersen & Arthur L. Reingold, Real-World Evidence: The Low Validity of Temperature Screening for COVID-19 Triage (*Frontiers in Public Health*, 30 June 2021 (<https://doi.org/10.3389/fpubh.2021.672698>)).

IV. Alternative Work Arrangements

A. Pandemic Operations Background

The Judiciary's policies concerning alternative work arrangements are the same currently as they were before the pandemic. Pursuant to those policies, administrative heads are permitted to authorize certain employees to work either an [alternative work schedule](#)¹⁶ or to [telework](#).¹⁷ Generally, teleworking, if approved, is limited to no more than one day per week and is not available to supervisors or managers, with exceptions permitted only by the Chief Judge of the Court of Appeals or the State Court Administrator. Employees are not permitted to have both an alternative work schedule arrangement and a teleworking arrangement.

The purpose of these arrangements, as described in the Policy on Alternative Work Schedules, "is to provide more flexibility for establishing employee work hours which are in the best interest of the Judiciary." Such alternative work arrangements are thus treated as a privilege, rather than a right, and administrative heads may implement or discontinue such arrangements for an employee or all employees under their authority at their discretion.

In the early stages of the COVID-19 pandemic, the Judiciary made much greater use of alternative work schedules and teleworking outside of those permitted under current policies. We break that use down based on the [five phases of operations](#) established by administrative orders issued by the Chief Judge of the Court of Appeals.¹⁸

Phase I (March 17, 2020 – June 4, 2020): During Phase I, the Judiciary maintained essential functions through a combination of limited in-person work and telework. During that period, essential employees whose positions required their in-person presence were required to report in-person. Administrative heads had discretion to permit other employees who were able to telework to do so. Timesheets reflect significant increases in the number of employees engaged in telework during Phase I.

¹⁶ The Judiciary's Policy on Alternative Work Schedules is located here: <https://www.mdcourts.gov/sites/default/files/import/employeehandbook/pdfs/alternativeworkschedules.pdf>. The policy permits certain employees to be approved to work either a compressed work week (e.g., four ten-hour days per work week) or flexible work hours.

¹⁷ The Judiciary's Policy on Telework is located here: <https://mdcourts.gov/sites/default/files/import/employeehandbook/pdfs/telework.pdf>

¹⁸ For a full description of the phased reopening, see <https://mdcourts.gov/coronavirusphasedreopening> and <https://www.courts.state.md.us/sites/default/files/admin-orders/20200603amendedprogressiveresumptionoffullfunctionofjudiciaryoperations.pdf>.

Over time, staff in some clerk's offices were organized into teams to allow groups of essential workers to alternate between onsite work (with sufficient social distancing) and, depending on the jurisdiction (MDEC versus non-MDEC) and user, remote work or administrative leave. Employees who could work remotely were able to do so securely using Judiciary VPN software and other technology described above. Some employees worked remotely using personal equipment and others were provided equipment by the Judiciary.

Phase II (June 5, 2020 – July 19, 2020): In Phase II, administrative heads continued to have flexibility to authorize alternative work schedules and teleworking arrangements best suited for their operations. Staff therefore continued to work in shifts and, at least in some jurisdictions, with more liberal telework policies.

Phase III (July 20, 2020 – August 30, 2020): In Phase III, clerks' offices re-opened to the public on an appointment basis. As a result, most employees were expected to return to the office and both alternating shifts and teleworking were phased out or began to be phased out.

Phase IV (August 31, 2020 – October 4, 2020): In Phase IV, the Judiciary returned to full operations except for jury trials. As a result, all general exceptions to the existing alternative work schedule and teleworking policies expired and all staff were expected to return to work following pre-pandemic policies.

Phase V (October 5, 2020 – November 29, 2020): In Phase V, the Judiciary resumed jury trials. Pre-pandemic alternative work schedule and teleworking policies were in place.

Return to Phase II (November 30, 2020 – March 14, 2021): Returning to Phase II, administrative heads again were permitted to utilize alternative work schedules and teleworking according to their operational needs, without regard to pre-pandemic restrictions. Many did so.

Transition to Phases IV and V (March 15, 2021 – December 28, 2021): Effective March 15, 2021, the Judiciary again eliminated exceptions to the existing alternative work schedule and teleworking policies.

Interim Return to Phase III (December 29, 2021 – March 6, 2022): Returning to operational Phase III, administrative heads again were permitted to utilize alternative work schedules and teleworking according to their operational needs, without regard to pre-pandemic restrictions.

Return to Phase V (March 7, 2022 – current): In Phase V, the Judiciary has resumed jury trials. Pre-pandemic alternative work schedule and teleworking policies are in place.

Snapshots taken from timesheet reports identifying usage of teleworking during the various operational phases generally reflect the greatest use of telework during Phase I (snapshot taken 3/25/20 – 4/7/20), during the return to Phase II (12/2/20 – 12/15/20), and during the transition to Phase IV (1/27/21 – 2/9/21). They also generally identify a greater use of teleworking among the appellate courts and the Administrative Office of the Courts and other Annapolis Complex staff than among the trial courts. Indeed, snapshots do not reflect a usage of teleworking greater than 10% for Circuit Courts or District Courts at any point during the pandemic. Further work is required to test the accuracy of these data.

B. Considerations

The ability to employ alternative work arrangements during the COVID-19 pandemic was critical to the Judiciary's ability initially to perform essential functions and eventually to perform many functions in MDEC jurisdictions¹⁹ in the early phases of the pandemic. The most prominent form of alternative work arrangement the Judiciary utilized was full- or part-time teleworking, which involved individual Judiciary employees working remotely from their homes using either personal or Judiciary-provided technology. As summarized in Section One, pre-pandemic, the Judiciary's teleworking policy permitted administrative heads to authorize teleworking only for eligible employees (which did not include any managers) for a maximum of one day per week. During the early stages of the pandemic response, nearly all Judiciary employees who were able to telework were permitted to do so on a full-time basis and, following that, administrative heads had increased flexibility to authorize teleworking. As of August 31, 2021, the Judiciary returned to its pre-pandemic teleworking policy. That policy was again relaxed with the Judiciary's return to Phase III operations from December 29, 2021 through March 6, 2022. As of March 7, 2022, the Judiciary returned to its pre-pandemic teleworking policy.

Increased flexibility to authorize teleworking presents a variety of potential benefits to the Judiciary and its personnel, including increased flexibility for personnel, reductions in commute time, a potential for increased productivity, benefits in recruitment and retention of personnel, reduced burdens on physical plants, and savings in costs such as parking. Notably, the overwhelming majority of comments received through the internal survey on general operational issues were made in favor of increased utilization of teleworking. Although some of those comments were made in the context of staff fatigue and instability related to the ongoing effects of the pandemic, many viewed a long-term

¹⁹ At the outset of the pandemic, all Maryland jurisdictions were MDEC jurisdictions with the exception of the three largest: Montgomery County, Prince George's County, and Baltimore City. During the early phases of the return to full operations, those jurisdictions were permitted to receive filings through remote electronic drop boxes, which required onsite staff to print and docket filings in the paper files. Montgomery County transitioned to MDEC effective October 25, 2021.

increase in teleworking flexibility as benefitting overall productivity, job satisfaction, and work-life balance.

Increased flexibility to authorize teleworking also presents significant challenges and risks, including less operational flexibility to address in-office issues, reduced opportunities for supervision, reduced opportunities for in-person collaboration, a more disconnected workforce, a potential for decreased productivity, information security concerns, and a greater burden on and need for Judiciary technology resources.

C. Recommendations

The Administrative Office of the Courts has been studying the prospect of increased flexibility for teleworking. The Subcommittee recommends that the study effort be aided by the creation of a new Alternative Work Arrangements Feasibility Workgroup within the Judicial Council Structure to make recommendations concerning the possible expansion of the use of teleworking, along with other alternative work arrangements, within the Judiciary. The Subcommittee recommends that the following principles should guide the work of such a workgroup:

1. The amenability of any office or position to increased use of teleworking varies widely.²⁰ Some offices require regular in-person interaction with members of the public that cannot be provided remotely. And even if some of that work can be performed remotely, personnel in such offices are often required to provide back-up support in the office. Other offices and personnel may perform few tasks that require an in-person presence. As a result, some positions may not be appropriate for teleworking at all while others may be appropriate for liberal teleworking.
2. Any teleworking policy should provide minimum requirements and standards to:
 - a. maintain a consistent and equitable level of supervision of a teleworking employee's activities whether in person or remote; and
 - b. assess a teleworking employee's productivity while working remotely.

²⁰ The work of the appellate courts and the Administrative Office of the Courts, for example, appears to be more adaptable to telework than many trial court positions. Reports on the usage of teleworking during the early phases of the recovery based on timesheet entries reflect a relatively low use of teleworking among all trial court personnel, including personnel in MDEC jurisdictions. If that is correct, it may reflect that teleworking is either not broadly feasible in trial courts or that the infrastructure to make it feasible does not yet exist. An examination of whether MDEC jurisdictions may be able to leverage telework outside of ordinary work hours to process filings to eliminate pandemic-related backlogs may be useful in determining additional opportunities for telework in the trial courts.

