

2022-2023 Critical Issues Report

Planning Priorities for the Wisconsin Court System



Submitted to the Wisconsin Supreme Court
by the
Planning and Policy Advisory Committee
December 2021

**Critical Issues:
Planning Priorities for the Wisconsin Court System
2022 – 2023**

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Mission of the Wisconsin Court System:

The mission of the Wisconsin Court System is to protect individuals' rights, privileges and liberties, to maintain the rule of law, and to provide a forum for the resolution of disputes that is fair, accessible, independent, and effective.

EXECUTIVE SUMMARY

The Planning and Policy Advisory Committee (PPAC) of the Wisconsin Supreme Court develops the biennial *Critical Issues Report* to identify key matters affecting the court system. The Supreme Court and Director of State Courts use this information to explore initiatives or actions, such as pilot projects, rule petitions, or study committees. The Critical Issues Report may also be used as the basis for future budget proposals or administrative recommendations.

PPAC recommends that the Supreme Court and Director of State Courts prioritize two critical issues in the 2022-2023 period:

- Mental health; and
- Use of technology.

Technology and mental health have been identified as critical issues in past reports. Since the onset of the global COVID-19 pandemic in March 2020, however, the court system faces a changed landscape due to advancements in technology and widespread mental health issues among litigants. As a result, continued focus on these topics is timely and necessary.

Mental health challenges are evident in all manner of court cases, ranging from small claims and family cases to criminal trials. Because this problem impacts state and municipal courts, law enforcement agencies, and correctional institutions, collaboration is essential for identifying long-term solutions. In this report, the mental health critical issue focuses primarily on court-involved individuals. This approach is not meant to detract from the importance of addressing the mental health needs of court officials, staff, attorneys, and jurors; efforts are underway to support these needs through judicial education, lawyer assistance programming, and trauma-informed resources for jurors and staff.

In addition to mental health, use of technology has emerged as a central factor impacting the court system. The most notable pandemic-related change was the widespread expansion of remote hearing technology, and in particular, Zoom videoconferencing. In some courtrooms, these changes were temporary in nature. In others, use of Zoom has become a routine part of court operations. In order to ensure that the proper balance is struck between efficiency and the preservation of parties' rights, the court system should continue to assess how technology is being utilized and support short- and long-term policies that allow emerging technology to be appropriately deployed.

The following report identifies several recommendations for addressing these two issues, and sets actionable goals, where feasible. PPAC is responsible for monitoring progress toward these goals through quarterly updates. The report also summarizes other issues of importance and highlights new and ongoing activities related to each.

PPAC PLANNING SUBCOMMITTEE

PPAC was created through Supreme Court Rule Ch. 70.14 in 1990 to advise the Supreme Court and the Director of State Courts and to provide a forum for the exchange of ideas between judges and justice partners. The smaller, more focused Planning Subcommittee was created in 2001 to provide input regarding the court system’s strategic planning efforts. To this end, the Planning Subcommittee has issued a *Critical Issues* report regularly since 2002. The Director of State Courts and PPAC have responded to the report’s recommendations in a variety of ways, including creating standing and *ad hoc* subcommittees, directing the work of staff in the Office of Court Operations, and developing biennial budget proposals for consideration by the Supreme Court.

REPORT METHODOLOGY

The planning process for the 2022-2023 critical issues cycle began by reviewing articles and reports by the Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSCA), the National Center for State Courts, the State Bar of Wisconsin, and others about trends affecting state courts. In July 2021, an online survey collected feedback from internal and external stakeholders, including judges, court commissioners, clerks of circuit court, registers in probate, juvenile court clerks, district court administrators, director of state courts staff, PPAC members, legislators, elected county officials, district attorneys, public defenders, corporation counsel, State Bar of Wisconsin members, and staff at the Wisconsin Departments of Corrections and Justice.

The survey asked respondents to rate the importance of ten topics:

- Use of technology
- Substance abuse/treatment courts
- Mental health
- Court security
- Legal representation for indigent criminal defendants
- Self-represented litigants/access to justice
- Reducing racial disparities in criminal and juvenile justice
- Research and data analysis
- Rights of crime victims
- Pretrial services and bail reform

Respondents were asked to rate each topic on a scale of 1-5, with 1 indicating that an issue is of lesser importance, and 5 indicating that an issue is very important. Each of the 10 topic areas also included several subtopics with the same 1-5 ranking scale.

