



# REMOTE PROCEEDING TOOLKIT



**PREPARED BY**  
The National Center for  
State Courts

# USER GUIDE:

This toolkit has been developed to help courts consider what the best practices are for remote hearings. As such, there are a lot of helpful links, worksheets, and samples for courts to use. Below is a key to help you navigate this toolkit.

Anything in **PLUM** is a link to an external page, site, or resource (excluding some headings).

Anything in **RUST** is a link to another page within this document.

Anything in **NAVY** is a link to an endnote or footnote.

Additionally, this toolkit has been developed with modules that can be downloaded as stand-alone documents. Consider working through each module.

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# INTRODUCTION

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This toolkit is meant to provide courts with considerations and guidance for adopting policies for remote and hybrid proceedings, as well as a menu of options for achieving success with remote and hybrid proceedings that are mindful of court budgets and capacity.

These resources and guidance come from several sources. Some were developed by courts in anticipation of post-pandemic remote hearings. Others are examples of pandemic policies that can be used post-pandemic. Academic research, national webinars, technical assistance work, and conversations with courts and experts from around the world have also informed NCSC's thinking in this area. Additional NCSC resources on remote proceedings are available [\*\*here\*\*](#). For a quick video overview, check out NCSC's [\*\*hybrid hearings tiny chat\*\*](#).

## WHY DEVELOP STATE OR JURISDICTION-WIDE POLICIES?

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Clear policies promote fairness and transparency for all court users.

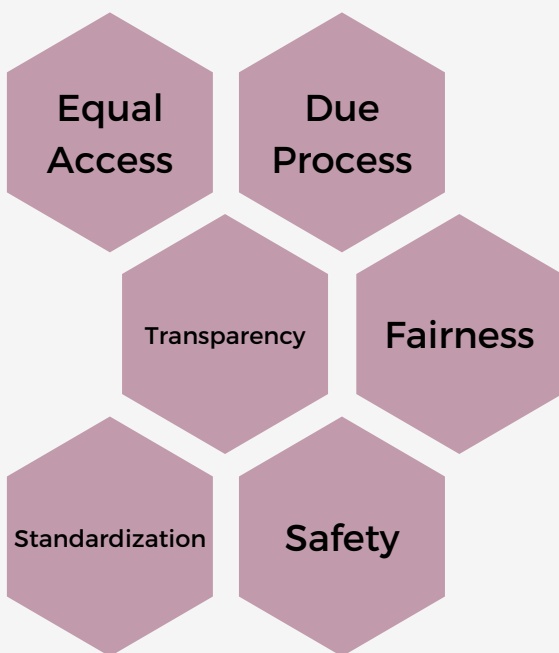
Standardization can improve performance, reduce costs, decrease errors, and will help courts process cases more efficiently.



# GUIDING PRINCIPLES

When developing policies for remote proceedings, it is important to ensure these policies promote judicial principles including fairness and equality.

## Key Guiding Principles



**Equal access:** Does the remote proceeding policy permit all court users to participate equally and equitably both remotely and in person? How does it account for people who are not able to use technology? People who need interpretation for limited English proficiency? People who need accommodations for access?

**Due process:** Will the policy allow people to meaningfully participate in hearings regardless of their method of appearance? Does the policy appropriately balance safeguarding rights with user access? How will technology challenges that happen mid-hearing be handled to ensure that people's rights are not violated? [\[i\]](#)

**Transparency:** Is the policy clear and understandable? Is it available in languages that are not English? How does it allow for **public access**? How is it communicated to the public and which court forms, notices, websites, or outreach practices might need to be modified? Can the policy be easily found and understood by all court users?

# GUIDING PRINCIPLES CONTINUED

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**Fairness:** Does the policy address the needs of all court users? Does it provide adequate options for people to appear both remotely and in person?

**Standardization:** Does the policy ensure that court-users will encounter the same processes in all courts across the jurisdictions? If there are differences in policy for particular courts or particular cases or proceeding types, are there clear justifications for those differences?

**Safety:** Does the policy safeguard against inappropriate disclosure of personal information? Are there provisions in place to notify participants about live-streaming and to guide participants about how to safeguard personal information that might be visible if they are appearing from home or a location in their community? Does the policy consider trauma-informed principles to allow parties to fully participate?



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# Additional considerations

This NCSC **resource** has more information about guiding principles and how to incorporate them into virtual hearings. [\[ii\]](#) If you'd like to see the principles explained in the style of Goodnight Moon, as read by five state supreme court justices, **here you go**.

This can be a good opportunity for court communities to consider their values and guiding principles. [\[iii\]](#) The body making recommendations or decisions about remote proceeding policies should take time to reflect on what is important in their jurisdiction and to the court-users that they serve. The how-to information in the **Strategies** section may be helpful here as you gather information from stakeholders about guiding principles.



# Module 1: REMOTE PROCEEDING BASICS

- What is a "Remote Proceeding?"
- Why Remote Proceedings?
  - Reduce Barriers to Appearing in Court
  - User Preference
  - Better Public Access
  - Court Improvement Considerations





# What is a "Remote Proceeding?"

- For purposes of this toolkit, a remote proceeding is **any proceeding where at least one participant appears by video conference or telephone**. This includes proceedings where all parties appear virtually and proceedings where some parties appear in-person and some appear virtually/telephonically.
- This toolkit covers some basic concepts applicable to all types of hearings where at least one party appears remotely. There are special considerations for hybrid hearings where there are parties appearing remotely and in-person, including placement of equipment and due process considerations that NCSC is also exploring in its **Hybrid Hearings Improvement Project** in pilot sites across the country.

- Courts adopting remote proceeding policies should ensure that their policies include a definition of a remote proceeding.
- Consider broad definitions to allow for flexibility.



**State Spotlight:** Arizona's Continuity of Court Operations Workgroup defines a remote hearing as "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."

# Why Remote Proceedings?

Allowing remote participation supports due process, equal access, transparency, fairness, and safety. Remote proceedings reduce barriers to appearing in court, improve public access, and are responsive to the diverse needs and preferences of court users.



# Reduce Barriers to Appearing in Court

Participants in NCSC's 2021 State of the State Courts survey identified the following barriers to physically attending court: distance to court (49%); time off work or school (41%); transportation (30%); disability access (23%); childcare (22%).

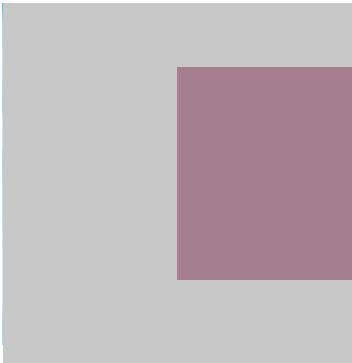


In-person hearings can create serious barriers for court users. People must take time off work, travel to a courthouse (navigating public transportation in some circumstances, paying for gas and parking, driving long distances in rural jurisdictions), and finding childcare. [\[iv\]](#) Additionally, in-person hearings can be difficult for some people with disabilities, [\[i\]](#) and some people may feel uneasy going to a physical courthouse if they are undocumented or have been involved in the criminal justice system. Remote hearings can also increase participation for survivors of violence who may feel safer appearing remotely when appropriate. [\[v\]](#) Allowing remote appearances can eliminate these barriers and create better participation in court hearings.

