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*Measuring Access
and Fairness in Remote
Court Proceedings*



Measuring Access and Fairness in Remote Court Proceedings

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As state courts begin to adopt long-term policies and practices regarding remote proceedings, it is vital that their decisions are informed by court user experiences. Courts can use NCSC's new access and fairness survey to gather actionable data on court users' experiences in both remote and in-person settings.

Measuring Access and Fairness in Remote Court Proceedings

Although state court leaders have discussed the need for improved virtual court services for years, the onset of the COVID-19 pandemic in 2020 forced courts to adopt remote proceedings on a large scale, essentially overnight. Remote proceedings can include hearings (either evidentiary hearings or status hearings), jury selection and orientation, check-ins with probation officers and case workers, and mediation. Now, three years later, remote court services are transitioning from a temporary emergency provision to a permanent part of court infrastructure and services. Court leaders must determine when and how virtual court services will be used and how to design rules, procedures, and technologies to fit the needs of diverse court users. As remote court experiences increasingly become the norm, it is important for courts to understand how court users perceive these proceedings.



The [survey] findings will be considered by a special committee the Supreme Court has established to make recommendations for how to improve remote hearing practices. They may also be used to guide the Judiciary's training, outreach, and planning efforts.

Scott Griffith,
Vermont Judiciary



Measuring court user experiences in remote proceedings is crucial. When courts have data to support their policy decisions, they can describe processes, caseloads, and outcomes; identify priorities for action; communicate needs and successes to different audiences; ensure that services and programs are effective; detect and prevent unintended consequences of policy decisions; and track changes over time. In particular, data on court users' perceptions of access and fairness provide actionable information that equips court leaders to ensure that the courts are providing equal justice to all.

Early Data on Remote Proceedings

Early information from a variety of studies on the effectiveness of remote proceedings allowed courts to be optimistic about the long-term viability of these services. Potential advantages to remote proceedings include faster case processing, greater convenience and lower cost for litigants to appear, and an enhanced ability for victims, witnesses, interpreters, and others to participate in proceedings if they live and work far from the courthouse. During the first few months of the pandemic, the use of remote hearings led to improved appearance rates (National Center for State Courts, 2023), and a majority of Americans surveyed said that they would be willing to appear remotely for their own cases (GBAO Strategies, 2020b). By 2021, a majority of Americans surveyed said that they wanted remote proceedings to continue to be offered (GBAO Strategies, 2021a), and one-third said that increasing online court

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proceedings would make them more confident that the courts were providing equal justice for underrepresented communities (GBAO Strategies, 2021b).

Despite the overall positive effects of remote court services early on, initial data also suggest that there is substantial diversity in the quality of the experience for different types of court users. For example, nearly half of all Americans surveyed in 2020 said that they would rely on their cell phones to participate in remote court proceedings (GBAO Strategies, 2020a), including more than half of African Americans, Hispanic participants, and younger participants. Only 58 percent of those surveyed had unlimited cell-phone minutes and data, and this figure dropped to 51 percent in 2021 (GBAO Strategies, 2021b). Furthermore, although a majority of Americans surveyed in 2021 said that they would be willing to appear remotely for their own court cases, that percentage was only 31 percent for people over age 65 (GBAO Strategies, 2021b).

The fact that remote proceedings may be more accessible and effective for some litigants than others makes it vital for courts to assess court user experiences with their remote services. Courts should focus particularly on data that can point to disparities between court users from different backgrounds or demographic groups. Remote proceedings are also likely to be more effective for some case types than others, for some types of proceedings than others, and in some locations than

others. Survey data can help courts pinpoint where and how to use remote proceedings. Finally, some research suggests that early in the pandemic court personnel were more optimistic than attorneys about how well remote proceedings were working (Mazzone et al., 2022). Because judges and court staff can only glean limited information about court users' experiences in their day-to-day interactions with them, courts need to hear from court users firsthand.

Measuring Court Users' Experiences with Remote Proceedings

NCSC's CourTools are performance measures that courts can use to determine whether they are meeting their goals and to track changes in performance over time. These measures are relatively easy to implement and targeted to the specific, actionable information that courts need.

CourTools Measure 1, the access and fairness survey, was originally released in 2005. It was designed to measure court users' perceptions of access and fairness during a time when court business took place almost exclusively in person. Now that many state courts have moved significant portions of their operations to remote technologies and virtual spaces, the access and fairness survey has been updated to meet the demand for information about court users' experiences in remote proceedings.



“Court users want choices. For judges who are looking to make caseflow decisions based on data, this survey tool provides valuable insight into the user experience.”