The 2021 survey received a total of 722 responses. This marks an increase from 2019 response level of 411, but is similar to the 2017 level, when 638 responses were received. In 2021, there

were 348 “court” respondents (judges, court commissioners, clerks, district court administrators, clerks of circuit court, and other court staff) and 374 “non-court” respondents (private-sector attorneys, non-profit or certain government attorneys, district attorneys, public defenders, county staff, treatment court or pretrial personnel, corporation counsel, elected officials, and others). A summary of survey results is included in Appendix A, attached to this report.

The Planning Subcommittee reviewed the survey results and selected two issues as priorities for the 2022-2023 cycle. In drafting recommendations to address the two issues highlighted as being of critical importance, the Planning Subcommittee focused on how the court system could address each problem, considering short-term goals, long-term goals, and training goals. Training objectives highlight areas in which seminars provided through the Office of Judicial Education, the Judicial College, and other entities, such as the Court Safety and Security Conference, can be used to address issues outlined in the report.

Finally, although previous Critical Issues Report titles referenced a three-year period, this does not accurately reflect the time frame during which most activities outlined in the report take place. Accordingly, this and future versions of the Critical Issues Report will refer to the two-year time period following adoption of the report, beginning with 2022-2023.

CRITICAL ISSUES AND PLANNING PRIORITIES

Critical Issue 1: Mental Health

Issue

Critical Issues Survey respondents have consistently identified mental health as one of the most pressing, and most complex, challenges facing the court system. While judges, court staff, and justice partners recognize the substantial impact of mental health on the court system, it is less clear what specific actions the court system can take to address this issue.

Wisconsin's court system is not alone in emphasizing the importance of mental health. The Conference of Chief Justices and Conference of State Court Administrators (CCJ/COSCA) recently identified mental health as a priority issue. In March 2020, CCJ/COSCA established a National Judicial Task Force to Examine State Courts' Response to Mental Illness. The group's charge is to assist state courts in their efforts to respond to the needs of court-involved individuals with serious mental illness.

Initial work completed by the Task Force points to several challenges, including the lack of access to mental health care, incarceration of mentally ill individuals, and the lack of information and tools for judges to make informed decisions regarding individuals with mental illnesses, substance abuse disorders, and co-occurring disorders. The Task Force is expected to complete its work and issue recommendations in 2022.

In areas of the state where mental health treatment services are available, some counties may wish to explore the

development of mental health courts. For these efforts to be successful, it is crucial to have local, timely access to treatment facilities and personnel, adequate county staff, attorney support, and judicial training on mental health court standards.

Action Steps

Short-Term Objectives:

The Director of State Courts Office will monitor activities of the CCJ/COSCA National Judicial Task Force on mental health and assess which recommendations are most likely to address mental health needs in Wisconsin and improve the ability of the court system to effectively respond to mental health-related issues.

PPAC, through the Director of State Courts will explore collaboration with partner agencies and other court system stakeholders to identify state-level initiatives that may be recommended for legislative or cross-agency consideration.

The Office of Court Operations will gather feedback from existing mental health court programs and prepare informational resources for those considering establishment of a mental health court.

Long-Term Objectives:

PPAC will continue to gather feedback from judges regarding how mental health issues impact the court system. Collection of this feedback may include Critical Issues surveys or review of court system case data.

Critical Issue 2: Use of Technology

Issue

The advent of the COVID-19 pandemic precipitated immediate expansion of videoconferencing in the state’s courtrooms, enabled largely by the Director of State Courts’ procurement of Zoom licenses for court officials. This pivot highlighted the need for updated guidance for video-based court proceedings. An effort is underway to ensure that the statutory language governing the use of videoconferencing allows the court system to embrace the newest technology while also protecting the constitutional and statutory rights of participants.

A further impact of the pandemic was a change in how court interpreter services are delivered. Although initially envisioned as a pilot project, VRI, or video remote interpreting, was fully implemented using Zoom technology during the early months of the pandemic. This service allows counties to deploy certified language interpreters from almost any location and helps improve availability in less populated areas of the state.

In addition to supporting videoconferencing and interpreter services, technology has played a central role in helping the court system combat the ongoing shortage of stenographic court reporters. The Director of State Courts previously authorized installation of digital audio recording (DAR) equipment in every courthouse. In addition, a pilot project for remotely monitored digital audio recording (RMDAR), established a pool of digital court reporters who can remotely monitor digital audio recording from a different courthouse or from a court administrative office.