And in fact, early data suggests that remote proceedings increase participation. Data from the Maricopa County Justice Courts in Arizona, for example, showed a change in failure-to-appear rates in eviction cases from about 40% to as low as 13%. [\[vi\]](#)

[\[i\]](#) It is important to keep in mind that the needs of people with disabilities are highly individualized and for some people with disabilities, in-person proceedings are more accessible. If a court user identifies as a person with a disability, it is critical to ask the person what they need to meaningfully participate. Accessibility and accommodations are discussed more in various sections of this toolkit.

# User Preference



Initial surveys show that court users want the option to appear remotely

Most participants in the 2021 NCSC State of the State Courts survey would consider appearing remotely for some types of court proceedings, including jury screening, traffic proceedings, small claims, and consumer debt. [\[vii\]](#)

A 2021 study commissioned by the D.C. Bar Foundation about the use of remote hearings in family law cases found that most participants reported that remote hearings eliminated challenges with appearing for court hearings and that they preferred remote hearings, particularly for shorter hearings. [\[viii\]](#)





# Better Public Access



Livestreaming or remote access to court proceedings has allowed public participation in the judicial process in a more robust way, which can bolster public trust and confidence in the legal system. People can view court proceedings more easily and gain a better understanding of the judicial process. This has been particularly useful for researchers, court watchers, news organizations, and law students. However, there are privacy considerations for courts to keep in mind as they think through how to balance public access and the wider access that streaming creates. These considerations are discussed in the [Public Access](#) section of this toolkit.

# Court Improvement Considerations

Remote hearings can improve court processes so long as court leadership considers how processes can be modified to ensure the appropriate balance of efficiency and procedural fairness and develop appropriate plans. Courts should embrace this opportunity to process map and evaluate current procedures and case flows and consider what barriers or challenges currently exist, and how shifting to remote hearings could allow the court to redesign those processes for improvement.

Better participation will lead to better outcomes and increased public trust in courts. Remote hearings can also lead to smoother functioning of hearings.

[\[ix\]](#)

# Module 2: CREATING REMOTE PROCEEDING POLICIES

- Strategies
- Task Forces
  - How-To
  - Key Questions
  - Participation/Input Checklist
  - Surveys
    - How To
    - Samples

REMOTE PROCEEDING TOOLKIT





## STRATEGIES

It is critical to have clear policies for court users to understand when remote proceedings are possible, and how to engage with court proceedings remotely. In July 2022, the Conference of Chief Judges and Conference of State Court Administrators adopted a **resolution** encouraging states and jurisdictions to create policies around the use of remote proceedings. As you develop remote hearing policies use the following best practices to gather information:



Several states including [Arizona](#), [California](#), [Illinois](#), [Maryland](#), [Michigan](#), and [Utah](#) created task forces to address the continued use of remote hearings post-pandemic.

**Gather feedback from stakeholders.** Include a variety of groups, such as judges, court staff, lawyers - private bar, legal services and public defenders, self-represented litigants, parties in criminal cases, justice partners, the disability community, and community organizations such as victim's rights organizations and other community leaders. Court user feedback is critical here.

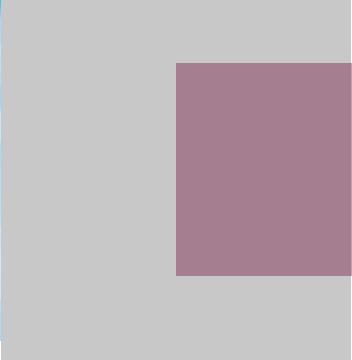
**Use a variety of methods to collect feedback.** Use paper and electronic surveys, focus groups, interviews, and stakeholder-based bodies such as task forces to obtain information. Make sure written materials can be read and understood by a wide audience and are translated into languages that are prevalent in your community.

**Don't make blanket assumptions about particular case types** (e.g. all criminal hearings must be in person or all evidentiary hearings must be in-person). Rather use the guiding principles outlined above, additional principles important to your court community, and the realities of your community to create your own policies.

**Identify challenges and successes.** What does your state do well? What is a challenge? How might challenges be addressed? Identify ways to collect information from courts in your states about experiences with remote proceedings to assist with statewide policies.



# Task-Force How-To



The following sections contain tools for convening a task force to make recommendations on remote proceedings.

## Key Questions:

Who is responsible for convening the task force?

What should the task force do? Obtain stakeholder feedback? Make recommendations?

What is the timeline for recommendations?

Who should participate in the task force in your community? Ensure diverse representation from court users, court staff, judges, justice partners, and attorneys. Consider “non-traditional” partners, like social service providers whose clients use the courts, as well as researchers and academics who may study the courts, in order to understand the experiences and needs of court-users that may not have been previously taken into account.

**A task force may be helpful to ensure input from a variety of stakeholders, thoughtful consideration of process changes that may need to happen, and opportunities for user testing.**

# Task Force Participation/Input Checklist

You can use the following checklist to identify task force participants. The level of participation of members may vary but try to seek input from the following groups:

- ☐ Judges from a variety of court types (criminal, civil, juvenile, family, small, medium, large)
- ☐ Court administrators from a variety of court types (criminal, civil, juvenile, family, small, medium, large)
- ☐ Courtroom staff, including bailiffs and court reporters
- ☐ Court self-help staff and court clerks
- ☐ Civil attorneys including private practitioners and attorneys who work for civil legal service organizations
- ☐ Criminal attorneys including prosecutors and public defenders
- ☐ Attorneys who practice in child welfare and juvenile cases
- ☐ Court users, including self-represented litigants
- ☐ Court interpretators
- ☐ Other community partners like social service providers, academics and community college faculty, local government officials, representatives from the disability community, other local affinity groups, victim's rights organizations, and community leaders



# Survey How-To & Samples

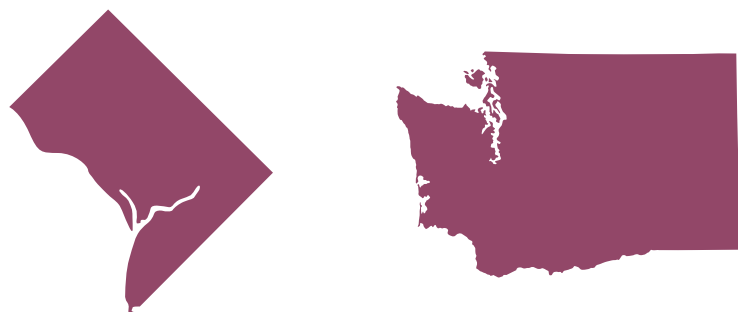
Key questions for stakeholder surveys include questions about:

- Ease of process
- Ability to participate meaningfully in the hearing
- Benefits of being able to appear remotely
- Barriers caused by technology
- Barriers caused by not being in-person

**Click on a state to see their sample surveys**



**Click on a jurisdiction to see their sample report**



# Module 3:

# TECHNOLOGY

# CONSIDERATIONS

- Selecting the Technology Platform
  - Key Questions Checklists
    - For Technology Platform
    - For Contracting digital services
- Addressing Barriers to Technology Access
  - Court Capabilities
  - Court User Barriers
  - Flexibility & Resources





# Selecting the Technology Platform

Use this time to reassess the technology you are already using and determine if a change is needed. Technology is a tool but not a fix-all. Make sure to think about your guiding principles as you consider how to incorporate technology into court processes and hearings. And remember, language access and disability accommodation considerations should be part of the remote hearing policy and should be factored into technology decisions. To help in this process, NCSC created an interactive online tool (as well as a pdf and physical booklet) that will help you think through considerations and allow you to incorporate guiding principles. You can access the tool here: [www.ncsc.org/exitingtech](http://www.ncsc.org/exitingtech).