3. Some individuals or circumstances may be more suited for teleworking than others.
4. The workgroup should attempt to gather and use in formulating its recommendations:
 - a. available data reflecting productivity of teleworking personnel in different fields and positions,
 - b. information about the use of teleworking in other court systems, and
 - c. best practices for telework policies.
5. A teleworking policy must be fair and, within any particular office, must treat all similarly situated personnel equitably. Any such policy should also, however, make appropriate allowance for differences in the amenability of different positions to effective teleworking and in deference to differing conditions and differing operational priorities of administrative heads. A fair policy should:
 - a. Set the outer boundaries for the scope of teleworking an administrative head or supervisor may authorize.
 - b. Require administrative heads or supervisors to establish written criteria for the authorization of teleworking for individuals who report to them (with assistance from AOC) and include criteria for them to consider in:
 - i. determining which categories of employees should be eligible for teleworking;
 - ii. determining how much teleworking should be permitted for each eligible category of employees;
 - iii. establishing the conditions on which teleworking may be approved, revoked, or restricted; and
 - iv. establishing, communicating, and enforcing appropriate expectations for teleworking staff.
 - c. Identify minimum requirements a teleworking employee must satisfy to be approved for teleworking, including availability of technology (computers, internet connectivity, etc.) necessary to perform job functions, availability to report to the office as necessary, and availability during the workday (or other assigned work hours) while teleworking.
6. There is a strong desire among Judiciary employees for greater flexibility in permitting teleworking, but a mixed response from administrative heads. In light of developments outside the Judiciary, increasing flexibility for teleworking and other alternative work arrangements could have implications for recruitment and retention. Any benefits must be balanced against any potential detrimental impact of teleworking on the quality, timeliness, and effectiveness of the Judiciary.
7. In conjunction with teleworking, the workgroup should also consider whether the Judiciary should provide administrative heads or supervisors the authority to adopt

other forms of alternative work arrangements, such as alternative work schedules, to a greater extent than is contemplated by current policy.

V. Courthouse Scheduling and Docket Management

A. Pandemic Operations Background

Courts around the State found many innovative ways to manage their dockets safely during the pandemic. Both the use of remote proceedings and social distancing requirements for in-person proceedings required adjustments to scheduling that previously resulted in crowded courtrooms. The most basic adjustment was reducing the volume of cases heard during any court session or slowing the pace of proceedings (e.g., breaking a jury pool up to conduct voir dire in multiple smaller groups instead of at one time). For proceedings held remotely, reducing volume and slowing pace was necessary to accommodate logistical challenges and additional demands imposed on personnel. For proceedings held in-person, reducing volume and slowing pace was necessary to permit social distancing in the courtroom. Reductions in the number of cases heard and slowing the pace of proceedings, while necessary for public safety, has resulted in delays in hearing cases, additional demands on Judiciary personnel, and inefficient case processing.

Another scheduling tool some courts employed during the pandemic in both remote and in-person proceedings was staggering report times for dockets. Where those courts pre-pandemic may have had a single report time for a morning case docket and another report time for an afternoon case docket, during the pandemic they moved to multiple report times during each docket. For remote proceedings, staggering report times permitted personnel to manage participants on the technology platform more efficiently. For in-person proceedings, staggering report times reduced the number of people in the courtroom at any one time and, therefore, allowed for greater social distancing. Judiciary and external personnel reported additional benefits from staggering report times, including most significantly a reduced burden on the time of the participants in those proceedings and, consequently, reduced cost of representation. However, some courts reported decreased efficiency accompanying staggered dockets, especially during dockets with high percentages of cases involving either no-shows or cases that resolved without proceedings (e.g., criminal cases in which *nolle prosequi* are entered).

Another scheduling tool employed during the pandemic was improved processes for jury trial prioritization, including adoption of formal criteria to assign priority to cases, determine which are likely to proceed, determine which can be assigned back-up status without excessive inconvenience, and disseminate priority lists in advance. Doing so enabled courts to more effectively “right size” jury pools and address postponements or facilitate settlements sooner. The process also increased transparency and certainty for attorneys and parties.

B. Considerations

Two of the primary ways in which courts addressed the logistical challenges of remote proceedings and the need for social distancing in in-person proceedings were reducing the volume of cases heard during any particular session of court and reducing the pace of proceedings. The Subcommittee does not recommend continuing either of those practices post-pandemic because, other than the obvious public health benefits during the pandemic, neither practice advances any aspect of the Judiciary’s mission. To the contrary, both practices create barriers to the fair, efficient, and effective administration of Justice.

The tool of staggering report times for dockets with multiple cases, however, has generally been viewed positively by courts and litigants where it has been implemented during the pandemic. The reduction in so-called “cattle call” dockets—where many unrelated cases are all ordered to report at a single time, each to be called individually over an extended period of time for a hearing that is expected to be relatively short—has significant benefits for parties and attorneys. For both, staggering report times requires less time in the courthouse; provides greater certainty concerning when a matter will be heard; and may improve transportation options for parties. Staggering report times also means that attorneys spend less unproductive time waiting in a courtroom, which time is either billed to a client who is not receiving any benefit from it or unable to be billed and so lost. From the perspective of parties and attorneys, the Subcommittee views staggered report times as unambiguously beneficial.

Courts that implemented staggered dockets during the pandemic and responded to the Subcommittee’s survey generally expressed positive views of the change, primarily for the substantial benefits to parties and attorneys. Staggered dockets present little perceived benefit to the court itself, although it may increase efficiency by reducing conflicts among counsel who have matters in multiple different courtrooms during the same session. Other courts have been reluctant to move to staggered dockets or reported substantial inefficiencies from doing so. Those courts have reported concerns or experienced inefficiencies resulting especially from dockets that (1) include a substantial number of no-shows or (2) involve cases that frequently resolve only once the parties appear, but with little or no judicial participation (e.g., cases ending with entry of a *nolle prosequi*). In the absence of an ability to predict which cases will not require judicial attention, staggering a docket can lead to substantial court downtime, with a resulting decrease in efficiency for the court and downstream consequences for the ability of the court to meet the needs of parties in other matters.

Courts that identified improved processes for jury trial prioritization identified benefits including additional transparency and certainty for attorneys and parties, a need to call in fewer jurors, and the ability to facilitate earlier resolution of postponements and settlements earlier.

C. Recommendations

1. Courts should be encouraged to examine the use of staggered dockets as a means to reduce burdens on parties and attorneys where doing so is an appropriate practice for the docket in question.
2. The Judicial Council's Court Operations Committee should authorize the creation of a workgroup to explore, and disseminate information about, best practices in docket management. The workgroup should consider, among other things:
 - a. Tools to reduce the amount of time parties and attorneys spend waiting for proceedings without a substantial adverse effect on the efficiency of the court, including:
 - i. Tools to increase the efficiency of dockets, including requiring parties to supply information in advance of a scheduled hearing date to help identify cases that are unlikely to require court attention and, therefore, can be removed from the docket entirely or set at the end of the docket;
 - ii. The use of automated sign-in technology;
 - iii. The creation of a remote waiting room to permit participants in remote or in-person proceedings to have a sense of when their case is likely to be called; and
 - iv. Ways in which JIS can assist courts in implementing best practices identified by the workgroup.
 - b. Ways to prioritize jury trials to improve operational efficiency, "right size" jury pools, facilitate earlier resolution of postponements or settlements, and increase transparency and certainty in the scheduling process; and
 - c. Whether there is a role for the use of remote technology in jury selection under normal operating conditions.

VI. Judicial College of Maryland

A. Pandemic Operations Background

The Judicial College of Maryland provides a wide variety of education programs in three of its five departments: Judicial Education, Professional Development, and Technology Education. Judicial Education offers approximately 60 classes each year to judges and magistrates, puts on a 5.5-day New Trial Judge Orientation residential program for all new judges, creates on-demand webinars, maintains a digital library, and provides support for mentor and internship programs. Professional Development runs three certificate programs—the Court Professional, Court Supervisor/Manager, and Institute for Court Management Certificate programs—and offers additional proficiency-based coursework and programs. Technology Education is offered to all Judiciary personnel to support the use of key technologies, focusing on interactive delivery, practical application, and experiential learning.

Before the pandemic, programs in all three departments relied heavily, but not exclusively, on in-person learning opportunities, primarily face-to-face classes. At the beginning of the pandemic, many of these classes had to be canceled. The Judicial College quickly pivoted to adopt innovations and adaptations that eventually permitted it to make all its course offerings available, many in new formats, while also providing additional support for the Judiciary’s COVID operations. These included:

Instructor-led distance learning classes. Before the pandemic, Judicial College staff had not offered instructor-led distance learning courses. The Judicial College quickly developed the expertise to offer such courses through the Zoom for Government application in a “virtual classroom.” The transition to remote education also required the Judicial College to: (1) train its faculty, many of which are volunteer judges, magistrates, law professors, lawyers, and other subject matter experts, to use the remote platform to teach; (2) alter existing course content as appropriate for the remote format; and (3) develop new course content.