The court system also continues to prioritize the threat of cyberattacks by limiting access to external websites and requiring that all court system users complete cybersecurity awareness training.

Finally, the court system has implemented an electronic filing (eFiling) system in the circuit and appellate courts. The Supreme Court is currently conducting a pilot project and will assess further implementation in the future.

Action Steps

Training Objective:

PPAC will promote cybersecurity training for judges and court staff, and will support training on available technologies, including DAR equipment and software.

Short-Term Objectives:

The Director of State Courts, District Court Administrators, and Judges will continue to support the RMDAR pilot project.

PPAC, through the Videoconferencing Subcommittee, will review current statutory language and submit a rule petition to support current and future use of videoconferencing technology while protecting participants’ rights.

PPAC, through the Office of Court Operations, will continue to create and disseminate training materials, such as the Zoom Best Practices Guide, to support court officials and staff in the use of Zoom and videoconferencing technology.

Long-Term Objectives:

The Director of State Courts will explore long-term technology solutions that support the court system’s ability to capture the record in every courtroom.

OTHER ISSUES OF IMPORTANCE

In addition to the topics outlined above, the following section highlights ongoing activities associated with areas included in previous critical issues reports, but not selected as critical issues for the 2022-2023 cycle. These include racial disparity, court safety and security, and substance abuse/treatment courts. Each of these areas plays a significant role in the overall functioning of the court system and contributes to the effective administration of justice.

Racial Disparity

The court system has offered training on implicit bias at several judicial training seminars, and continues to prioritize learning opportunities in this area. A poll of judges at the 2019 Wisconsin Judicial Conference found that the vast majority, over three-fourths, felt that it was important for judges to understand implicit bias. During the past year, every judicial administrative district has had the opportunity to participate in seminars focused on power and privilege organized by the Office of Judicial Education. Additional sessions presented at the 2021 Wisconsin Judicial Conference focused on improving access to justice and helping court officials be mindful of the role that bias and background may play in courtrooms.

In addition to these efforts undertaken by the court system, approaches to addressing racial disparity have been instituted by other state and local partners. In 2021, the Wisconsin Criminal Justice Coordinating Council (CJCC) convened a subcommittee on Race Equity, Inclusion and Access (REIA). The subcommittee is co-chaired by Justice Rebecca Dallet and Bayfield County District Attorney Lawton. The state CJCC subcommittee joins an ongoing effort in Milwaukee County to examine the intersection of race and the criminal justice system. The County holds an annual conference with key justice system stakeholders, including judges, court commissioners, prosecutors, the defense bar, and others. These gatherings have been held annually since 2014, in collaboration with the Milwaukee Community Justice Council. Although the 2021 conference was canceled due to the pandemic, the event is expected to resume in April 2022.

Courthouse Safety and Security

The 2012 adoption of Supreme Court Rule Chapter 68 laid the groundwork for establishing county-level security protocols that provide a safe environment for judges, parties, members of the public, and staff to participate in court proceedings. The PPAC Court Security Subcommittee played a substantial role in the creation of SCR Ch. 68, which provides a framework for counties and courts to use when examining their policies and practices, exploring construction or renovation projects, and instituting new security measures.

The Critical Issues Report for the years 2020-2022 outlined several action steps related to strengthening implementation of Ch. 68, primarily by providing local security and facility committees with tools to assess and improve court security practices. Although the COVID-19 pandemic limited the ability of staff to complete these action steps, this work will continue during the 2022-2023 period. In addition, the Court Safety and Security Conference, which has taken place regularly since 2009, is scheduled to resume in March 2022, following a one-year hiatus. This gathering will provide opportunities for county-level teams, including judges, court security officers, county elected officials, clerks of circuit court, and other court staff to learn about best practices for court security and how to respond in emergency situations.

The PPAC Court Security Subcommittee reviewed Ch. 68 and submitted rule petition 21-06 in October 2021 to revise and update portions of the rule. The proposed changes are intended to clarify the responsibilities of county-level security and facilities committees, improve the process for collecting and submitting reports regarding security threats and incidents, building improvements, and new construction. Finally, the proposal would update provisions of the rule related to courtroom security equipment to reflect updated technology needs and current practices.