# Key Questions About Technology Platforms

The following checklists outline some key questions to ask about technology platforms and court use of platforms:

- ☐ Do court staff find it easy to use?
- ☐ Are court users able to connect easily with the platform?
- ☐ If this is a new platform, has it been tested by court staff and users?
- ☐ Will the platform allow for simultaneous interpretation?
- ☐ Does the platform allow for captioning and other accessibility requirements? [\[x\]](#)
- ☐ Does the platform allow for the hearing to be recorded? Can these hearings be used to establish a court record?
- ☐ Does the platform allow for viewing and exchanging documents?
- ☐ What is the cost of the platform?
- ☐ Will there be a cost to court-users? If yes, use another platform to ensure access and avoid due process concerns.
- ☐ If changing platforms, what steps do you need to take to ensure continuity of services? (See the next section about contracting for digital services for more information.)

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# Additional considerations

**This** resource from the California Commission on Access to Justice and adapted by the Conference of Chief Justice, the Conference of State Court Administrators also has an excellent list of considerations regarding technology platforms. [\[xi\]](#)



# Key Questions For Contracting Digital Services [\[xii\]](#)

- ☐ Have you considered data ownership?

Who owns any data created by use of the platform? How does this intersect with privacy laws and public record laws in your jurisdictions? What steps will your court need to take to ensure that data is protected? How will data errors that impact court users be handled?

- ☐ Will your court and court users be able to adapt and modify the technology in any way to meet the needs of the court?

- ☐ Who is responsible for providing platform support? If court users must go to the platform company for technical support, what does this look like?

- ☐ How will updates to the platform be handled? Will you need to purchase new licenses in the future?

- ☐ What happens if the platform is no longer supported (i.e. if the technology company decides to retire the platform)? Do you have a plan to transfer platforms?



## ADDRESSING BARRIERS

**The following sections address some common technology barriers (often referred to as the “digital divide”) and strategies to help with these barriers.**



**State Spotlight:**  
Illinois' First Judicial District and the Administrative Office of the Illinois Courts received a Technology Modernization Grant that they used to rewire courthouses and purchase equipment for remote hearings in rural Illinois counties.

**Court Broadband Considerations:** Some courthouses are located in areas where broadband is either not available or not reliable and this may impact a court's ability to realistically conduct remote hearings. (**This** Arizona report has good information about court technology infrastructure.) Courts should consider their own technology capacity in creating policies about remote hearings. However, courthouses in these locations are likely to be in rural areas where people may experience transportation barriers and must travel long distances to courthouses so remote hearings may be particularly important in these communities. Courts in these areas should consider grants or funding to modernize court technology if appropriate.

**Hybrid Proceedings:** If a proceeding is a hybrid proceeding (some parties are appearing in person and others are appearing remotely), do courtrooms need additional equipment to ensure that all participants can hear and see each other and that a clear record can be captured? Check out this **short video** to learn more.

**Virtual Courtroom Structure:** This **NCSC resource** contains examples of how courtrooms in Vermont and Illinois have structured their courtroom equipment. [\[xii\]](#)

# Court Users: Equipment Barriers

**The Challenge:** Although one study indicated that 85% of Americans own a smartphone and 97% own a cell phone and at least three-quarters of Americans own a computer or tablet of some sort, [\[xiv\]](#) the reality is that owning a device does not mean that a court user is well equipped to access a remote proceeding. Their devices may not have good cameras or microphones. (Data and broadband access are also discussed in the next section.)

## Strategies:

- Provide kiosks in courthouses and/or other community locations where people can go to access hearings remotely. Ensure that these kiosks are located in private spaces, particularly kiosks hosted by community partners. Learn more about kiosks in this short video.
- Identify community points for access and provide this information with hearing notices about schools, libraries, McDonalds, Starbucks, or other local businesses that offer free Wi-Fi.
- Consider whether users can “check-out” equipment from the court [\[xv\]](#) or public library. [\[xvi\]](#)
- Ensure phone participation is always an option.

## State Spotlight

**Minnesota** Legal Services has placed 270 kiosks in community locations throughout the state which can be used to access remote hearings.

**Travis County, Texas** provided iPads and hotspots to jurors for virtual jury trials.

**D.C.** has a number of remote hearing sites in community locations.

**Maryland** has partnered with public libraries to loan equipment and hotspots to court users.

**Hawaii** has created a Wi-Fi map so users can identify Wi-Fi locations. The Minnesota-based **Land O'Lakes**, Inc. also has a Wi-Fi map.





# Court Users: Broadband/Data Access Issues

**The Challenge:** At least 21 million Americans do not have broadband access [\[xvii\]](#) and others may have infrequent access to the internet due to resource challenges such as pre-paid phone or data plans that are not always active or inconsistent access to devices. Although surveys suggest that a high percentage of Americans have a smartphone or access to a smartphone, it is important to remember that not all smartphone owners have consistent coverage. Some have plans with limited data and others may not always have service.

## Strategies:

- **Kiosks** are also an option for these users.
- Identify community points for access and provide this information with hearing notices about schools, libraries, McDonalds, Starbucks, or other local businesses that offer free Wi-Fi.
- Ensure phone participation is always an option.
- Consider whether there is a role for your court/jurisdiction in advocating for increased broadband access in your community. For example, Michigan's Task Force recommends that their state court administrator, judges' associations, and the State Bar of Michigan "coordinate a plan to advocate for the adoption of legislative appropriations to modernize the state's broadband and technology infrastructure." [\[xviii\]](#)

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# Court Users: Technology Knowledge Issues

**The challenge:** Some court participants may not feel comfortable using technology. These participants include parties, attorneys, and court staff. This is a place where user testing and feedback can be important, both in identifying barriers and developing strategies and resources for users who do not feel as comfortable with technology.

## Strategies:

- Ensure there are clear instructions (ideally available in several formats and languages, including written and video) provided to court users about how to log on, the technology platform, whom to contact if a user is having problems, and expectations about the wait time and the hearing. Sample instructions from various states are available in this toolkit [here](#).
- Provide dedicated technology training to court staff and judges, including training on how to enable interpretation, captioning, and other accessibility tools.
- Ensure phone participation is always an option.
- Build a “tech check” into the hearing process. This may include asking users to log on early to test equipment and designating a staff person to ensure that users' technology is working correctly. Consider having court staff contact litigants days in advance of the hearing to run tests on equipment and a user's comfort using the system—which can pay dividends for a user's experience during the hearing and increase court appearance rates.
- Some courts have identified court-based helpers who can assist both users and court staff with technology. Courts should consider whether to request staff or train volunteers for this role.