Hybrid learning classes. Once it became safe to offer certain courses in person with social distancing, the Judicial College began to do so, sometimes with a hybrid participation option. Doing so required Judicial College personnel to manipulate available equipment to manage a hybrid classroom.

Just-in-Time classes. During the pandemic, Professional Development and Technology Education developed Just-In-Time classes on key applications, including Skype (and, later, Microsoft Teams), the use of which the Judiciary expanded dramatically during the pandemic, and Zoom for Government, which the Judiciary had not used before the pandemic.

On-demand webinars. During the pandemic, the Judicial College continued to deliver educational content through on-demand webinars.

Development of a new simulation model. The Judicial College took advantage of the cancellation of classes at the beginning of the pandemic to develop a simulation model by which staff can build simulations to be used as part of future face-to-face coursework.

2021 Judicial Conference. The Judicial College offered virtual conferences for judges, magistrates, and clerk leadership in 2021 and also hosted virtual graduation ceremonies for its certificate programs in 2020 and 2021.

For 2020, in recognition of the need to cancel most Judicial College courses for several months, Chief Judge Barbera suspended the requirement that judges complete a minimum of 12 hours of judicial education for the calendar year. As a result of the Judicial College's adaptations and innovations that permitted it to offer a full course load during 2021, that requirement was not suspended.

B. Considerations

The Judicial College's development of instructor-led distance learning classes has been essential to the Judiciary's ability to provide education to its personnel throughout the pandemic. It has also provided additional benefits, including:

- Reduced time away from other judicial responsibilities for personnel who would otherwise need to travel significant distances to attend classes. Before the pandemic, most of the classes offered by the Judicial College were held at the Maryland Judicial Center in Annapolis. A limited number of classes were offered at satellite locations. The need to travel to attend a class, and to seek administrative leave from other responsibilities to do so, necessarily limits options for attending personnel and imposes additional burdens on them, those who supervise them, and those with whom they work most directly;
- Increased flexibility in course selection, especially for those who would have needed to travel to attend courses; and
- Some participants prefer learning in the virtual environment.

On the other hand, instructor-led distance learning classes also have drawbacks as compared to in-person classes, including:

- The loss of face-to-face instruction, which many learners prefer and consider superior to the virtual classroom environment. The Judicial College deems it particularly challenging to make use of remote technology as effective as in-person courses for:
 - courses that require significant interaction with colleagues as part of the learning process; and

- technology courses where there is a need for direct interaction between the instructor and the learner during hands-on learning;
- The loss of face-to-face interactions that often occur before and after classes and during breaks that add to the collegiality and camaraderie of the Judiciary;
- At present, some learners lack the technology—such as headsets and webcams—or private space where they will not be disturbed and have the ability to freely participate without disturbing others, to participate effectively in a virtual classroom;
- Those participating in a virtual classroom can be subject to distractions that are easier to avoid in an in-person classroom, including email, phone calls, and visitors; and
- Fatigue caused by too much time in front of screens.

As a result of current limitations on available technology, the Judicial College's use of hybrid learning classes has been less effective than classes that are fully in-person or fully remote. Judicial College staff and participants believe that, in general, learners who participate remotely in such classes participate less than those who are present in person. That may be able to be remedied by the development or adoption of new technologies.

The Judiciary's ability to deliver effective technology education to all personnel who need to use it will be critical to the Judiciary's continued and expanded use of technology to meet its core mission, as described elsewhere in this Report. Comments made on internal surveys by Judiciary personnel about technology training they have received during the pandemic were generally very positive. Some constructive comments relevant to making training more efficient and useful included: (1) additional segmentation of training on specific technologies, targeted based on job classification and specific uses of those technologies; and (2) that some Judiciary technology users be employed to help support/train other users based on their greater familiarity with how the technologies are used in practice. Other comments demonstrated that many users remain unaware of training opportunities that have been made available and feel overwhelmed by new technologies they have been required to use as part of their regular responsibilities.

C. Recommendations

1. Encourage the Judicial College to continue to deliver its courses using all the content delivery methods that are now available to it, with flexibility to determine the best content delivery method factoring in course content, learner's needs, geographic challenges, and available facilities and technology.
2. Ensure that all Judiciary personnel who are eligible to attend virtual education programs have appropriate equipment to enable full participation in the programs, including appropriate headphones, microphones, webcams, etc.

3. Encourage the Judicial College to continue to explore the use of hybrid learning, if it concludes that the technology is available to provide a seamless experience for in-person and remote participants, but otherwise to use such technology only on a limited and exception-based basis.
4. Encourage the Judicial Council's Technology Education Subcommittee to work with the Judicial College and JIS to continue to develop technology training on all technology platforms used by the Judiciary, including training on platforms that are used differently by different personnel groups that is targeted to those groups. Consideration should be given to: (1) involving members of those groups in developing and running the training to maximize usefulness and efficient use of training time; and (2) certifying members of those groups as go-to personnel for questions from other members of those groups.
5. Continue to require that all judges and magistrates attend at least six of their required 12 hours of continuing education through in-person courses.
6. Ask the Judicial Council's Technology Education Subcommittee to develop guidelines for ensuring that: (1) available technology options are advertised to all Judiciary personnel; (2) appropriate technology training is made available to all Judiciary personnel on technologies that are essential or useful for their roles; and (3) all Judiciary personnel are made aware of technology training that is available and have the technology and appropriate supervisory support to take advantage of necessary and appropriate training.

VII. Meetings

A. Pandemic Operations Background

Before the pandemic, nearly all meetings of Judiciary committees and groups, including Judicial Council committees, subcommittees, and workgroups that involved participants from all corners of the State, occurred in person. During the pandemic, the work of all such committees and groups was accomplished virtually, eventually using primarily either Zoom for Government or Microsoft Teams. As we have progressed further into the pandemic, many of these committees and groups have returned in full or in part to in-person meetings while others, including this Subcommittee, have continued to hold meetings remotely.

B. Considerations

The use of remote meetings has allowed Judiciary committees to continue to do their important work throughout the pandemic. Remote meetings have also had additional advantages, including:

- Reduced time away from other judicial responsibilities—or, for evening meetings, from family, community, or personal time—for personnel who would otherwise need to travel significant distances to attend the meetings;
- Making it easier for participants who live and work further from Annapolis to participate in committees and groups, thus expanding the geographic diversity of participation; and
- Making it easier for non-Judiciary personnel who might be invited to present at a meeting to inform the work of a committee or group to do so.

On the other hand, remote meetings have also presented disadvantages, including:

- The loss of face-to-face interactions that often occur before and after meetings and during breaks that add to the collegiality and camaraderie of the Judiciary and promote the unscheduled but important sharing of ideas;
- Those participating in a virtual meeting can be subject to distractions that are easier to avoid in an in-person meeting, including email, phone calls, and visitors; and
- Fatigue caused by too much time in front of screens.

C. Recommendations

Judiciary committees and groups that are designed to encourage participation of a geographically diverse segment of the Judiciary should be encouraged to hold at least some of their regular meetings virtually, and to provide a virtual participation option in

meetings that are held in person, to encourage, and ease the burden of, widespread participation. The degree to which any specific committee or group utilizes remote technology for meetings should be left to the membership of the committee or group.

VIII. Non-Judicial Functions

A. Marriage Licenses

1. Pandemic Operations Background

Each year, the Maryland Clerks of Court issue approximately 37,000 marriage licenses. Pursuant to § 2-402(b)(1) of the Family Law Article, applicants must appear before the clerk in person and provide, under oath, the information required for a marriage license application. On May 13, 2020, Governor Hogan issued Executive Order No. 2020-05-13-02, which enabled an alternative process for marriage applications and ceremonies. Based on the executive order, the Attorney General's Office created a COVID marriage application that allowed for applicants to take the oath through videoconferencing or, if that was not practical, to sign an affidavit attesting to the information provided on the application. Applicants could submit their applications through email, by placing them in a drop box, or by U.S. mail.

Although it permitted the continued issuance of marriage licenses, the process used during the pandemic suffered from certain inefficiencies. First, there was no way for applicants to pay fees online. As a result, even individuals who submitted applications by email had to mail in their payment, which caused delay. Second, because most applications were submitted handwritten, difficulties in reading them often lead to typographical errors on the licenses that were not discovered until the license was issued and received by mail. Correcting the errors resulted in delay and additional postage costs.

2. Considerations

The ability to take the marriage license oath by videoconference and to submit marriage applications electronically provided significant benefits for couples seeking licenses, especially those who do not live in the jurisdictions in which they are to be married and those for whom it is a hardship to take off work during the normal hours of operation of a clerk's office. However, the process was significantly hampered by the inability to accept payment for licenses on-line and the reliance on handwritten applications.

3. Recommendations

- a. Support a legislative change to Family Law § 2-401(b)(1) to permit clerks to take oaths in support of marriage applications by affidavit or by videoconference.
- b. Extend the ability to accept online payments to include marriage licenses.
- c. Develop an on-line marriage application form that can be completed and submitted electronically.