Colleen Rosshirt, Supreme Court of Ohio



Development and Testing of the New Access and Fairness Survey

After developing a draft version of the new access and fairness survey, NCSC partnered with the Supreme Court of Ohio, the Kansas Judicial Branch, and the Vermont Judiciary to pilot test and refine it. In Ohio seven courts throughout the state collected data between January 2021 and April 2022 and received over 3,600 responses. In Kansas six district courts collected data between April and June 2022 and gathered over 350 responses. In Vermont the judiciary collected data between September 2022 and January 2023 and gathered over 350 responses.

Visit courtools.org for the new Measure 1

Based on data from the pilot sites, NCSC researchers refined and reduced the number of survey items so that Measure 1 focuses on the most useful, actionable information

that courts need. The target audience for the updated survey is litigants and their families and friends, victims and witnesses, and public observers. Because the survey is designed to assess the views of the court's primary customers, those who work in or for the courts—e.g., judges, staff, attorneys, social service providers, law enforcement—are not the target audience for this measure. Our pilot tests also enabled us to gather insights from our court partners about the recruitment and dissemination methods that are most effective for reaching remote court users. Additionally, because the pilot tests in Ohio and Kansas

measured experiences in both remote and in-person court proceedings, we were able to examine how user experiences in these two court settings compare to each other.

What's New in this Version of Measure 1?

The original version of the access and fairness survey included ten items measuring perceptions of access and five items measuring perceptions of fairness for in-person hearings. The new version adopts a similar format of ten access items and six fairness items, but measures both remote and in-person court experiences. Participants begin the survey by identifying whether they completed their court business in person or remotely and, depending on the response, are automatically directed to the relevant set of questions. Survey items in each of these two tracks correspond directly to each other, so courts can compare the scores of in-person users to those of remote users. For example, where in-person participants rate their agreement with the statement, "Finding the courthouse was easy," remote participants rate their agreement with the statement, "Joining the proceeding was easy."

Traditionally, courts have printed the access and fairness survey and disseminated it to court users in the courthouse. In contrast, the updated survey is online. Using an online survey platform makes it possible for courts to reach people who interact with the court either in-person or remotely. Remote court users can receive the URL for the survey several ways including by email, by text message, in the chat of the court's videoconferencing system, or through advertisements on the court's website.

In-person court users can complete the survey in the courthouse—on their own device or on a device provided by the court—or after they have left the courthouse. Online surveys also eliminate the need for court staff to enter data from paper surveys into a database, saving substantial time and money and reducing the potential for clerical errors. Finally, online surveys give courts the option to collect data at dedicated, specific intervals (e.g., two weeks per year) or keep the survey open and periodically analyze the data.

Measuring access and fairness with an online survey also makes it easier to reach court users with limited English proficiency. The original Measure 1 was available in English and Spanish, and courts offering the survey in Spanish needed to anticipate how many copies to print in each language for each court location. With the new online survey, courts can distribute a single URL to all court users, and those who prefer to complete it in a language other than English can simply select their language from a dropdown menu. The new Measure 1 is currently translated into Spanish, Arabic, Mandarin Chinese, Russian, Somali, and Nepali.

Finally, the new access and fairness survey contains a set of supplemental measures that make it possible for courts to answer important questions about court user experiences. The data from the survey can give courts specific, actionable information about their operations and produce important insights about how to serve court users better. Courts not only can measure perceptions of access and fairness over time, but also pinpoint where they can make improvements to promote access and fairness for different types of court users in different types of cases.

Recommendations from our Court Partners

For courts that plan to use **email** to reach survey participants, our research partners in Kansas recommend **collecting email addresses for parties on a regular basis**. That way, litigants are easily reachable when it is time to conduct the survey.

Our research partners in Ohio suggest, “It is important not only to **plan for the dissemination of the tool, but also to plan for what will happen after the survey**. What changes will be made as a result? Will there be any publication of the results to share with staff or stakeholders? Knowing the answers to these questions will help local courts make use of the data collected.”

What Questions Can Courts Answer Using the New Measure 1?

Accessibility

- How accessible is the court?
- Has accessibility improved over time?
- Which aspects of court services (e.g., safety, forms, staff assistance) are most and least accessible?
- How does accessibility compare for in-person and remote proceedings?
- How does accessibility compare for different types of court business or different case types?
- Is the court more accessible to litigants who are represented by attorneys or self-represented litigants?
- Is the courts' remote hearing platform more accessible on certain types of devices?
- Does accessibility vary by court users' age, race and ethnicity, gender, education, disability status, or language?