# Technology Knowledge Issues Continued

- User testing of technology before deciding on a particular technology can help identify technologies that may be easier for users. Ensure user testing includes limited English proficient users and users with disabilities.
- Even court users who are more familiar with technology will benefit from clear information about how to access technology for a hearing and how to ensure quality internet connections. Examples of resources for **technology instructions** and **what-to-expect documents** are included in this toolkit.

## State Spotlights:

Vermont has court staff who act as “tech bailiffs” to address technology problems during hearings, ensure that technology is working for court users, and help court staff troubleshoot technology questions from court users.

Michigan’s Committee recommended that court staff be trained annually on technology use.

# Flexibility & Resources

In-person should always be an option. Some users will prefer to be in person, and for some people with disabilities, it will be necessary for them to participate in person.

## Flexibility:

Flexibility is essential to ensure due process and equal access. Some examples of flexibility include:

- If a certain hearing type is presumptively remote or in person, create a clear process for parties to request a change. Parties should be able to request a change without having to travel to court and appear before a judge. Consider allowing these requests to be made via email, phone, or a web-based form.
- Allow telephonic appearance for users who want to appear remotely and are not able to use video.
- Do not sanction parties for non-appearance until ensuring that their failure to appear was not the result of a technology failure.
- Be ready to grant continuances if the party or participant experiences a technology problem.

### Technology Resources

These NCSC resources have information about **considerations when selecting technology and technology needs.**

# Module 4: WHAT PROCEEDINGS?

- Introduction & Identifying Benchmarks
  - Length of Proceedings
  - Evidence
  - Rights & Constitutional Considerations
  - Convenience & Party Considerations
- Court Services and Programs
- Tools & Resources

REMOTE PROCEEDING TOOLKIT



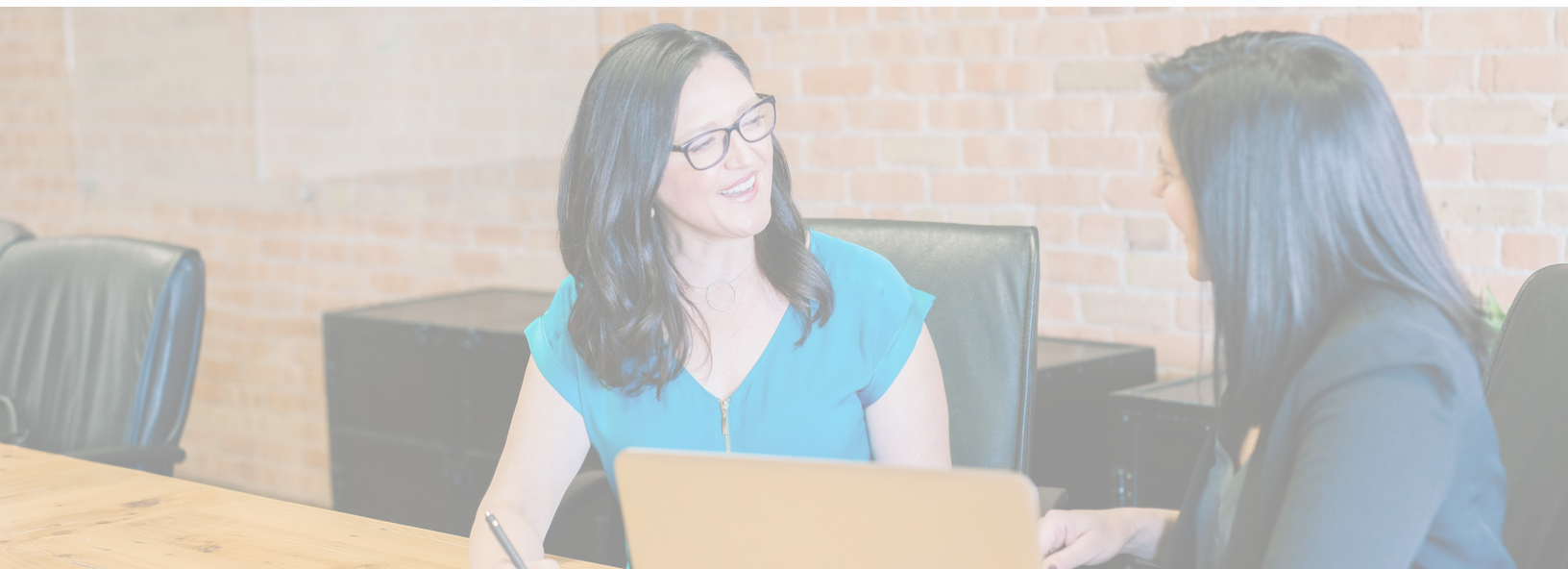
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# Introduction:

This section provides guidance and examples about identifying the types of proceedings that may be more appropriate for remote participation or for in-person participation. Several jurisdictions have issued guidance about the types that are presumptively in-person or presumptively remote.

## Identifying Benchmarks:

Some suggested benchmarks are on the pages that follow with examples of courts that have adopted policies based on these benchmarks, but there may be others relevant to your jurisdiction.





# Length of Proceeding

States that have considered post-pandemic remote proceedings have made some shorter proceedings presumptively remote. [\[xix\]](#)

## Examples:

- Scheduling conferences
- Status hearings
- Arraignments and pleas agreements (particularly where incarceration is not anticipated)
- Non-evidentiary motion hearings

Long periods of time on videoconferencing software can lead to exhaustion, irritability, and difficulty with decision-making. [\[xx\]](#) Tips for holding longer proceedings remotely are also addressed in **Modules 5** and **7** (Tips for Remote Hearings and Cautions).



# Evidence

## Will Evidence Be Presented?

If not, the proceeding may be appropriate for remote appearance. Arizona recommends that many non-evidentiary proceedings be presumptively remote.

However, not all evidentiary proceedings need to take place in-person. The following sections break out some considerations about evidence when making decisions about how to hold evidentiary proceedings.

## What Type of Evidence Will Be Presented?

Can the evidence be adequately and fairly considered in a remote setting? Physical evidence will be harder to accommodate in remote hearings than documents or photographs.

Connecticut has a remote presumption for bench trials in cases where there are no interpreters and that do not have numerous exhibits. [\[xxi\]](#)

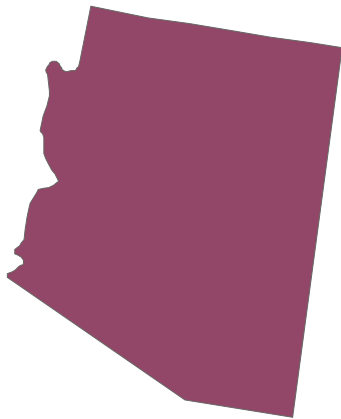


# Virtual Or In-Person

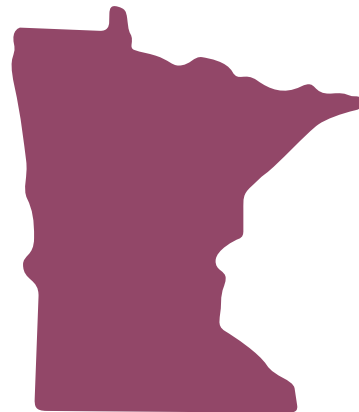
**The following states have created guidance or recommendations about post-pandemic remote hearings:**

**Click on a state to see their guidance or recommendations**

Arizona: Hearings involving witness testimony, jury selection, and trials, as well as bench trials are in-person. Other proceedings may take place remotely.



