

To: National Center for State Courts

From: GBAO

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## 2021 State of the State Courts – National Survey Analysis

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This year's State of the State Courts survey shows that public confidence in the court system has declined, along with confidence in a wide range of institutions, as public discourse continues to be dominated by the coronavirus pandemic and a sharply divided political environment. The courts still enjoy relatively high trust, but few institutions in our country have escaped the broad decline in trust that has been evident in our research for several years but greatly accelerated over the last 18 months.

We have been measuring public attitudes toward state courts for NCSC since 2012, and on almost all of our core tracking measures of state court performance and attributes, this year's survey represents the lowest marks we have seen in those nine years. While it is impossible from this research to ascertain exactly what is contributing to these losses in overall public confidence, we strongly believe it has less to do with direct experience with the courts and more to do with larger declines in trust across the country. Relatively few respondents this year have had direct experience with the courts due to coronavirus restrictions, but we see broad support for many of the measures taken by courts during this period, most notably remote hearings.

Looking forward, this survey reveals the many obstacles a wide range of Americans face in accessing courthouses – from pandemic concerns to transportation challenges and a lack of paid time off – and the degree to which they are willing to embrace technological solutions to overcome those obstacles. Broadly speaking, remote proceedings are popular; majorities say they would be willing to participate in a range of proceedings remotely and support the continuation of remote proceedings even after pandemic restrictions are no longer needed. On the other hand, this survey also identifies limits to this enthusiasm and points to areas where courts can most effectively employ these technologies without undermining confidence in the court system.

Many judicial leaders and court administrators have long expressed hope that technological solutions can help address some of the inequities in the court system, and small pluralities of Americans agree that greater availability of online resources and proceedings would make them more likely to represent themselves and more confident that underserved communities would be able to get equal justice in the court system. However, attitudes on all of these questions about technology and the courts are very soft. The public recognizes that the pandemic has forced courts to adopt new solutions, and they are inclined to continue down this road post-pandemic, but direct experience and word of mouth over the next few years will determine whether their current optimism is sustained or falls victim to the broader cynicism in the current political environment.



The State of the State Courts is an annual national survey conducted since 2014 on behalf of the National Center for State Courts. Interviews were conducted by live interviewers via landlines and cell phones, as well as online. The following are key findings and recommendations based on our survey of 1,000 registered voters conducted October 12-16, 2021. The poll is subject to a margin of error of +/- 3.1 percentage points at the 95 percent confidence level.

**Public Confidence**

- **Courts caught up in negative political environment.** All of the research we have conducted over the last several months has demonstrated declining confidence in the direction of the country and virtually all of its institutions. Reinforcing the negative tone of the current political environment, this survey shows ratings of the nation’s economy at their lowest mark in 6 years, with just 41 percent rating the economy as excellent or good (compared to 67 percent pre-pandemic) and 58 percent rating it as just fair or poor.

The real threat for the court system is the widespread deterioration in trust we have seen. Since the first State of the State Courts survey in 2014, we have tracked public confidence in six governmental institutions – the U.S. Supreme Court, the federal court system, the court system in each state, the Governor and state legislature in each state, and respondents’ local police department. Over these seven years, we have seen some fluctuation, but confidence in each of these institutions has largely stayed within a relatively narrow band. The more partisan institutions – Governors and state legislatures – generally had lower marks, while all three levels of the court system generally enjoyed better than 2-to-1 confidence levels.

Confidence in Government Institutions	2021	2020	Change
	Conf	Conf	Conf
Local Police Department	78%	79%	-1
State Court System*	64%	70%	-6
U.S. Supreme Court	63%	70%	-7
U.S. Federal Court System	60%	66%	-6
Governor*	56%	62%	-6
State Legislature*	56%	60%	-4

\*Question customized by state for each respondent

This year, every institution but the local police saw their lowest confidence levels since we started tracking. The size of the drop from a year ago was fairly consistent across the various institutions, further reinforcing our belief that this decline is more about the larger political environment than it is about specific concerns about the court system. A final piece of evidence in this regard is the fact that the declines in confidence for all five institutions come disproportionately among Republicans and white, non-college voters – the same groups leading declining confidence in national polling in the media, academic institutions, government, and virtually all other institutions except the military and police.