B. Business Licenses.

1. Pandemic Operations Background

Each year, the Maryland Clerks of Court issue approximately 80,000 new or renewal business licenses (e.g., Trader's Licenses, Restaurant Licenses, Scrap Metal Processor/Junk Dealer and Agent Licenses, Peddler's Licenses, etc.). Such licenses expire each year on April 30 unless renewed. Although applicants may begin the process of applying for and renewing licenses on-line using the Business On-line software program, the system is currently unable to accept payment on-line. As a result, applicants must either complete their applications and make payment in person or complete the application on-line, print it out, and return it by mail or in person with payment. During the early stages of the pandemic, due to the inability of clerk's offices to accept on-line payments, applicants for business licenses had to complete their applications through the mail.

Before the pandemic, some clerk's offices had begun collecting email addresses from applicants for business licenses. As a result, during the pandemic, those clerk's offices were able to email renewal applications rather than sending them by U.S. mail. That was both more efficient and less expensive than the traditional process using the U.S. mail.

2. Considerations

Clerk's offices were able to process new and renewal applications for business licenses during the pandemic through the pre-existing ability of applicants to begin the application process on-line and complete it through the mail. In the absence of the ability to accept on-line payment for applications, that process was and remains inefficient. Sending renewal applications by email was more efficient, less expensive, and more environmentally friendly than printing applications and sending them by U.S. mail.

3. Recommendations

The Judiciary should develop a capacity for receiving on-line payment for business licenses so that the entire process of applying for a new or renewed business license can be completed on-line. Clerk's offices should also be encouraged to collect email addresses from applicants for licenses and to distribute renewal applications by email or through use of an on-line program such as eLicense.

Conclusion

The members of the Subcommittee appreciate the opportunity to present the foregoing recommendations to the Judicial Counsel's Major Projects Committee and Technology Committee. The various innovations and adaptations that the Judiciary has employed during the ongoing COVID-19 pandemic were adopted out of necessity but many have proved to offer significant opportunities for improvement. The members of the Subcommittee hope that this Report serves as just an early step in the Judiciary's effort to harness lessons learned from pandemic operations to advance the Judiciary's mission of providing fair, efficient, and effective justice for all.

Guiding Principles for Post-Pandemic Court Technology

A pandemic resource from CCJ/COSCA

July 16, 2020 | Version 1



Each year more than 83 million cases are filed in the nation's courts. Prior to the COVID-19 pandemic, in almost all cases, tens of millions of court users had no choice about whether to visit a courthouse to resolve their case; they were required to appear in person. The pandemic forced state courts to figure out how to maintain access to justice while keeping court users, the public, and court employees safe. Courts improvised in-the-moment solutions built upon existing continuity plans and have shown remarkable creativity, resourcefulness, and willingness to embrace new technologies. Over the last 120 days, courts have shared ideas, innovations, and problem solving across jurisdictions and should be commended for their commitment to keeping the legal system running.

This national emergency led state courts to embrace online platforms like never before. To varying degrees before the pandemic, courts had been using online processes like electronic filing, online case management, video- and teleconference hearings, online payment platforms, text message notifications, and Online Dispute Resolution (ODR). These technologies acted as gateways to modernization that this pandemic has accelerated. As a direct result of the pandemic, courts have improved their business processes and increased access for court users by deploying remote services to conduct essential functions and provide greater flexibility for court users and staff alike. While some of these solutions have been tested and proven for years, the disruptive pandemic expedited the courts' use of them and resistance to change.

With all of the advancements, courts should not just rest on the accomplishments of the past quarter but should view this moment as an extraordinary opportunity to deliver better justice. Courts have often felt insulated from the pressures of the private marketplace that has forced many businesses to adapt to new technology, but court users are demanding advancements and choosing to take their disputes elsewhere. To better serve court users, we must modify decades-old court procedures put in place before laptops, email, text messages, or even the Internet – many times even the mechanical typewriter. Courts now have a unique opportunity to leverage creative thinking, seize on an emergency-created receptivity to change, and adopt technology to create long-term and much-needed improvements.

The COVID-19 pandemic is not the disruption courts wanted, but it is the disruption that courts needed: to re-imagine and embrace new ways of operating; and to transform courts into a more accessible, transparent, efficient, and user-friendly branch of government. Institutional inertia should not end this transformation once the pandemic passes. The process of developing new business processes and technologies to better meet the

needs of court users and staff should continue, and courts must be willing to adjust as necessary in response to user input and experience. This moment in history marks a unique opportunity to create long-term and much-needed change for state courts.

Technology is not a panacea. It does not and should not replace the fundamentally human character of justice. However, it provides a unique opportunity for courts to ensure that all parties to a dispute—regardless of race, ethnicity, gender, English proficiency, disability, socio-economic status or whether they are self-represented—have the opportunity to meaningfully participate in court processes and be heard by a neutral third-party who will render a speedy and fair decision.

The technological improvements made recently provide benefits beyond this pandemic, as these same solutions allow state courts to prepare disaster plans to maintain court operations during other challenges, such as power outages, natural disasters, or cybersecurity attacks. As court processes become increasingly intertwined with technology, disaster plans must create redundancies to address situations that may specifically impact mission-critical technologies.

In consideration of all of this, the Post-Pandemic Planning Technology Working Group of the Conference of Chief Justices/Conference of State Court Administrators recommends that state courts consider the following six key principles as they embrace technology:

1. Ensure principles of due process, procedural fairness, transparency, and equal access are satisfied when adopting new technologies.

Although adopting new technologies may allow courts to become more efficient, it is imperative that the principles fundamental to the court are preserved when processes go online. Courts should:

- Ensure parties receive proper notice of a case. This includes adapting statutes and court rules to allow for electronic service and other tech-friendly options.
- Include plain language procedural and substantive legal information for all parties at various stages of their cases, so that users can access easy-to-understand and relevant information in real time.
 - This is true within both traditional in-person court processes and in online court processes.
 - Within online systems specifically, court users need access to plain language legal information directly from the court website or court-annexed online dispute resolution (ODR) platform easily and without having to toggle between multiple websites or additional sources of information.
- Design systems that connect litigants to available legal help and, if applicable, develop solutions where attorneys can participate fully with their clients during remote hearings or ODR.

- Live chat for the public, chatbots, telephone hotlines, and other interactive features allow court users to ask questions to self-help court staff and outside attorneys and to locate available legal referrals on court websites, within ODR platforms, and within remote hearing platforms.
- Courts should design systems that allow for multiple users to access case files and legal information; and for online negotiations that specifically accommodate the use of breakout rooms.
- In ODR, facilitate court or staff review of proposed agreements and orders prior to hearings or enforcement.
 - Once reviewed and confirmed by a judicial officer, orders should be fully enforceable.
 - Parties should maintain the same rights to appeal whether a judge resolves the case via ODR or in a traditional court process. For ODR specifically, cases that do not resolve through online systems should proceed through an in-person court process in a timely manner.

2. Focus on the user experience.

Courts should implement technology that is designed to meet the needs of all users and reduce barriers to access. Court users should include not only judges, clerk and court staff, but also attorneys, self-represented litigants, community partners, researchers, and the public. In particular, courts should:

- Ensure that online services are mobile responsive, compatible with the most used browsers, and easy for users to provide the necessary information to advance their cases. In the era of paper, this meant giving court users easy access to a plethora of court forms. Today, as remote services become more available, this means finding easy ways to collect data from users in a way that facilitates the transfer of that data across the court system.
- Look to the impact the innovation would have on underserved communities and ensure their perspectives and needs are effectively addressed in design and functionality. Implement technologies only after carefully considering the benefits, costs and burdens on court users and ways to bridge the digital divide.
- Ensure accessibility.
 - Comply with the Americans with Disabilities Act, applicable state laws and regulations and commonly accepted accessibility guidelines related to accommodations for persons with disabilities. This requires ensuring the compatibility of online platforms with screen-reading software, confirming that web pages can be easily magnified, and using video technology that integrates closed captioning.
 - Reduce barriers for individuals with limited English proficiency by designing systems that allow for online translation and remote live

interpretation. Offer online tools in whatever languages are commonly spoken in the populations being served. Consider creating videos and spoken language assistance to address the needs of people with low literacy, American Sign Language as well as limited English proficiency.

- Make non-protected court case records and documents publicly available online and, where appropriate, enforce confidentiality requirements for information, pleadings, proceedings, negotiations, and communications in online settings.
- Provide alternatives such as telephone or SMS texting services, to ensure information is available to the broadest range of communities, including those without internet access.
- Avoid requiring users to pay additional costs to use technology or remote services and streamline the process for obtaining civil fee waivers.
- Accommodate the payment of fees and fines via electronic, telephone, or community pay point (such as gas stations, grocery, or convenience stores) eliminating the requirement for individuals to come to courthouses to make payments. Be mindful of unbanked court users; and consider payment options from credit card and/or electronic wallet options (like Venmo, Apple Pay, PayPal) as well as cash through community pay points.