Minnesota: Presumption that most non-evidentiary civil hearings are remote.



Maryland: Criminal and civil trials are presumed to be in-person. A number of criminal hearings including arraignments and plea agreements where incarceration is not anticipated are presumed to be remote. Many civil non-jury evidentiary proceedings are also presumptively remote as are order of protection hearings.



Michigan: Presumption that certain types of civil proceedings including pre-trial hearings and motions, as well as certain limited criminal proceedings, including arraignments are remote. Trials and evidentiary proceedings are presumed to be in-person but could be remote if there is agreement by all parties and the court.



# Witness Testimony



## Equal Access Considerations:

- Remote hearings may allow for increased use of experts by parties who previously could not afford the cost of bringing an expert in person.
- Remote testimony may allow some witnesses to feel safer and more able to testify.

## Witness Credibility Determinations:

Some stakeholders have expressed concerns about determining witness credibility if the witness is appearing by phone or video. Whether to allow remote witness testimony may be a determination best made on a case-by-case basis instead of creating a presumption.

## Should you Allow Remote Witness Testimony?

- Weigh the potential costs and benefits of allowing remote witness testimony, including due process and fairness concerns.
- Remember that decisions about remote proceedings and testimony can be made on a case-by-case basis. Create a clear process to request remote or in-person proceedings.
- Criminal cases will require different considerations than civil cases. Think carefully about **confrontation clause** concerns in criminal proceedings. **This NCSC resource** gives a more detailed analysis of remote proceedings and the confrontation clause and there is a section of this toolkit specifically addressing confrontation clause concerns.



## OTHER EVIDENCE CONSIDERATION

### Key Questions:

- How will proposed evidence be shared with all parties prior to the hearing?
- How will evidence be shared with other parties during the hearing if there is some reason it cannot be shared ahead of time?



#### State Spotlight:


Arizona: Is creating a digital evidence portal where parties can upload and view exhibits. This portal is live in some Arizona counties and will expand statewide.

### Strategies:

- Be flexible about evidence and remote hearings.
- Create clear instructions to parties about evidence sharing and evidence procedure in remote hearings.

### Samples

- Minnesota Evidence Procedure
- Massachusetts Land Court Sample Zoom Pretrial Order



Minnesota: Has created an **Exhibit Process Overview** and **Digital Exhibit Management System** evidence to help parties submit exhibits to the court and other parties.

# Rights & The Constitution

Proceedings that impact significant rights or liberty interests might be better suited to an in-person format.

## Examples:

- Criminal jury trials
- Sentencing hearings
- Termination of parental rights
- Adult guardianship/conservatorship proceedings

**Confrontation Clause:** Where the Confrontation Clause is at issue, some states have created **guidance** to help courts determine whether in-person hearings and testimony are needed. Most courts see criminal trials as proceedings that must be in person.

**Effective Assistance of Counsel:** Without the ability to communicate in real-time, attorney-client representation in criminal cases may be seriously compromised. If remote criminal proceedings are part of your jurisdiction's recommendations, make sure to address communication.

**Due Process Concerns Generally:** Constitutional concerns do not only arise in criminal cases. [\[xxii\]](#) Be mindful of general due process considerations and whether a party can meaningfully participate in any remote hearing. For example, **Michigan's court rule** on remote proceedings requires courts to consider whether the use of videoconferencing technology will undermine the integrity, fairness, or effectiveness of the proceeding.



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# Convenience & Party Specific Considerations

Build in the room to consider participant convenience and technology comfort and party-specific considerations in decisions about whether to allow proceedings to occur remotely. This means allowing room for flexibility and case-by-case decision-making. However, be careful that this does not lead to bias in decision-making (e.g. assumptions that participants in particular demographic groups are not comfortable with technology or will not be able to maintain court decorum when participating remotely).

## Sample:

Michigan's **recent court rule** on when to permit remote proceedings requires courts to consider among other things:

- Court and party capabilities to participate in a videoconference.
- Convenience to parties and the potential to increase access to courts by allowing parties and/or their counsel to appear by videoconferencing technology.
- If there is reason to believe that the participants will not be able to maintain the dignity, solemnity, and decorum of court while using videoconferencing technology.



# Court Services & Programs

This is a good opportunity to think about other court services and programs that might benefit from a remote component. Self-help services and some probation services and check-ins are good examples of court-based programs that can benefit from continued remote components.

Litigants who are appearing remotely may not have the same opportunities to learn about or access on-site services including self-help centers and court-based legal help desks. Information about these services should be shared widely to ensure litigants are still able to access the same supports and services they would be able to in person. If services are available remotely, consider when and how referrals can be made to a service provider.

Collect user and participant feedback about court services and programs to understand how remote options can help people accessing these services and programs.

Both **Maryland** [xxiii] and **Illinois** [xxiv] provide remote self-help services.

## Jury Trials

Most states that have developed guidance about remote/in-person proceedings place jury trials in the in-person category. However, there may be some parts of jury selection that can be handled virtually. Remote jury selection can result in better juror participation, a more diverse jury pool, and court savings if jurors do not have to physically come to the courthouse. Jury selection is currently happening remotely in some Texas courts; in civil trials in New Jersey; in Duval County, Florida; in Mohave County, Arizona; and some counties in California. The King County Superior Court in Washington **surveyed** prospective jurors who appeared for voir dire remotely and found the majority appreciated being able to participate remotely and would like a remote option to remain in place.

# Tools for Determining Proceeding Format

The following worksheets may help you as you think through remote proceeding policies in your jurisdiction:

## **Proceeding Type Worksheet**

List proceeding types that happen in your jurisdiction:

What proceeding types might be appropriate for remote proceedings? Should they be remote by default? Remote if a party requests remote appearance?

### **Topic 1**

Has your jurisdiction (not necessarily the court itself) had any analysis done about the digital divide in your community? Are there existing community resources to bridge the digital divide that you could share with court users?

Are there proceedings that should never be remote? Remote only in extraordinary circumstances?

What factors are important to you in considering whether to hold proceedings remotely or in-person?

# Remote or In-Person Chart

You can use this chart to track proceeding types, whether remote by default, at the request of a party, by consensus, or in-person

Proceeding Type	Evidentiary?	Remote by Default?	Remote by Discretion?	Remote by Request?	Remote by Agreement?	Never Remote

# Sample Case Chart

An example of remote/in-person recommendations broken down by case type from Arizona. [\[xxv\]](#) The full document is available [here](#).

## 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
<b><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></b>			
<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	

# Module 5: TIPS FOR REMOTE PROCEEDINGS

- Scheduling
- Instructions to Court-Users
  - How To Connect
  - Expectations, Norms, Safety, & Privacy
  - Virtual Waiting Rooms
- Trauma-Informed Practices
- Proceeding Conduct
  - Platform Basics, Norms, & Access

REMOTE PROCEEDING TOOLKIT





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# Scheduling:

Reduce or eliminate the use of trailing dockets. Schedule each proceeding for a specific time even if using the same remote meeting link. This will eliminate confusion for court users who may be waiting in virtual waiting rooms, allow participants to plan if they need to use public equipment or have limited minutes or data, and will reduce frustration for court staff and users.