Fairness

- How fair do court users perceive the court to be?
- Have perceptions of fairness improved over time?
- How do perceptions of fairness compare for in-person and remote proceedings?
- How do perceptions of fairness compare for different case types?
- Is the court perceived as more fair by litigants who are represented by attorneys or self-represented litigants?
- Do perceptions of fairness vary by court users' age, race and ethnicity, gender, education, disability status, or language?



Since April of 2020 I have been handling routine appearance dockets by Zoom on a weekly basis. At the end of each hearing, I always ask the participant if they want their next appearance to be by Zoom or in person. It is very rare that the participant requests an in-person proceeding. If they do, we happily accommodate them. Now that we are here, I don't see a future for court proceedings that does not involve the use of this technology.

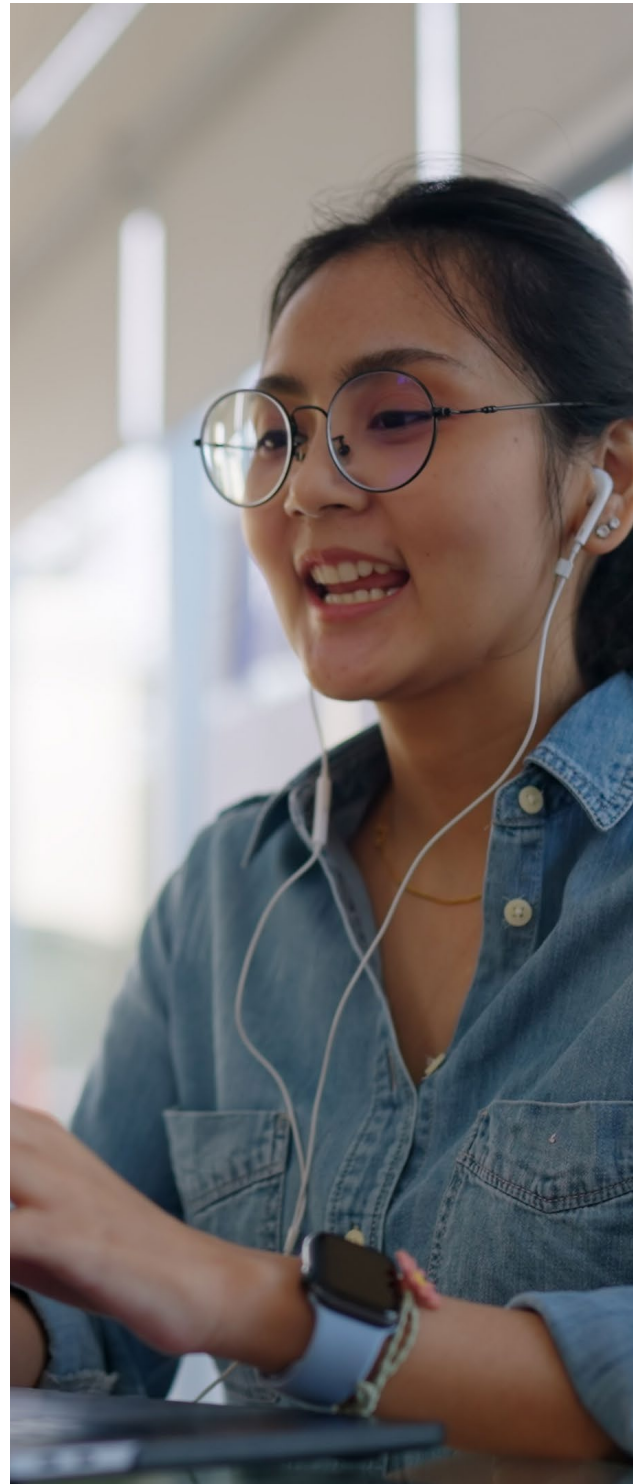


Judge Nick St. Peter, Kansas Judicial Branch

Four Lessons Learned about Court User Experiences in Remote Proceedings

Our pilot test of the new access and fairness survey in three states has led to some important insights, and the data begin to paint a picture of how court users are experiencing remote court proceedings. It is important to note that these findings are not representative of all courts. The diversity of experiences across jurisdictions is one of the reasons why it is so important for all courts to measure perceptions of access and fairness. Furthermore, different pilot sites saw different types of disparities in court user experiences by race, gender, age, disability status, and other important demographics. This finding demonstrates that it is vital for courts to systematically examine whether there are disparities in experiences among court users from different backgrounds and demographic groups. As more and more courts conduct surveys of their remote court users, our knowledge base will grow about how best to offer remote services, and how to ensure that remote services are accessible and effective for all.