3. Prioritize court-user driven technology.

The speedy release and adoption of court technology—with room for modification and iteration—has been especially important during this pandemic, where emergency court closures have forced courts to make rapid technology decisions relating to teleworking software, hardware, and remote hearing platforms. Going forward, courts should make intentional technology decisions, based on the needs of and feedback from a range of diverse court users. While the experiences of other courts can provide valuable insights, it is essential that courts analyze court user and their own business needs in making technology choices that will respond to local problems and maximize return on investment.

The court user experience should drive innovation and the transitioning of traditionally in-person processes online where appropriate. Courts should focus on implementing technology improvements that better serve both court users and staff; and as such, are open to working with public/private entities to achieve desired innovation. Technology vendors should be included collaboratively to ensure a common understanding of the business problems being addressed and user needs.

In addition, courts should collaborate with one another to define needs to achieve efficiencies with vendors. Requiring technology customization for institutional local court cultures is likely to increase the cost of products and processes. Courts should consider collaborating on a local or regional basis to standardize requirements and leverage negotiations with vendors. The tendency to regard each court as a unique business problem permits vendors to charge bespoke prices for what may be across-the-board very similar solutions.

Courts often look to off-the-shelf products developed by private companies. While many can be quickly customized and implemented, some platforms can require costly modifications to align with existing court rules and procedures. Courts in this instance need to make informed choices between standardization, which facilitates the use of off-the-shelf solutions, or customization, which provides tailored products but compromises the hoped-for savings in choosing an off-the-shelf product. Gaps between court needs and vendor offerings have often created challenges. Some may not fully integrate with the court's other systems, resulting in user frustration and duplication of staff effort. In some instances, products have been implemented that are not designed for court users, resulting in low levels of adoption and use. Wherever practicable, state courts should explore platforms that allow for increased flexibility when implementing off-the-shelf software, should explore choices in operational processes, and should simplify the training process. This avoids simply replicating decades-old paper processes with a digital substitution, or "paving the cow path."

To avoid these pitfalls, courts should:

- Clearly define what user challenges and business problem(s) the court is trying to solve before settling on a specific technology.
 - During this analysis, the court should review and adjust business processes to reduce redundancy and eliminate unnecessary steps.
 - Map current processes and determine which elements can be eliminated or combined and/or consider how existing processes can be re-imagined to better meet user needs.
 - Review established court technologies to assess whether they can be re-purposed (to avoid "re-inventing the wheel") and/or whether a new technology will be necessary to solve the business problem at hand.
- During the design phase, test the anticipated new process with real users, with an emphasis on external stakeholders.¹
 - This review can also highlight when and where court users can and should receive legal information within new technologies.
 - Review existing court administrative orders, procedures, rules, and cultural habits to identify those that should be modified or eliminated to conform with more modern, technologically innovative processes.

¹ See, e.g., Hagan, Margaret. "Participatory Design for Innovation in Access to Justice." *Daedalus* 148, no. 1 (2019): 120–27. https://doi.org/10.1162/DAED_a_00544; Aldunate, Guillermo, Margaret Hagan, Jorge Gabriel Jimenez, Janet Martinez, and Jane Wong. "Doing User Research in the Courts on the Future of Access to Justice." *Legal Design and Innovation*. Stanford, CA, July 2018. <https://medium.com/legal-design-and-innovation/doing-user-research-in-the-courts-on-the-future-of-access-to-justice-cb7a75dc3a4b>; Maier, Andrew, and Sarah Eckert. "Introduction to Remote Moderated Usability Testing, Part 2: How." 18F, US General Services Administration agency, November 20, 2018. <https://18f.gsa.gov/2018/11/20/introduction-to-remote-moderated-usability-testing-part-2-how/>; 18F. "18F Methods: A Collection of Tools to Bring Human-Centered Design into Your Project." US General Services Administration, 2020. <https://methods.18f.gov/>; O'Neil, Daniel X, and Smart Chicago Collaborative. *Civic User Testing Group as a New Model for UX Testing, Digital Skills Development, and Community Engagement in Civic Tech*. Chicago: The CUT Group, 2019, <https://irp-cdn.multiscreensite.com/9614ecbe/files/uploaded/TheCUTGroupBook.pdf>; and Hagan, Margaret. "Community Testing 4 Innovations for Traffic Court Justice." *Legal Design and Innovation*, 2017. <https://medium.com/legal-design-and-innovation/community-testing-4-innovations-for-traffic-court-justice-df439cb7bcd9>.

- Issue competitive requests for information or proposals (RFIs/RFPs) that invite and empower vendors to propose solutions that are responsive to court users' needs, rather than promoting specific products. Leverage the creativity and expertise of vendors, without letting vendors determine court technology priorities.
- Explore low-code development and application platforms that allow for a more flexible approach to implementing off-the-shelf software.

4. Embrace flexibility and willingness to adapt.

Cost-effective technology design is achieved by doing three important things:

- Identifying the technology solution only after clearly articulating the business problem that the technology will address, informed by user input and experience;
- Solving the business problem by proposing user-experience based solutions; and
- Testing for success at each step.

This approach, pioneered in Silicon Valley, is an on-going process that shapes technology solutions through multiple versions of a product until the goal is achieved; and even then, technologies can continue to be improved to better meet the changing law and user needs. Agility maximizes return on scarce court technology dollars by spotting and avoiding expensive mistakes early in development. This process also identifies opportunities to streamline and simplify court operations through available technology choices as the design progresses.

Put another way, courts should adopt an agile approach to piloting innovation and technology. This means a willingness to test and adapt, anticipating that changes will be required after the initial launch. It means being willing to try things and fail. It also means being willing to jettison technologies or court processes that do not deliver intended benefits and/or cause unanticipated harms. By identifying small failures in assumptions quickly, expensive mistakes can be avoided, corrections will be easier to make, and overall success is more likely.

- Start with a minimum viable product, pilot test, learn from user experience, and identify needed features. This will allow courts to learn how the technology works in practice, which will inform how to improve future versions and releases; and will likely result in more cost-effective innovation.
- Neither the minimum viable product nor the updates that follow should affect fundamental due process.
- Every version of a technology product under development is examined and reexamined to avoid “scope creep” and assure the product remains oriented to the project goal, including considerations of due process, procedural fairness, transparency, and equal access.
- Be open to public/private partnerships, including with civil legal aid offices, law

school technology innovation labs, charities, community organizations, non-profits, start-up technology ventures, private vendors, and large law firms to accomplish what is required.

5. Adopt remote-first (or at least remote-friendly) planning, where practicable, to move court processes forward.

Courts should implement technology that is deliberately designed to allow court staff, judicial officers, and external court users to advance court processes remotely where appropriate, while respecting the fundamental court processes that will always be best served by live participation. Courts should ensure that the needs of external court users are paramount in all decisions.

In particular, courts should:

- Build supportive infrastructure around remote work practice for court staff, judicial officers, probation and pre-trial officers, self-help staff, court-annexed mediators, and interpreters. This will require courts to promulgate the necessary employee and human resources remote policies, as well as to set the expectation for good home internet connections and quiet working space for court staff to allow for court business to continue remotely.
- Move as many court processes as possible online. This will not only facilitate the resolution of legal issues during the pandemic, but will also reduce the inconvenience and burden of in-person processes including taking time off work, getting childcare, and/or commuting far distances to courthouses once the risk of COVID-19 has passed.
- Allow for remote attendance at hearings (by either telephone or video) and ensure that court staff and court users are provided with the training, plain language instructions, and resources necessary to participate effectively.
- Identify options for those without meaningful and/or limited access to the Internet or equipment required to participate in court processes remotely. To bridge the digital divide, courts should allow participation via telephone or court- or community-based kiosks.

6. Take an open, data-driven, and transparent approach to implementing and maintaining court processes and supporting technologies.

As courts seek to improve their effectiveness through online services, they should collect data to monitor and evaluate new processes and technologies to determine success and address any challenges, while also maintaining appropriate data management protocols. Specifically, courts should:

- User-test technology with the public during development. Ensure the system meets user needs, including accessibility, ease of use, and language.

- Establish baseline metrics from existing processes/systems.
- Collect data at frequent intervals. Monitor the effectiveness of online services as compared to baseline metrics. Ensure collected data helps court leaders accurately assess the technology's impact on the identified business problem and make any necessary adjustments.
- Protect personal identifying information (PII) in the use and reporting of court data.
 - When working with vendors, courts should consider who owns the case, configuration, and usage data; the parameters and timeframes for the transfer or destruction of this data; and restricting vendor and third-party usage of data.
 - Use the RFI/RFP bidding process to specify requirements relating to data collection, legal information and limited English proficiency/disability accessibility.
 - Work to provide transparency while balancing the privacy and safety needs of litigants, witnesses and jurors.
- Evaluate all technology innovations to aid with continuous improvement and, when resources permit, consider working with third-party evaluators to conduct external review.
- Share developed technologies (for free or limited cost, if practicable) and lessons learned from court technology projects with other courts.
- Prepare for costs associated with continuous improvement. Develop and follow through with sustainability and maintenance plans for all technology innovations. Budget anticipated future costs to modify technology due to changes in the law or user needs over time.