- Public approval of state courts’ job performance matches previous low.** Ratings of the performance of state courts in each state did not drop as far as overall confidence, but it did tick down to match its previous low at 44 percent excellent or good and 55 percent just fair or poor; last year, state courts job performance was at 46 percent excellent/good, 51 percent just fair/poor. Demographically, ratings of the courts’ performance reached a new low among white voters (46 percent excellent/good, 53 percent just fair/poor) but are still higher overall than among Black (35 percent excellent/good, 63 percent just fair/poor) or Latino voters (44 percent excellent/good, 55 percent just fair/poor). As with the confidence measures above, the declines we do see on this measure are once again led by Republican voters more than any other group.
- Underlying attributes for state courts continue trend of new lows.** In order to provide a more nuanced understanding of attitudes toward the courts, we regularly ask how well a series of positive and negative descriptors apply to the court system in each state. Aside from *hard working*, each of the positive attributes we tested saw a decline from the last time we measured them two years ago, with *provide equal justice for all*, *a good investment of taxpayer dollars*, and *provide good customer service* all moving into net negative territory for the first time.

State Courts – Positive Attributes	2021		2019	
	Well	Not Well	Well	Not Well
Hard working	55%	36%	55%	34%
Fair and impartial	50%	42%	54%	36%
Provide equal justice to all	46%	47%	49%	41%
A good investment of taxpayer dollars	43%	48%	46%	42%
Provide good customer service to people in the court system	41%	45%	46%	38%
Innovative	33%	53%	36%	48%

Looking at the negative attributes we tested, there was much less notable movement. Voters were split on whether the courts in their state are *inefficient* (45 percent describes well, 44 percent not well), while a plurality rejected the idea that they are intimidating (42 percent describes well, 47 percent not well) – both in line with previous years. A majority said the courts in their state are *political* (53 percent describes well, 37 percent not well), but this year’s number actually marks the lowest level on this measure since 2014.

## Digital Divide and Access to Technology

- **Overwhelming majority of potential jurors have internet service at home.** Overall, 88 percent of voters report having some form of internet service at their home, and 82 percent say they have high-speed broadband service – both small increases from a year ago. Additionally, 95 percent say they have a cell phone of some sort (unchanged from last year), and 88 percent say they have a smartphone that provides them with the ability to connect to the internet and perform critical tasks such as sending and receiving e-mails or reviewing documents sent to them. Only 3 percent say they have no internet service at home or on their phone.
- **Notable differences in access remain across key demographics.** As we saw last year, there are critical differences across key demographics when it comes to internet access. While 90 percent of white voters have internet service at home, that number drops to 84 percent among Black voters and 75 percent among Latino voters. However, we see no significant differences in smartphone ownership based on race. Similar to last year, the greatest differences in internet access are based on age, with just 1 percent of those under age 50 but 7 percent of those ages 65 or over reporting no internet access at home or via their phone. Smartphone usage drops from 95 percent among those under 50 to 73 percent among seniors. We would reiterate that the age of 65 is not a rigid dividing line here – the older any potential juror is, the less likely they are to have internet access or internet-connected devices.
- **Significant variance in quality of cell phone plans could impact ability to participate in remote processes.** Overall cell phone access is extremely high and likely to remain so in the future, but many potential jurors or individuals with matters before the courts could be constrained by limits on their cell phone plans. Just 51 percent report having both unlimited minutes (62 percent overall) and unlimited data (71 percent overall) – down from 58 percent a year ago; what's more, 14 percent have neither of these features – also down from 17 percent a year ago. Again, there is significant drop-off based on age. Just 40 percent of seniors have both unlimited minutes and data while 30 percent of seniors have neither. Among those ages 50-64, just 51 percent have both while 14 percent have neither. Among those under 50, 56 percent have both (including 82 percent with unlimited data) and just 6 percent have neither.
- **Similar demographic differences persist when it comes to videoconferencing usage and comfort.** Use of video conferencing services exploded last year as a result of the coronavirus pandemic, and nearly 3-in-4 respondents in this survey (74 percent) say they have used these services at least once or twice over the last two years, including a clear majority who have used 'video conferencing services such as Zoom, WebEx, Skype, or Google Hangouts' regularly (30 percent) or occasionally (26 percent) over this time period. However, the demographic gaps on this are much greater than internet access, as regular or occasional usage of these services drops from 74 percent among those under 50 down to 48 percent among those ages 50-64, and then all the way down to 31 percent among seniors. Gender and education also play important roles on this measure, with regular or occasional use of these services ranging from 81 percent among college-educated women to 65 percent with college men, 48 percent with non-college women, and 42 percent with non-college men.