Substance Abuse and Treatment Courts

In the 2021 Critical Issues Survey, as well as in several previous surveys, the issues of substance abuse, mental health, and the availability of treatment resources have consistently ranked among the most important issues for respondents. One mechanism for addressing the needs of offenders with substance abuse and mental health challenges has been the proliferation of treatment courts.

Currently, 57 counties and five tribal communities operate some form of treatment or problem-solving court, including adult drug treatment courts, tribal healing to wellness courts, mental health courts, veterans' courts, OWI courts, and family drug treatment courts. Many of these programs are supported through Treatment Alternatives and Diversion (TAD) grants, created by 2005 Wisconsin Act 25 in order to augment efforts underway in some counties to provide treatment and diversion for non-violent adult offenders for whom substance abuse is a contributing factor in their criminal activity.

Following a year of pandemic-related travel limitations in 2020, many in-person training and technical assistance activities resumed in 2021, including site visits and educational seminars. These training opportunities are essential for judges and staff to learn about the standards and practices needed for successful problem-solving court programs.

In 2020 and 2021, the PPAC Effective Justice Strategies (EJS) Subcommittee convened a Specialty Court Recordkeeping Advisory Committee. Comprised of judges, clerks of court, legal advisors, and treatment court program staff, the committee reviewed and updated the 2011

guide, “Treatment Court Best Practices for Record-keeping, Confidentiality, and Ex Parte Information,” and created updated standards for recordkeeping, confidentiality, minute-taking, and other procedures in treatment courts. The revised guidelines were finalized by the EJS Subcommittee in October 2021 and approved by PPAC in December 2021. The new record-keeping standards are expected to be implemented in 2022.

In order to better serve the broad network of both TAD and non-TAD problem-solving courts in Wisconsin, the new Statewide Problem-Solving Court Coordinator introduced an updated webpage, with extensive resources for both existing and prospective problem-solving court programs. Materials on the website provide guidance for how to properly implement Wisconsin’s 17 Treatment Court Standards as well as resources specific to different types of problem-solving courts. The new website also features an interactive training calendar with links to state and national training opportunities. In addition, several listserv groups have been established to facilitate discussion and information exchange among staff and judges involved with problem-solving court programs.

Finally, training and technical assistance to treatment courts focuses on determining whether racial or ethnic disparities exist in treatment courts, and if so, helping programs take reasonable corrective measures to eliminate them. This effort is pursuant to a unanimous resolution by the National Association of Drug Court Professionals Board of Directors. National and Wisconsin-specific treatment court standards obligate treatment courts to examine racial disparities as one facet of program management. This requirement, which supports both substance abuse and racial equity, will be included as a training seminar topic for treatment court judges and staff moving forward.