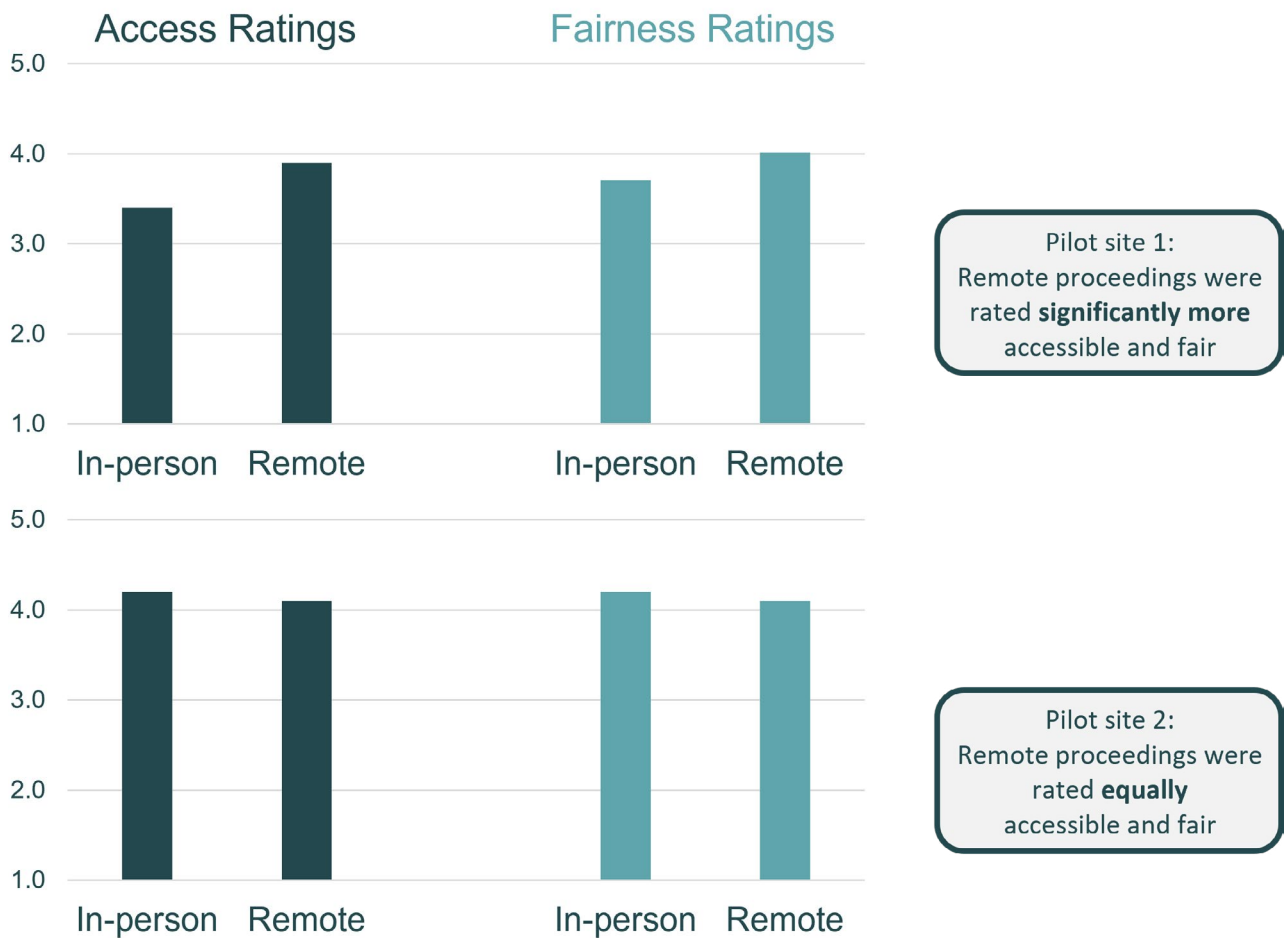
In the meantime, we have learned a few lessons from our Measure 1 pilot tests that may be useful for state courts nationwide. In this section, we share data from our Ohio and Kansas pilots, which allowed us to compare ratings from in-person court users directly to ratings from remote court users (the Vermont pilot included only remote participants).



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Lesson 1: On average, court users believe remote proceedings are at least as accessible and fair as in-person proceedings.

Overall experiences with remote proceedings are positive. Court users rate them as equally or more accessible and fair than in-person proceedings. This finding suggests that courts should continue to develop their remote services, as they are being received well by most court users.