As we did last year, we also wanted to measure how comfortable respondents would feel ‘using video conferencing services for meetings or appointments typically held in person,’ and 2-in-3 (66 percent) reported they would feel very or somewhat comfortable doing so. This number was unchanged from last year. Latino (81 percent) and Black (74 percent) voters are much more open to this possibility than white voters (62 percent), and while there is no gender gap on this measure, those with a college degree remain much more open to this technology than those without.

### Impact of Coronavirus on the Courts

- Public recognizes impact of pandemic on court system.** Three-in-four voters say they believe the pandemic has negatively affected state courts’ ability “to deliver justice and meet the needs of (STATE) residents in a fair and timely manner” – 43 percent say it’s had a major impact, compared to 32 percent who say it’s had a minor impact and just 12 percent believe the pandemic has not had a real impact on the courts. This recognition is remarkably consistent across demographic and geographic lines; the only major group where this number drops below 70 percent is the unvaccinated – those who have not received and do not plan to receive a COVID vaccine.

### Obstacles to Accessing the Courthouse

- Range of obstacles make it harder for Americans to get to the courthouse.** Pandemic concerns about gathering in a public place with large numbers of people top the list of factors preventing people from going to their local courthouse, but the other factors we explored are likely to persist long after pandemic fears have hopefully subsided.

Obstacles to Accessing the Courthouse						
<i>% Major/Minor Problem</i>						
<i>Next, I'm going to read you some factors that might make it more difficult for some individuals to go to the courthouse to conduct any business they have before the courts, but each factor would not necessarily apply to everyone. For each, please tell me if this would be a major problem for you personally, a minor problem for you, or if this issue doesn't apply to you.</i>	Total	Under 50	50+	White	Latino	Black
Spending a significant amount of time in a courthouse with others during a pandemic	56%	59%	53%	57%	62%	56%
The distance you would have to travel to get to the courthouse	49%	57%	42%	48%	53%	57%
Getting time off from work or school for the time needed for you to go to the courthouse	41%	57%	25%	37%	58%	43%
Finding transportation to get to the courthouse	30%	33%	26%	27%	44%	37%
A physical handicap or disability that makes it difficult to travel to or access the courthouse	23%	25%	21%	20%	23%	33%
Finding childcare for the time needed for you to go to the courthouse	22%	39%	5%	17%	37%	38%

Each of the obstacles we explored in this survey impacts at least 1-in-5 respondents, but the impact is far from consistent across the population. On every obstacle aside from pandemic concerns, there is a disproportionate burden on communities of color and younger Americans. This is most glaring on the issues of child care and being able to take time off from work or school. Other research we have conducted recently has confirmed the struggle that communities of color, in particular, face in advancing their careers, their education, and their larger financial security because of these two issues; these challenges have been exacerbated by the pandemic and labor shortages in child care and other industries.

## The Potential and Limitations of Remote Services

- Majorities open to remote services for range of proceedings.** We briefly explained to respondents how new technology has made it possible to perform many tasks online via video conferencing that would have previously only been able to be conducted in person or via the postal service, then asked them how willing they would be to use remote video conferencing technology if they had such matters before the court. In three of the four hypotheticals we tested, a majority indicated they would be likely to opt for a remote appearance, with the fourth just under 50 percent but still producing plurality preference for the remote option.