Conclusion

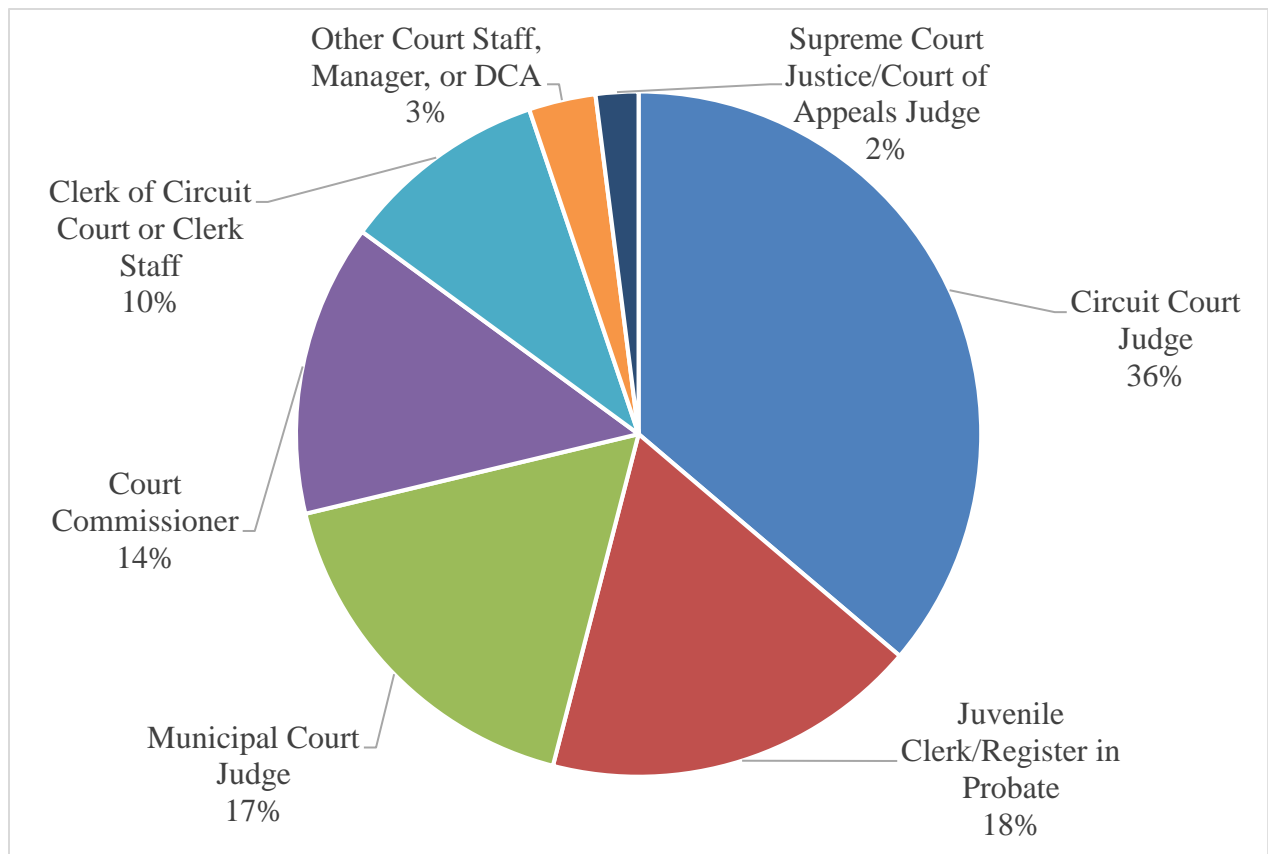
This report identifies mental health and the use of technology as critical issues for the court system to address during 2022-2023. It also highlights several other important issues, including racial equity, substance abuse and treatment courts, and ongoing efforts to keep court environments safe from security threats and disruptions. The Planning and Policy Advisory Committee will monitor the objectives outlined in this report and will update the Wisconsin Supreme Court and the Director of State Courts on progress toward achieving these goals.

Appendix A: Summary of 2021 Critical Issues Survey Responses

1. General Response Information: Court

Court Respondents	
Circuit Court Judge	126
Juvenile Clerk/Register in Probate	62
Municipal Court Judge	60
Court Commissioner	48
Clerk of Circuit Court or Clerk Staff	34
Other Court Staff, Manager, or DCA	11
Supreme Court Justice/Court of Appeals Judge	7
Total	348