Technology has played a critical role in the courts' response to the pandemic. As courts begin to resume some in-person proceedings and to consider a post-pandemic world, courts must not leave the technological advances behind but instead use these guiding principles to build upon the success of the past months to better serve court users and provide greater equal access to justice for all.

Remote Proceedings: Data and User Feedback

July 1, 2022

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Court Technology Modernization Funding (CTMF)

- The Legislature appropriated \$25 million for FY 2020–21 and FY 2021–22 to the judicial branch for modernization of trial court operations, of which \$15 million went to the courts in direct allocations for trial court technology modernization projects.
 - Of the direct allocations, almost one third was allocated to remote appearance technology projects.
- The Budget Act of 2022 includes an ongoing annual allocation of \$12.5 million for modernization of court operations through technology



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CTMF FY 2020–21 and FY 2021–22

FY 2020–21

- 24 project proposals submitted for Remote Video projects.
- \$2.8 million was expended to purchase **software and licensing** for remote appearances
- All 58 courts have the capability to hold proceedings remotely in at least one case type
 - 39 courts can hold proceedings remotely in most, if not all, case types
- Many courts did not receive enough in allocations to implement all projects that would fully support remote appearances

FY 2021–22

- 32 project proposals related to remote appearance technology were submitted and approved
- Supply chain issues and increased costs for hardware limited the number of projects that could be completed with funds available
- Only 13 courts were able to move forward with implementing 17 projects, totaling \$6.7 million
- Funding was used to **upgrade hardware** to further enhance and support remote court appearances
- It is anticipated that courts will resubmit unfunded remote appearance technology projects for funding consideration in the next program cycle



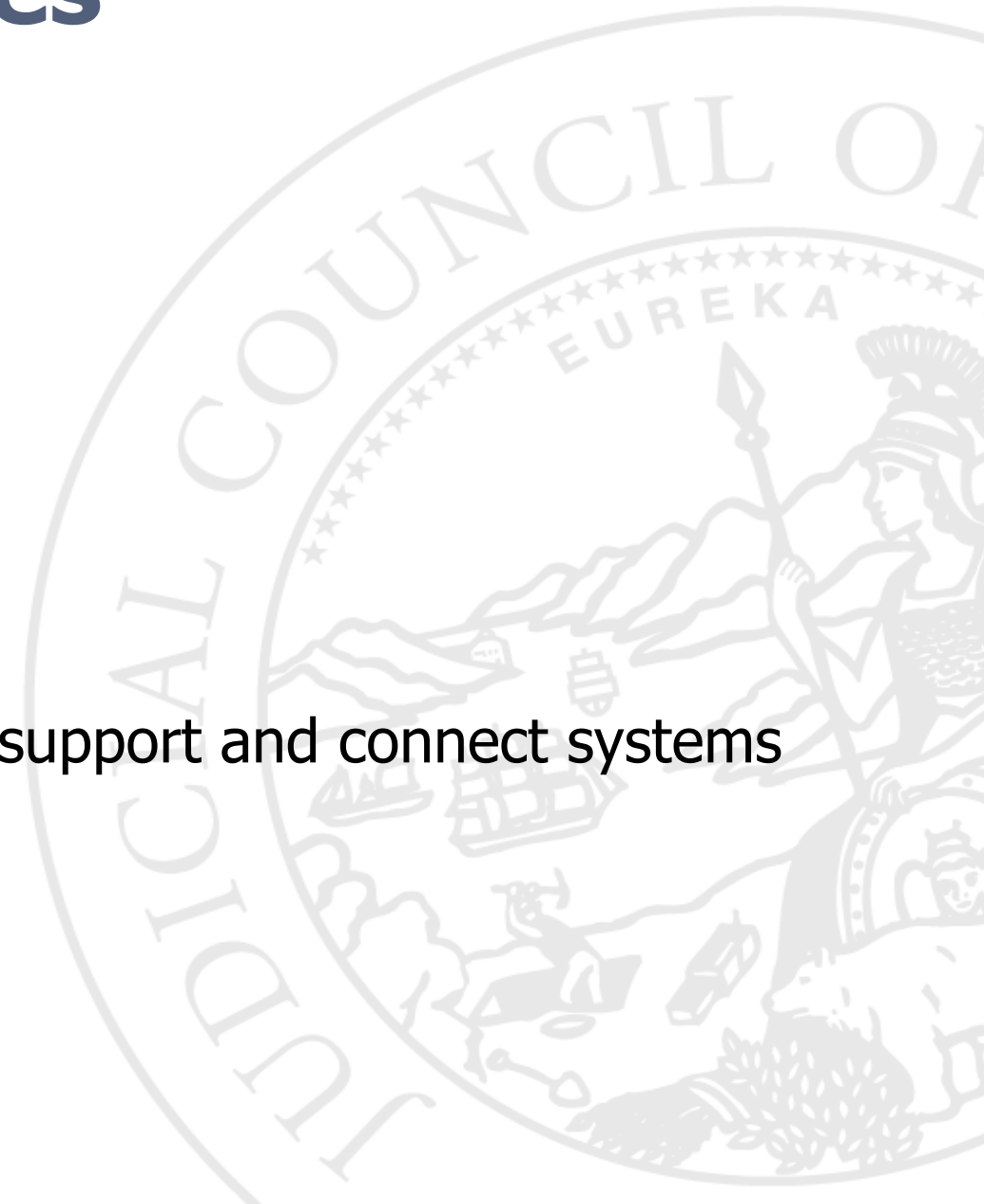
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FY 2022–23 CTMF Priorities

- Electronic Records Management
- Remote Access
 - Remote Appearances
 - Remote Access to Proceedings
 - Remote Records Access and Search
- Infrastructure
 - Ensuring that all components are in place to support and connect systems and services
- Innovative Branchwide Solutions



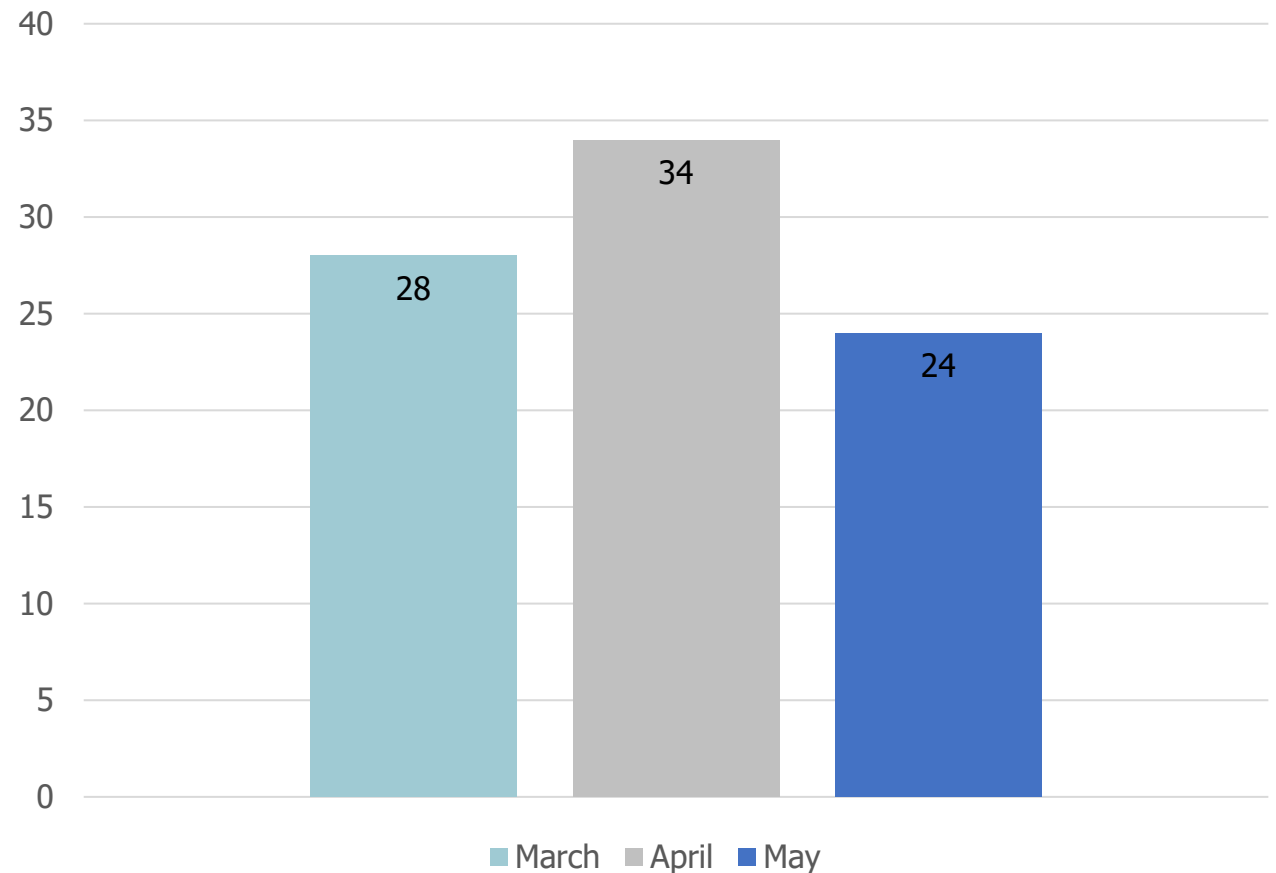
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Remote Proceedings Data

- 34 courts have reported at least one month of data
- Work is ongoing to support courts in data reporting efforts

Number of Reporting Courts by Month



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Remote Proceedings Data (cont.)