Likelihood of Remote Appearance	Use	Not Use	Diff
Report for jury duty and undergo screening for jury selection	60%	32%	+28
Participate remotely in an arbitration, mediation, or other procedure where a neutral third party helps opposing sides reach an agreement and avoid a trial	55%	35%	+20
Appear remotely for a case you had before the court	52%	39%	+13
Serve as a member of a jury in a trial conducted remotely	49%	41%	+8

It is important to note that we do not see significant differences on these questions along lines of race or gender. We do, however, see a huge difference based on age, with majorities of all non-seniors likely to avail themselves of remote options for all proceedings.

Likelihood of Remote Appearance by Age	% Would Use		
	<50	50-64	65+
Report for jury duty and undergo screening for jury selection	67%	64%	43%
Participate remotely in an arbitration, mediation, or other procedure where a neutral third party helps opposing sides reach an agreement and avoid a trial	62%	58%	38%
Appear remotely for a case you had before the court	61%	54%	31%
Serve as a member of a jury in a trial conducted remotely	58%	51%	30%



- **Time series shows significant movement on openness to remote proceedings.** The enthusiasm for remote proceedings detailed above is undoubtedly a combination of increasing comfort with and reliance on a range of technological solutions, as well as the spike in usage of video conferencing brought about by the pandemic. But it is an open question whether the public will still embrace remote solutions if there is no significant threat of a highly contagious viral disease. Fortunately for these purposes, while the question on alternative dispute resolution was added for this survey, we have asked each of the other three alternatives at least once previously.

The two questions on jury service – appearing for jury duty and screening or serving as a juror in a trial – were originally asked in June 2020 at the first peak of the pandemic in the midst of widespread lockdowns. At the time, respondents were likely to use remote options for jury duty and screening by a margin of 47 points (72 to 25 percent) and to serve on a jury by a margin of 31 points (64 to 33 percent). In both cases, there has been only a small increase in the number saying they are unlikely to use remote options and virtually no increase in the number who would definitely not use such an option. Instead, we see movement from ‘probably would use it’ to ‘don’t know’ as the immediate threat of COVID has subsided somewhat.

The question on ‘appearing remotely for a case you had before the court’; was first asked all the way back in 2014 and then again last June, and it provides perhaps the best long-term view of this dynamic. In 2014, voters said they were unlikely to use this option by a margin of 12 points (43 percent would use, 55 percent would not), and the number who would definitely not use it (24 percent) was much larger than the number who definitely would (16 percent). However, by last June, 64 percent said they were likely to use such an option while just 33 percent were unlikely to do so, and the number who definitely would (32 percent) was double the number who definitely would not (16 percent). Today, we see a clear decline from the peak of the pandemic, but a majority remain likely (52 to 39 percent), and the number who definitely would (26 percent) is still much higher than those who definitely would not (19 percent).

All of this data points to a ‘show me’ moment for state courts and public confidence in these remote technologies. Most courts have already been forced by the pandemic to turn to these technologies to some degree, but adoption has understandably been uneven for judges, lawyers, administrators, and the general public. If local residents start to see and hear horror stories in their local newspapers, social media, or by word of mouth, their current optimism could quickly turn, but successful implementation will create positive word of mouth from those who participate in remote proceedings, as well as better experiences for those still participating in proceedings at the courthouse.

- **Public draws clear lines on what kinds of cases they want to see addressed remotely.** We tested six potential types of cases that could be handled remotely and asked respondents if they would prefer remote or in-person proceedings if they were personally involved in such a case. Our goal here was to move from the theoretical to a more personal level, and to understand what kinds of cases are viewed as more appropriate for remote proceedings. What we found was a strong preference for remote proceedings on matters that involve relatively minor infractions or financial stakes, mixed opinions on larger financial or contractual disputes, and a clear preference for in-person proceedings in familial cases with high emotional stakes.

<b>Preference for Remote vs. In-Person Proceedings</b>			
	<b>Remote</b>	<b>In Person</b>	<b>Diff</b>
Traffic ticket	64%	26%	+38
Consumer debt	54%	34%	+19
Small claims	53%	37%	+16
Landlord/tenant dispute	45%	43%	+2
Divorce proceeding	35%	55%	-20
Child custody	22%	65%	-43

Fortunately, we also have very rich time series data for all six of these questions which shows that while a large majority has always been open to remote proceedings for traffic tickets, there has been a dramatic jump in preference for remote proceedings in all other cases since before the pandemic. Again, we might expect some movement back toward in-person proceedings when and if the threat of the pandemic is completely passed, but movement this significant is highly unlikely to be reversed.