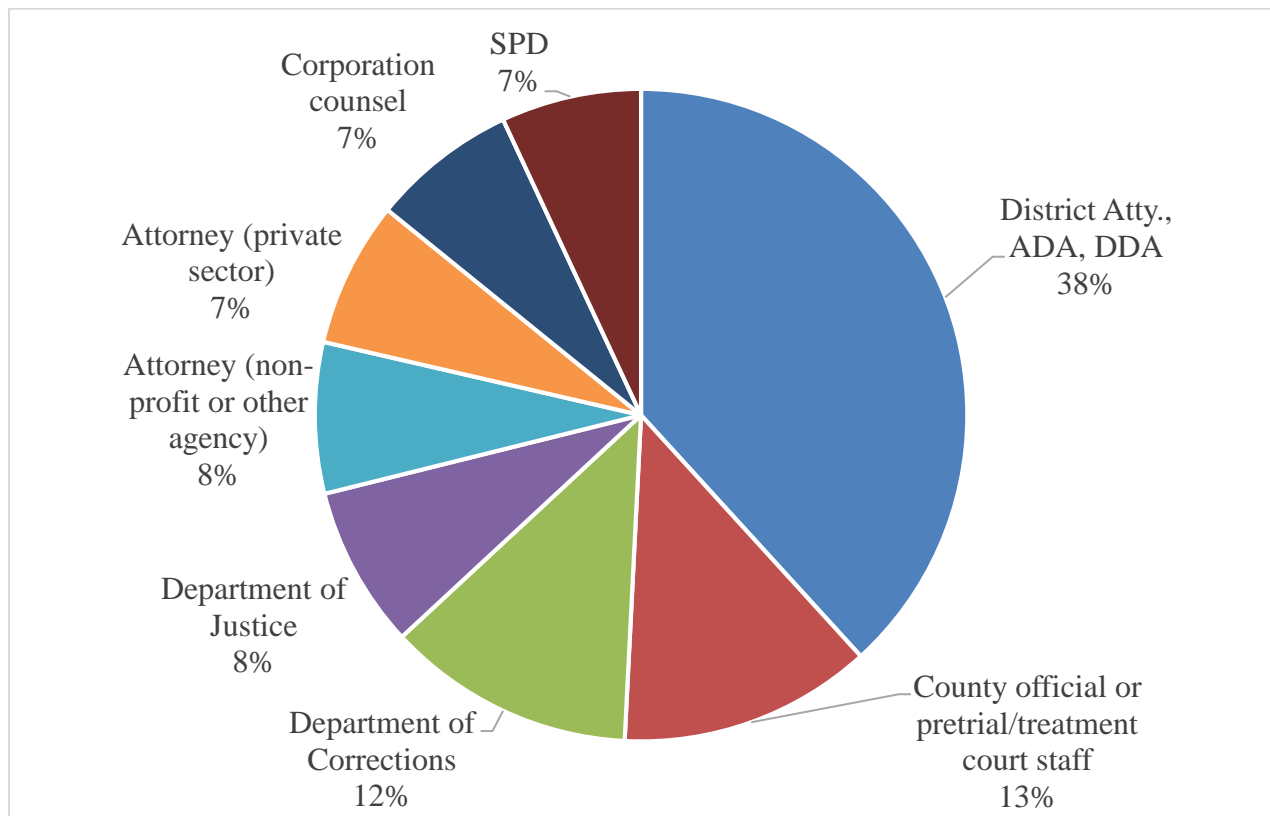
Court Respondents, by Type and Percent



2. General Response Information: Non-Court

Non-Court Respondents	
District Atty., Asst. DA, Dep. DA	143
County official or pretrial/treatment court staff	47
Department of Corrections	46
Department of Justice	30
Attorney (non-profit or other agency)	28
Attorney (private sector)	27
Corporation counsel	27
State Public Defender's Office	26
Total	374

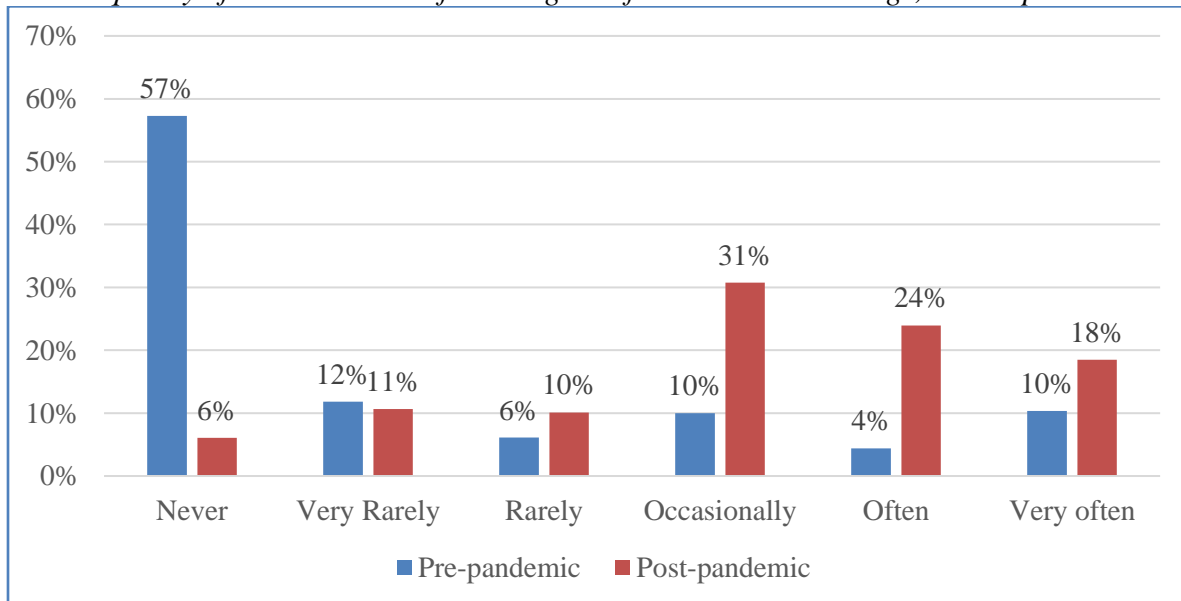
Non-Court Respondents, by Type and Percent