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Lesson 2: Participants who can choose between in-person and remote proceedings view the court as more accessible and fair.

Court users have a better experience in court when they can choose whether to appear in person or remotely. These court users give significantly higher ratings on both access and fairness. Because remote proceedings are not equally beneficial for every court user in every situation, this finding suggests that courts should allow court users to choose the setting for their proceedings whenever possible.



We learned that many of the things we are doing are working well, but that there is room for improvement. While remote hearings have been in practice for some time, this remains an evolving area of policy and practice. Survey responses will be very helpful as a reference point for decision makers.

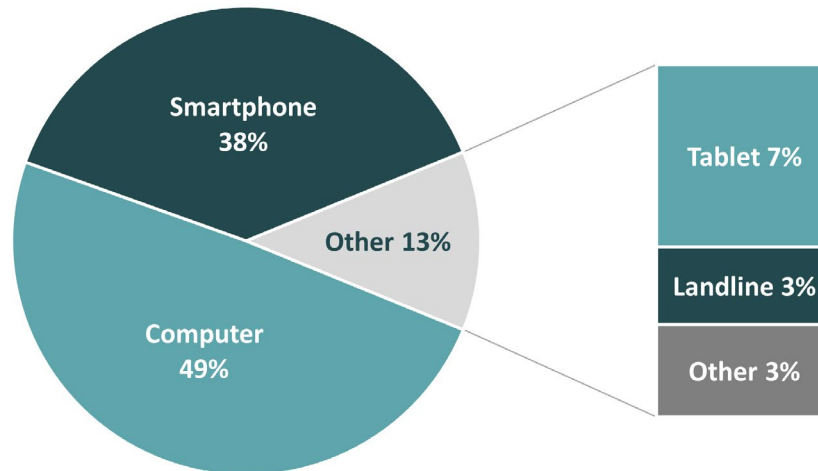
Scott Griffith, Vermont Judiciary



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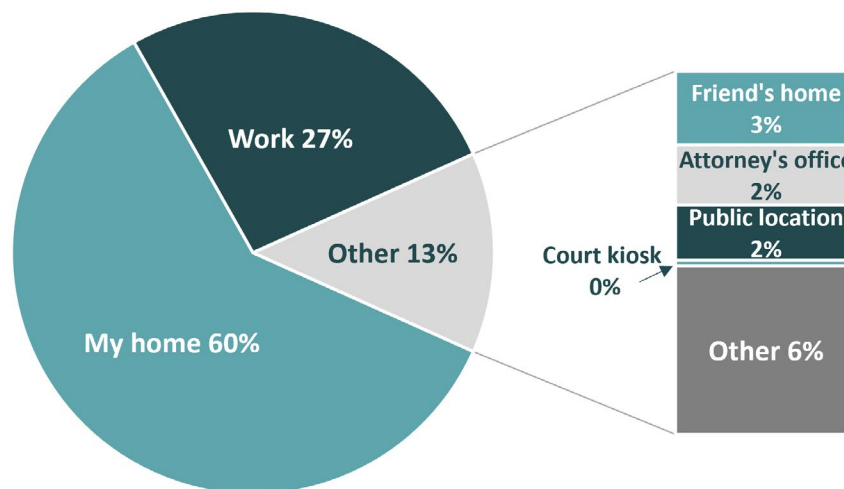
Lesson 3: Most remote court users access the court from laptops or smartphones.

More than one-third of remote court users complete their court business on a smartphone. Although the precise proportion of smartphone users will vary from jurisdiction to jurisdiction, this finding suggests that courts should make their remote services as mobile-responsive as possible.



Lesson 4: Most remote court users access the court from home or work.

About one-fourth of remote court users access the court while at work, which they would not be able to do if appearing in court in person. Although the precise proportion of court users appearing in court from their workplace will vary from jurisdiction to jurisdiction, this finding suggests that remote proceedings are benefiting court users who do not need to take time off from work to appear in court.



Conclusions

As remote court services grow from a temporary emergency provision to a permanent part of court infrastructure and services, it is becoming increasingly important for courts to understand court user experiences in these settings. Remote proceedings have the potential to increase the accessibility of the courts if implemented well, and evidence from the development of the new CourTools Measure 1 suggests that they are having an overall positive effect. Courts should continue to develop and expand their remote court services. However, because remote proceedings may be more accessible and effective for some litigants than for others, it is vital that courts monitor user experiences for signs of disparities. The new access and fairness survey equips courts to efficiently gather actionable information from their court users and to ensure that their services are equally accessible and fair for all.

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