If using trailing dockets, consider asking participants who are using kiosks or other public access points to identify this in their username and prioritize these cases if possible since the use of kiosks and other public computers/devices may be time-limited.



# Instructions to Court-Users

Ensure that instructions are available in multiple languages and that there are picture instructions for court users who do not read.

**Proceedings will run more smoothly, and court-users will feel more confident in the court process if they have good information about what to expect. User-testing any instruction and informational materials and asking for feedback from court users is important to make sure that participants understand instructions, materials, and the technology itself.**

The following pages have tips about what information to include and how to reach court users:



## COURT EXPECTATIONS & NORMS

- Give users information about what to expect during the proceeding and court expectations about appearance and behavior.
- Provide information about privacy and safety considerations including the use of virtual backgrounds. Emphasize that these are still public proceedings even if a person is appearing from their home.



### State Samples:

- Minnesota
- Alaska

### How to Connect:

Provide detailed instructions with pictures to users with notices. This should include information about how to connect to the video platform, and how to access interpretation channels on the platform. Make sure that there are instructions for phone users as well, including instructions about how to access interpretation. Also, give participants information about how to get help before the proceeding if they have questions about technology, interpretation, or accommodations.

### Samples:

- Colorado instruction [documents](#)
- [Maryland](#) “toolkit”

# Virtual Waiting Rooms

## **Manage remote participants:**

- Ensure parties and witnesses enter the correct hearing at the correct time.
- Direct attorneys and clients into breakout rooms for pre-hearing discussion if necessary.

## **Provide information to participants about the hearing schedule and when they can expect to be admitted:**

- Waiting in a virtual waiting room is disorienting and frustrating to many users. Giving information and updates about when they can expect to be admitted is important to reduce frustration and help court processes run more smoothly.
- Consider customizing waiting screens and other “virtual real estate” to display helpful links and resources, phone numbers to call for help, and information about what to expect in the hearing.

## **Provide information to participants about court expectations and resources**

Display links or videos about hearing norms and court expectations for users appearing remotely.

Provide information about specific resources. For example, in eviction cases, provide information about rental assistance programs. Use QR codes and links that will allow participants to connect to rental assistance applications.

# Trauma Informed Practices




We often hear about the need for trauma-informed practices in particular case types (child welfare or juvenile justice hearings) [xxvi], but the reality is that for many litigants any court proceeding can trigger trauma or involve traumatic experiences. The following recommendations can be applied in any case type to ensure people are able to meaningfully participate and that the court receives better information from participants:

- Give clear instructions to participants in multiple formats (e.g. verbal, written, and at various points in the proceeding) and in multiple languages
- When appropriate, give participants choices about how to appear (e.g. by video, with video off, telephonically, in person)

More information about trauma-informed practices is available in [this NCSC report](#).

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# Proceedings Conduct



There are some steps that judges can take at the beginning of remote proceedings to ensure that parties understand the expectations and how the proceeding will run. This is particularly important if parties are appearing by phone and do not have visual cues. Collect user feedback regularly about the process for remote proceedings to identify barriers, points of confusion, and ways to make proceedings run smoothly.

# Virtual Platform Basics

Give participants some virtual platform basics at the beginning of the hearing:

- Share an image of the platform controls (mute button, raise hand) indicated. For example:

Please mute your audio unless speaking:



- Remind participants to mute. Provide verbal instructions to telephone participants about how to mute if there are particular controls (e.g. \* 6) that they need to use.
- Let participants know how they should let the court know they would like to be heard. This may be raising virtual hands, using a chat feature, or other instructions for telephone participants.
- Explain how to change participants' display names and remind participants of any naming conventions (e.g. "NAME, Plaintiff").
- Give participants instructions about how to access interpretation and captioning if necessary.



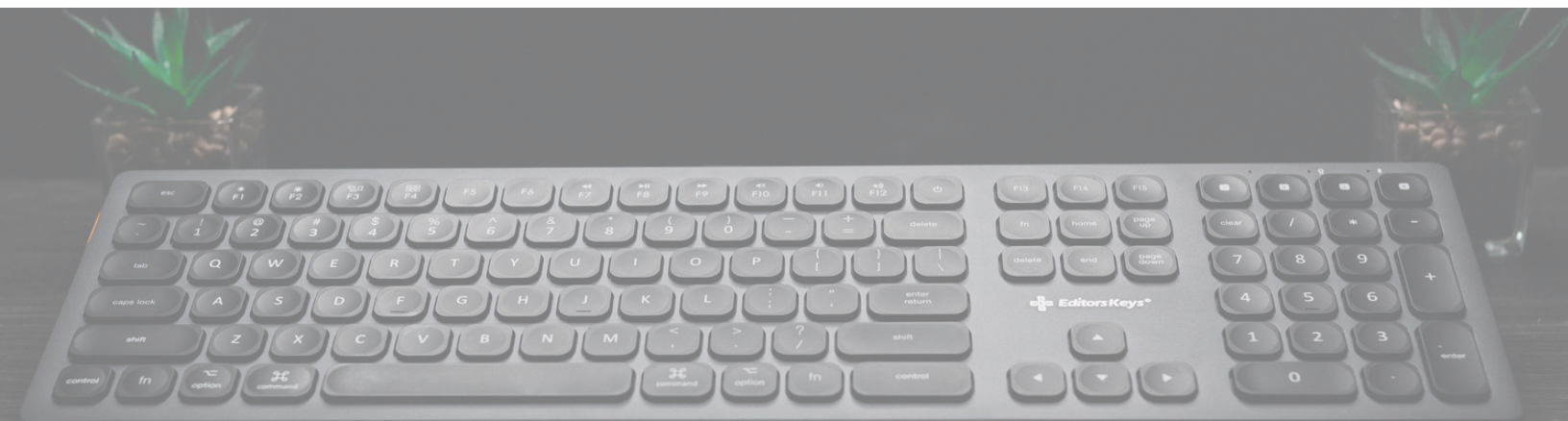
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# Set Hearing Norms & Give a Roadmap:

- Emphasize that this is still a court proceeding and there are expectations for behavior and decorum.
- Explain how the court proceeding will be structured and the order of presentations (e.g. we will hear opening statements from the plaintiff first and then from the defendant).
- Consider developing scripts for judges in your jurisdiction to use if they would like.

## Capturing the Record:

Getting a clear record has been a challenge for courts during remote proceedings. Make sure you have a plan for how to capture the record and test it with both in-person and remote participants.





## PUBLIC ACCESS

- Transparency is a key value for courts and remote hearings have allowed the public to participate in the judicial process in ways that were not possible before. However, widespread public access through live streaming or other virtual access has new privacy implications as information about court proceedings can be viewed widely and even captured and reproduced on the internet.

### Strategies:

Consider a streaming delay so that confidential proceedings or portions of proceedings are not inadvertently shared.