- Data received on remote proceedings are from courts that represent 73% of statewide filings

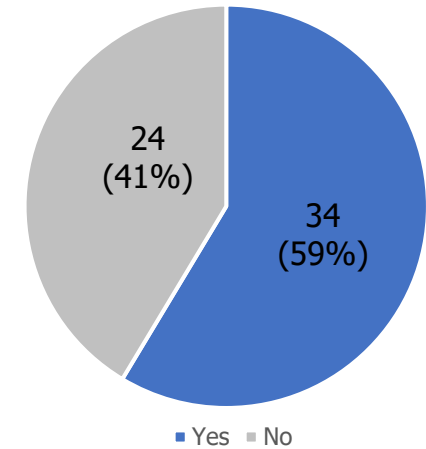
Total Statewide Filings

5.3 M

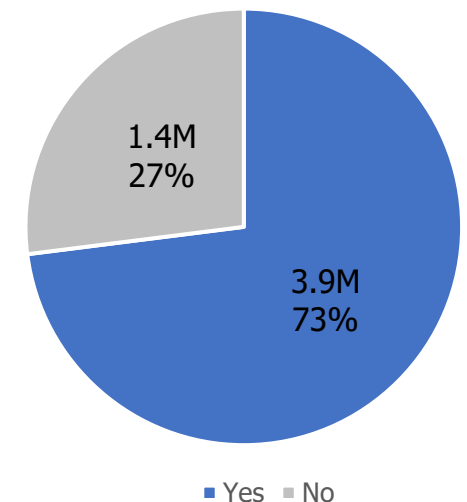
3 Year Average



(#) of Courts Submitting at Least 1 Month of Data



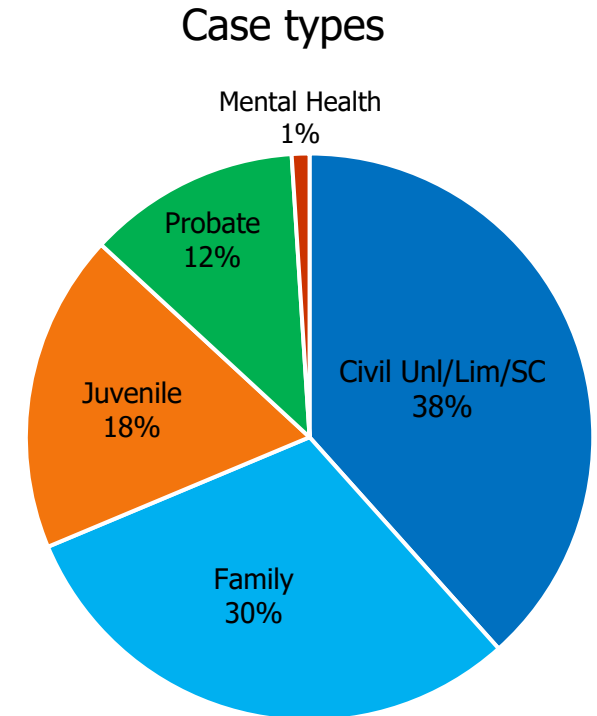
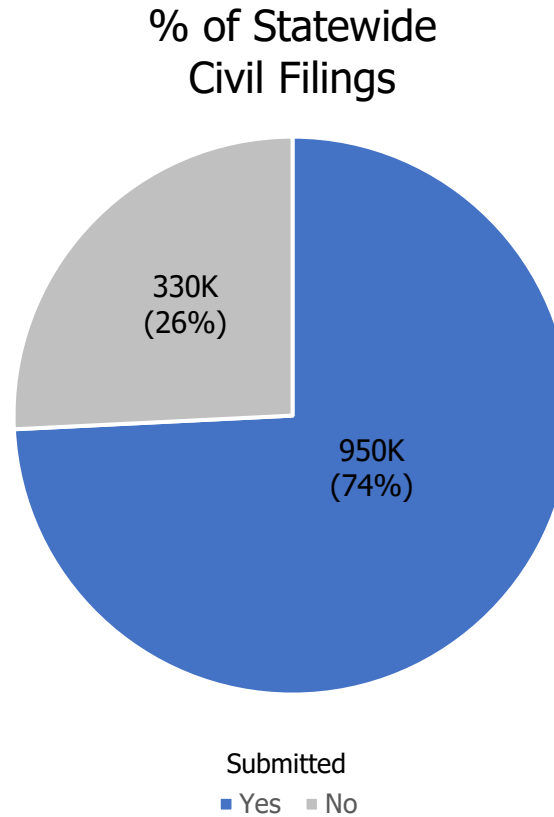
(%) of Statewide Filings



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Remote Proceedings Data (cont.)

- Data received on remote proceedings are from courts that represent 74% of statewide **civil** filings
- Those courts reported 214,000 **civil** remote proceedings for March 2022–May 2022
- Proceedings occurred in all civil case types



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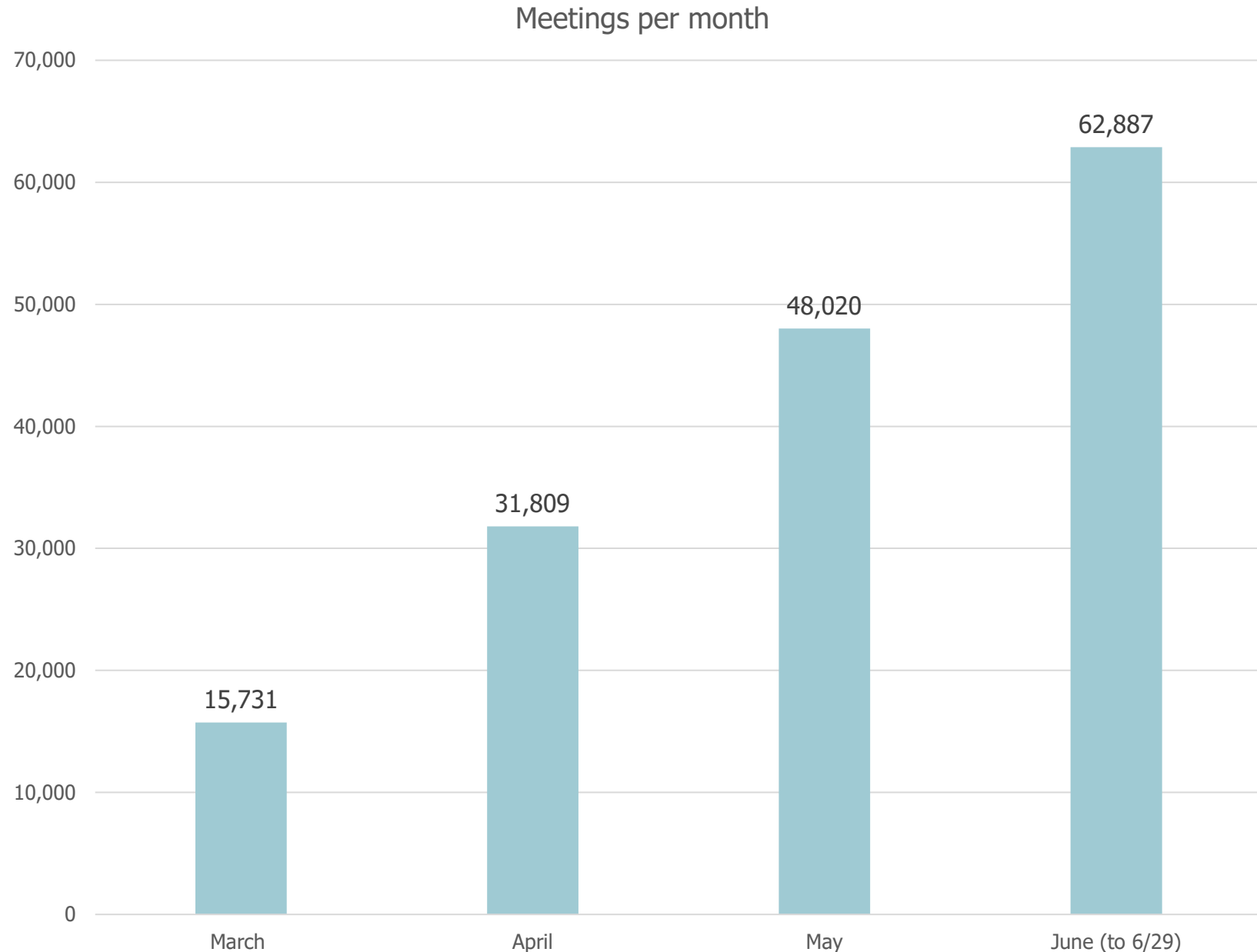
Zoom User Feedback

ZoomGov:

- Courts: 50
- Active users: 3,240



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Data Gathering – Internal User Feedback

- 12,984 responses collected
 - Good (Thumbs up): **98.06%**
 - Bad (Thumbs down): **1.94%**
- Users can provide more feedback if selecting “thumbs down”

How was your meeting experience?