<b>Time Series – Remote vs. In-Person Proceedings</b>			
<i>Difference: % Remote - % In Person</i>			
	<b>2021</b>	<b>2018</b>	<b>Net Shift to Remote</b>
Traffic ticket	+38	+35	+3
Consumer debt	+19	+5	+14
Small claims	+16	-7	+23
Landlord/tenant dispute	+2	-28	+30
Divorce proceeding	-20	-60	+40
Child custody	-43	-84	+41



- **Expanded online resources and remote options could increase likelihood of self-representation.** Since 2014, we have asked a statement pair measuring how well state courts are doing in empowering individuals to navigate the court system without requiring the assistance of an attorney. This year, just 26 percent say the ‘courts are effectively providing information and assistance so that individuals can navigate the court system without hiring an attorney,’ while 55 percent believe ‘courts are not doing enough to empower regular people to navigate the court system without an attorney.’ In 2014, the numbers were 30 percent and 60 percent, and they have barely budged in the four other annual surveys when we also asked this same question. It is clear that, while the number describing the courts as ‘intimidating’ has declined over the years, the thought of navigating the court system alone is still overwhelming for a majority of Americans.

In this survey, we see some promise for the potential of new technologies to address this persistent challenge. Approximately 1-in-4 respondents (26 percent) say increased availability of online court proceedings, online filing of court documents, and online help desks and other web-based legal resources would make them more likely to represent themselves in a potential court case, compared to 21 percent who say it would not and 42 percent who say these new resources would make no difference in that decision. Among the 26 percent who would be more likely to represent themselves with these resources, 64 percent currently say the courts are not doing enough in the previous statement pair – nearly 10 points higher than the overall population.

Those most likely to say these resources would make them more likely to represent themselves include parents (38 percent), younger women (34 percent), and communities of color (29 percent overall).

- **Expanded online resources and remote options could also increase confidence in equal justice.** Court leaders have often looked to technological solutions to help address core inequities within the justice system, and this survey suggests that many Americans see the same potential. Nearly 1-in-3 respondents (30 percent) say increased availability of online court proceedings, online filing of court documents, and online help desks and other web-based legal resources would make them more confident that under-represented communities like the poor and racial minorities would be able to get equal justice in the court system, compared to 26 percent who say it would not and 33 percent who say their opinion on these challenges would not be impacted by such resources.

As we often see on questions of racial equity, there are large divides along lines of race and age. As expected, Latino voters (41 percent) and Black voters (33 percent) are more likely than white voters (27 percent) to express optimism about the potential of these resources to increase access to justice, but the age gap on this question is even larger. Among voters under age 50, 42 percent say they would be more confident, compared to just 18 percent of those ages 50 and older. Education also plays a role here, with 35 percent of college graduates and just 27 percent of non-college voters expressing confidence in this concept.

- When all is said and done, a majority supports continued use of remote proceedings.** Near the end of this survey, after hearing a great deal of information about remote proceedings and their potential usage, we asked respondents to choose which of following two statements came closer to their own views:

<i>Once the pandemic is over, courts should continue to hold hearings by video because it allows them to hear more cases and resolve cases more quickly, and it makes it easier for people to participate without having to travel to a courthouse, take time off work, or find childcare.</i>	<p style="text-align: center;">52% (28% strongly)</p>
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<i>Courts should stop holding hearings by video as soon as possible because technology problems can disrupt the whole system, not everyone can use this technology, and people are less likely to take video hearings as seriously as if they had to appear in a courtroom in person.</i>	<p style="text-align: center;">38% (20% strongly)</p>
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While the public still clearly harbors concerns about remote proceedings and has well-defined feelings about where they would or would not be appropriate, a majority falls on the side of continuing with their use post-pandemic, and the intensity on this issue is also on their side. Those who are most supportive of continued use of remote proceedings include Black voters (54 percent overall, 36 percent strongly), younger white voters (63 percent overall, 30 percent strongly), and parents with kids under the age of 18 (60 percent overall, 33 percent strongly).