- Some courts have created public access viewing rooms in the courthouse, where participants can go to view the livestream of court proceedings.

## Key Questions:

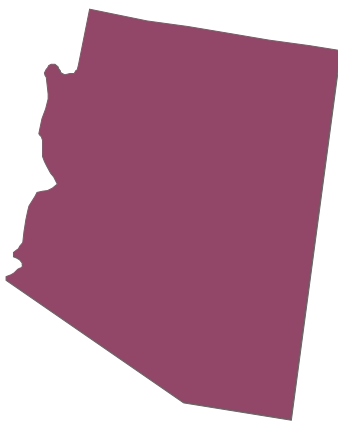
- How will your court provide public access?
- How will information be provided to the public about access?
- How will access be managed so that public access does not become disruptive to the proceeding? Many courts have addressed this through the use of livestreaming via YouTube or other platforms and disabling comments on the stream.
- What privacy concerns might livestreaming raise for litigants and how can courts be mindful of this? For example, some courts have created viewing rooms where they stream hearings but do not stream to the internet.
- Does your jurisdiction have media rules protecting images of parties (e.g. juveniles, victims)? Do these rules apply to streaming proceedings? Should similar rules be created for streaming? Will this violate laws about public access?



# Public Access Examples:

**The following states have videos or contact information for the public on their website.**

Click on a state to see their public information



# Module 6: Evaluation

- Planning
- Worksheet

REMOTE PROCEEDING TOOLKIT



# Evaluation

Virtual hearings are new territory. Policies regarding remote hearings should not stay static, as there are frequent changes to technologies and practices based on experience. Policies should be reassessed periodically but at least once a year using information collected from courts and users.

## Identify What Data You Need:

- **What information** will you need to tell if your remote hearing policies are successful? When identifying information, keep in mind the guiding principles you identified initially.
- **How will this information be collected?** Will case management software need to be updated to collect it? What about court operating procedures?

### Create a Calendar

Build a review process for any remote hearing policies.

•How often will the review happen? Every six months? Every year?

•Who is responsible for initiating the review? Who will participate?

**Make feedback from court users an integral part of the review process.**

Refer to the feedback tools discussed in Module 2 of this toolkit.

# Evaluation Plan Worksheet

Review Date	Review Initiated By:	All Necessary Stakeholders Participated in Review?	Date Reviewed	Next Steps

# Module 7: Cautions

- Effective Assistance of Counsel
- Safety & Privacy
- Remote Considerations





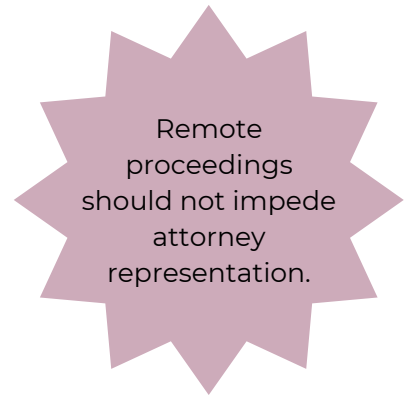


## SAFETY & PRIVACY

- Virtual proceedings allow broader access to court proceedings by the public. While this has positive repercussions when it comes to court transparency and fairness, it also has safety and privacy risks.
- Proceedings dealing with personal and sensitive information are now potentially available to a wider audience of people. [xxvii] With in-person proceedings, court observers would need to be in the geographic location of the courthouse and physically travel to the courthouse. With virtual hearings, this is not the case. Some examples of case types that could expose harmful or embarrassing information include family law cases, eviction hearings, and criminal cases. [xxviii]

## Effective Assistance of Counsel:

- Are there additional requirements for attorneys appearing remotely necessary to ensure effective representation? (i.e., attorneys must appear by video not telephonically)
- Provide opportunities for attorneys and clients to consult using breakout rooms before and after hearings or during hearing recesses as well as ample time during proceedings, particularly criminal proceedings for attorney-client communications.
- Are there rule or process changes needed in your jurisdiction to make sure that attorney representation is not compromised by remote hearings?



Remote proceedings should not impede attorney representation.

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# Final Remote Considerations

## Zoom Fatigue:

Spending long periods of time on videoconferencing platforms is psychologically challenging for people and can lead to exhaustion and difficulty with decision-making, colloquially called “Zoom fatigue.” [\[xxix\]](#)

If long proceedings are being conducted remotely, ensure breaks are built in. This can be as simple as a twenty-second break every twenty minutes where remote participants are encouraged to look at objects twenty feet away from their screen. [\[xxix\]](#)

## Remote Hearings Are Still New:

We do not yet have a lot of data about remote proceedings. This means we don’t know if there are unintended harms to litigants or promising practices that we haven’t yet identified. It is critical to reassess and collect data, including user feedback and user testing involving all stakeholders, and be willing to learn and stay flexible.



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# ENDNOTES

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[i] Adoption of Patty, Mass. Sup. Ct., SJC-13220 (April 7, 2022) is an illustration of how technology problems can interfere with due process. In this case, a mother was repeatedly disconnected from a termination of parental rights hearing and the decision terminating her parental rights was reversed on appeal.

[ii] Conference of Chief Justices and Conference of State Court Administrators, Guiding Principles for Post-Pandemic Court Technology, July 16, 2020, available at [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0014/42332/Guiding-Principles-for-Court-Technology.pdf](https://www.ncsc.org/__data/assets/pdf_file/0014/42332/Guiding-Principles-for-Court-Technology.pdf) (last accessed June 24, 2022).

[iii] National Center for State Courts, Tiny Chat 56 “Procurement” explores how values and guiding principles intersect with procurement policies, which, of course, intersects with building the policies and technologies necessary to enable remote hearings. Available at <https://vimeo.com/showcase/8536177/video/568389850>.

[iv] National Center for State Courts, 2021 State of the State Courts Poll Presentation, available at [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0020/70580/SSC\\_2021\\_Presentation.pdf](https://www.ncsc.org/__data/assets/pdf_file/0020/70580/SSC_2021_Presentation.pdf) (last accessed June 24, 2022).

[v] See e.g., <https://www.law360.com/access-to-justice/articles/1488580/judges-say-zoom-makes-courts-safer-expands-due-process>

[vi] Arizona Supreme Court COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup, Recommended Remote and In-Person Hearings in Arizona State Courts in the Post-Pandemic World, February 22, 2022, at 9, available at [https://www.azcourts.gov/Portals/0/Recommended%20Remote%20and%20In-Person%20Hearings%20in%20Arizona%20State%20Courts%20in%20the%20Post-Pandemic%20World%20\(2222022%20FINAL\).pdf?ver=icwT9Yfh-RgoBZBOZ4D2MQ%3d%3d](https://www.azcourts.gov/Portals/0/Recommended%20Remote%20and%20In-Person%20Hearings%20in%20Arizona%20State%20Courts%20in%20the%20Post-Pandemic%20World%20(2222022%20FINAL).pdf?ver=icwT9Yfh-RgoBZBOZ4D2MQ%3d%3d) (last accessed June 24, 2022).