Good



Bad

12,732

98.06%

252

1.94%

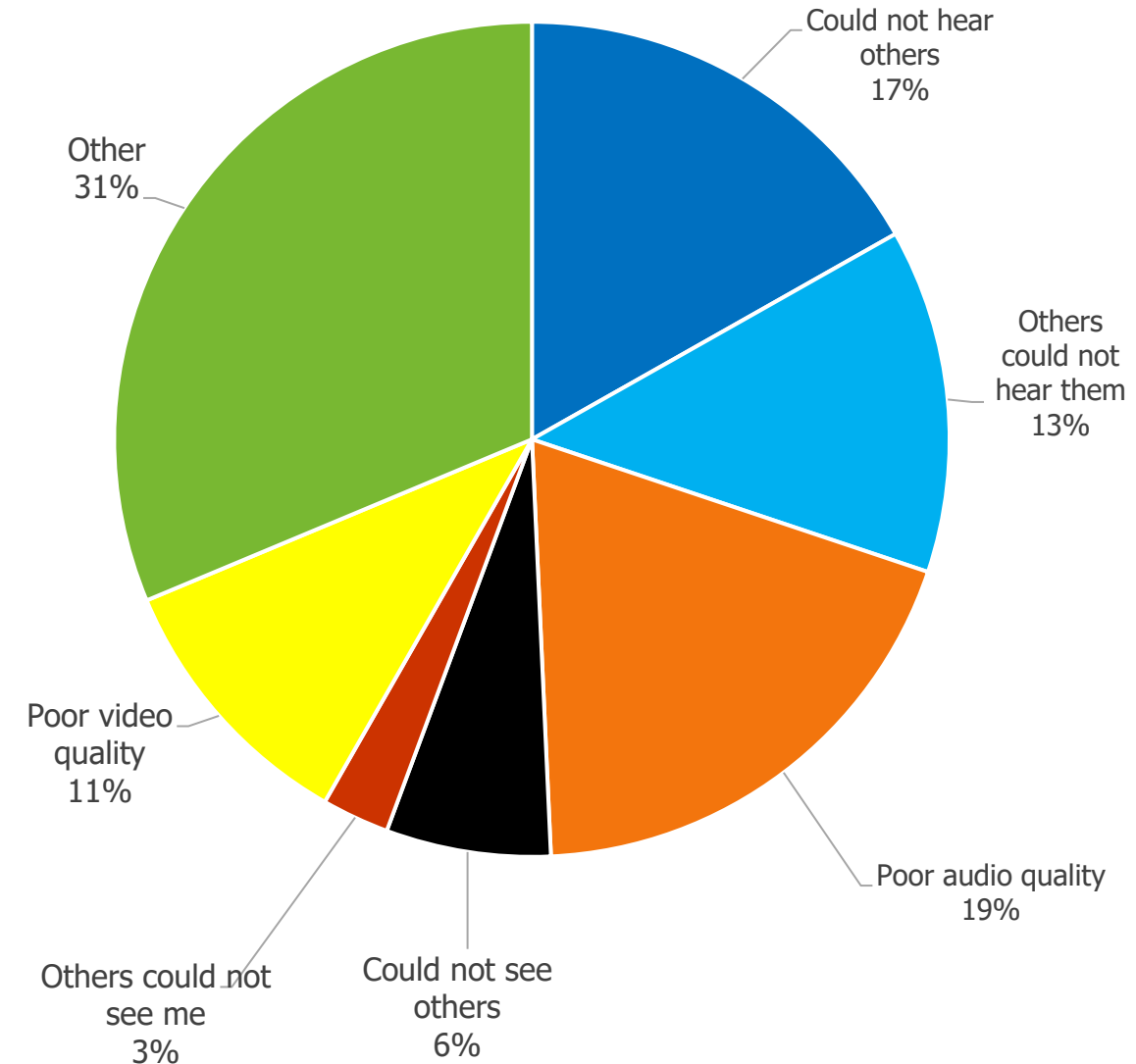


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Data Gathering – Internal User Feedback (cont.)

- Logged issues – **345** explanations

- Poor audio quality- 66
- Could not hear others- 58
- Others could not hear me- 46
- Poor video quality- 36
- Could not see others- 22
- Others could not see me- 9
- Other- 108



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Data Gathering- External User Feedback

- Survey released to 1,342 external users on 6/27/2022
- The response rate is 12.8% as of 7/1/2022

How was your meeting experience?



Good



Bad

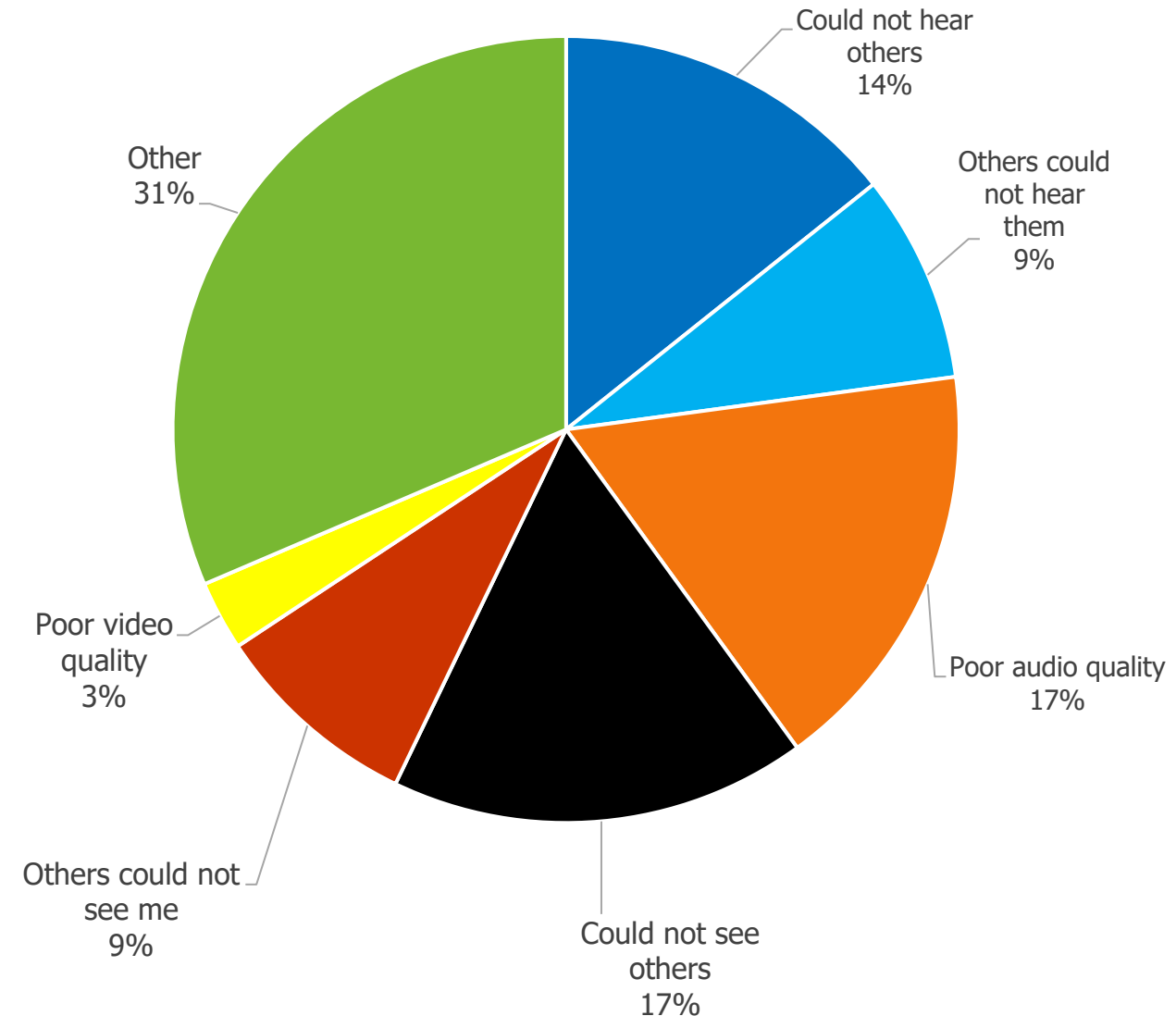


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Data Gathering – External User Feedback (cont.)

- Logged issues – **21** responses identifying 35 issues

- Poor audio quality- 6
- Could not hear others- 5
- Others could not hear me- 3
- Poor video quality- 1
- Could not see others- 6
- Others could not see me- 3
- Other- 11



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