3. Zoom and Videoconferencing Use

Zoom Videoconferencing Use, All Respondents		
1. How often did you participate in court proceedings using Zoom or videoconferencing technology <u>prior to the pandemic?</u> A. Never B. Very rarely C. Rarely D. Occasionally E. Often F. Very often		Number
	A	384
	B	79
	C	41
	D	67
	E	30
	F	70
Total	671	
2. How often do you expect to participate in court proceedings using Zoom or videoconferencing technology <u>after the pandemic has ended?</u> A. Never B. Very rarely C. Rarely D. Occasionally E. Often F. Very often		Number
	A	41
	B	73
	C	69
	D	209
	E	163
	F	125
Total	679	

Frequency of Zoom/Videoconferencing Use for Court Proceedings, All Respondents



4. Pandemic Response

1. What do you think the court system did well in response to the pandemic?	
Court Respondent Comments (N=264)	Times Mentioned
Instituted Zoom/pivoted to remote hearings	172
Remote access/laptops/technology	42
Implemented uniform safety guidance/rules	36
Stayed open/kept things moving	23
Training and support by CCAP/Court Operations	18
Good communication	15
Allowed local tailoring of plans	11
Provided Personal Protection Equipment (PPE)	9
Non-Court Respondent Comments (N=215)	
Non-Court Respondent Comments (N=215)	Times Mentioned
Instituted Zoom/pivoted to remote hearings	159
Stayed open/kept things moving	41
Promoted safety/required masks/cleaning	28
Adapted quickly	18
Good communication/clear guidance and notices	17
Demonstrated flexibility	8

Note: Some comments mentioned more than one topic.

2. If there is another pandemic in the future, what should the court system do differently?

Court Respondent Comments (N=180)	Times Mentioned
Allow more local discretion	28
Need better tech., more unified technology/ support	28
Ensure more statewide uniformity	19
Better communication/information sharing	15
Resume in-person operations more quickly	10
Better emergency operations/COOP planning	8
Respond to local health guidance; close if needed	7
Resume jury trials more quickly	7
More flexibility regarding location for proceedings	5

Non-Court Respondent Comments (N=148)	Times Mentioned
More uniformity across counties/districts	32
Pivot to Zoom more quickly	27
Provide better guidance/training for Zoom appearances	20
Stay open/keep things moving	18
Adhere to public health/safety guidance	14
Resume jury trials more quickly	13
More frequent guidance/communication from State	8
Electronic notices/updates and better eFiling	5

Note: Some comments mentioned more than one topic.

5. *Critical Issue Topic Ranking (1-5, with 5 being most important)*

Court Respondents	Average Score (1-5)
1. Mental health	4.2
2. Use of technology	4.1
3. Court security	4.1
4. Legal representation for indigent criminal defendants	4.0
5. Substance abuse/treatment courts	3.9
6. Reducing racial disparities in criminal and juvenile justice	3.7
7. Self-represented litigants/access to justice	3.6
8. Rights of crime victims	3.6
9. Research and data analysis	3.5
10. Pretrial services and bail reform	3.4

Non-Court Respondents	Average Score (1-5)
1. Mental health	4.5
2. Use of technology	4.2
3. Substance abuse/treatment courts	4.2
4. Legal representation for indigent criminal defendants	4.1
5. Reducing racial disparities in criminal and juvenile justice	4.1
6. Rights of crime victims	3.8
7. Court security	3.7
8. Self-represented litigants/access to justice	3.7
9. Research and data analysis	3.6
10. Pretrial services and bail reform	3.6

All Respondents	Average Score (1-5)
1. Mental health	4.4
2. Use of technology	4.1
3. Substance abuse/treatment courts	4.1
4. Legal representation for indigent criminal defendants	4.1
5. Reducing racial disparities in criminal and juvenile justice	3.9
6. Court security	3.9
7. Rights of crime victims	3.7
8. Self-represented litigants/access to justice	3.7
9. Research and data analysis	3.5
10. Pretrial services and bail reform	3.5