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[viii] NPC Research, Litigant Perspectives on Remote Hearings in Family Law Cases, December 2021 at 9-10, available at [https://www.dcbfoundation.org/\\_files/ugd/3ddb49\\_2c2da451535e4f9f8de6ab2baf575a54.pdf](https://www.dcbfoundation.org/_files/ugd/3ddb49_2c2da451535e4f9f8de6ab2baf575a54.pdf) (last accessed June 24, 2022).

[ix] See, <https://www.law360.com/access-to-justice/articles/1488580/judges-say-zoom-makes-courts-safer-expands-due-process>

# ENDNOTES

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[x] For ADA technology accessibility information, see Web Content Accessibility Guidelines (WCAG) 2.1 (2018), <https://www.w3.org/TR/WCAG21/>; THE 21ST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010, <http://www.gpo.gov/fdsys/pkg/BILLS111hr3101pcs/pdf/BILLS-111hr3101pcs.pdf>.

[xi] California Commission on Access to Justice (adapted by Conference of Chief Justice, Conference of State Court Administrators, and the National Center for State Courts), Remote Hearings and Access to Justice, at 5, available at [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf](https://www.ncsc.org/__data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf) (last accessed June 27, 2022).

[xii] The information in this section is taken from Nation Center for State Courts, Contracting Digital Services for Courts, May 2022, available at [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0029/76754/Contracting-Digital-Services.pdf](https://www.ncsc.org/__data/assets/pdf_file/0029/76754/Contracting-Digital-Services.pdf) (last accessed June 27, 2022).

[xiii] [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0023/75371/Remote-and-Virtual-Hearings-Technology-Considerations-LAB.pdf](https://www.ncsc.org/__data/assets/pdf_file/0023/75371/Remote-and-Virtual-Hearings-Technology-Considerations-LAB.pdf)

[xiv] <https://www.pewresearch.org/internet/fact-sheet/mobile/>

[xv] See e.g., [https://www.traviscountytexas.gov/images/courts/Docs/Remote\\_Jury\\_Trial\\_Procedures\\_for\\_Lawyers\\_and\\_Litigants.pdf](https://www.traviscountytexas.gov/images/courts/Docs/Remote_Jury_Trial_Procedures_for_Lawyers_and_Litigants.pdf) (Instructions from Travis County, Texas about equipment for jurors).

[xvi] <https://mdcourts.gov/sites/default/files/import/legalhelp/pdfs/srlresourceslibraries.pdf>

[xvii] <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2019/07/21-million-americans-still-lack-broadband-connectivity>

[xviii] State Court Administrative Office Lessons Learned Committee, Michigan Trial Courts: Lessons Learned from the Pandemic of 2020-2021, November 19, 2021, at 29, available at <https://www.courts.michigan.gov/4afc1e/siteassets/covid/lessons-learned/final-report-lessons-learned-findings-best-practices-and-recommendations-111921.pdf> (last accessed June 24, 2022).

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[xix] Arizona Supreme Court COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup, Recommended Remote and In-Person Hearings in Arizona State Courts in the Post-Pandemic World, February 22, 2022, available at [https://www.azcourts.gov/Portals/0/Recommended%20Remote%20and%20In\[1\]Person%20Hearings%20in%20Arizona%20State%20Courts%20in%20the%20Post\[1\]Pandemic%20World%20\(2222022%20FINAL\).pdf?ver=icwT9Yfh-RgoBZB0Z4D2MQ%3d%3d](https://www.azcourts.gov/Portals/0/Recommended%20Remote%20and%20In[1]Person%20Hearings%20in%20Arizona%20State%20Courts%20in%20the%20Post[1]Pandemic%20World%20(2222022%20FINAL).pdf?ver=icwT9Yfh-RgoBZB0Z4D2MQ%3d%3d) (last accessed June 24, 2022); State Court Administrative Office Lessons Learned Committee, Michigan Trial Courts: Lessons Learned from the Pandemic of 2020-2021, November 19, 2021, available at [https://www.courts.michigan.gov/4afc1e/siteassets/covid/lessons-learned/final-report-lessons\[1\]learned-findings-best-practices-and-recommendations-111921.pdf](https://www.courts.michigan.gov/4afc1e/siteassets/covid/lessons-learned/final-report-lessons[1]learned-findings-best-practices-and-recommendations-111921.pdf) (last accessed June 24, 2022); Minnesota Judicial Council, oneCourtMN Hearings Initiative Policy, June 6, 2022, available at [https://mncourts.gov/mncourtsgov/media/Judicial\\_Council\\_Library/Policies/500/525.pdf](https://mncourts.gov/mncourtsgov/media/Judicial_Council_Library/Policies/500/525.pdf) (last accessed June 24, 2022); Maryland Judiciary, Report of Joint Subcommittee on Post-COVID Judicial Operations, March 9, 2022, available at [www.mdcourts.gov/postcovidreport](http://www.mdcourts.gov/postcovidreport) (last accessed June 24, 2022)

[xx] <https://www.lawtimesnews.com/practice-areas/criminal/lawyers-are-speaking-out-about-the-stressors-of-lengthy-virtual-hearings-and-zoom-fatigue/363593>

[xxi] <https://jud.ct.gov/HomePDFs/RemoteproceedingspostCovid.pdf> (last accessed July 14, 2022)

[xxii] See e.g., Adoption of Patty, Mass. Sup. Ct., SJC-13220 (April 7, 2022) is an illustration of how technology problems can interfere with due process. In this case, a mother was repeatedly disconnected from a termination of parental rights hearing and the decision terminating her parental rights was reversed on appeal.

[xxiii] <https://mdcourts.gov/helpcenter/mchc> (last accessed July 14, 2022)

[xxiv] <https://www.ilcourthelp.gov/hc/en-us> (last accessed July 14, 2022)

[xxv] Arizona Supreme Court COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup, Recommended Remote and In-Person Hearings in Arizona State Courts in the Post-Pandemic World, February 22, 2022, available at [https://www.azcourts.gov/Portals/0/Recommended%20Remote%20and%20In-Person%20Hearings%20in%20Arizona%20State%20Courts%20in%20the%20Post-Pandemic%20World%20\(2222022%20FINAL\).pdf?ver=icwT9Yfh-RgoBZB0Z4D2MQ%3d%3d](https://www.azcourts.gov/Portals/0/Recommended%20Remote%20and%20In-Person%20Hearings%20in%20Arizona%20State%20Courts%20in%20the%20Post-Pandemic%20World%20(2222022%20FINAL).pdf?ver=icwT9Yfh-RgoBZB0Z4D2MQ%3d%3d) (last accessed June 24, 2022).

[xxvi] National Center for State Courts, Study of Virtual Child Welfare Hearings Facilitating Trauma-Responsive Virtual Hearings for Dependency Cases, April 2022, available at [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0023/75812/Trauma-Responsive-Virtual-Hearing.pdf](https://www.ncsc.org/__data/assets/pdf_file/0023/75812/Trauma-Responsive-Virtual-Hearing.pdf) (last accessed June 24, 2022).

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[xxvii]See e.g., <https://www.law360.com/articles/1348795/virtual-courts-lead-to-tension-between-access-and-privacy> (last accessed June 24, 2022)

[xxviii]<https://www.law360.com/articles/1348795/virtual-courts-lead-to-tension-between-access-and-privacy> (last accessed June 24, 2022)

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