



# Improving the Court System Response to Emergencies

## Lessons Learned from the COVID-19 Pandemic

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# Introduction

On March 11, 2020, the World Health Organization officially declared the novel coronavirus (COVID-19) outbreak a global pandemic. Two days later, Wisconsin had confirmed 19 cases in the state. Cases increased steadily, and then exponentially, resulting in over 480,000 cases by the end of 2020.

In the earliest days of the pandemic, the court system took several steps in response. First, the Director of State Courts authorized procurement of over 400 Zoom videoconferencing software licenses to enable judges and court staff to pivot to remote proceedings. Second, the Wisconsin Supreme Court issued two administrative orders on March 22, 2020. The first order suspended most in-person hearings, with limited exceptions, and encouraged the use of remote technology. This order was later amended on April 15, 2020, to clarify additional exceptions, and was extended until further order of the Supreme Court. A second administrative order limited the number of individuals allowed to be physically present in courts and suspended jury trials through May 22, 2020.

On April 28, 2020, former Chief Justice Patience Drake Roggensack convened a statewide COVID-19 Task Force to recommend criteria for safely expanding in-person court proceedings, including jury trials. The Task Force consulted with medical and public health experts to develop a template for counties to use in developing plans to move forward with court operations and jury trials. On May 22, 2020, the Court adopted the final report of the Task Force and counties began developing plans for approval by the Chief Judges. By June 1, 2021, all 72 counties had developed plans for resuming in-person operations and jury trials.

In the face of this unprecedented wave of simultaneous challenges, the court system persevered and continued to serve the people of Wisconsin. This report highlights some of these challenges and how they were addressed. It also provides suggestions for addressing future disruptions, whether they be planned activities, such as construction or renovation projects, or unplanned disruptions, such as natural disasters, civil unrest, or a subsequent public health crisis. Finally, the report focuses on some unexpected positive outcomes associated with the pandemic and their long-term impact on the court system.

The information in this report is based on feedback collected from internal stakeholders, such as chief judges, judges, court commissioners, clerks of circuit court, district court administrators, and staff, as well as from external stakeholders, including attorneys and partner agency staff. Information collected through the 2021 Critical Issues Survey also provided insight into some of the biggest challenges and opportunities as perceived by survey respondents.

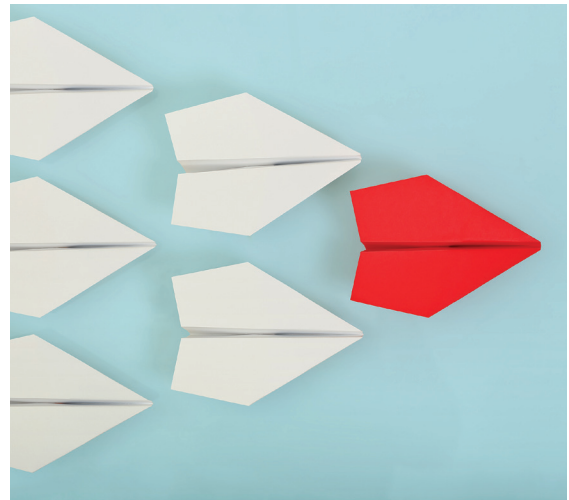


# Key Challenges and Lessons Learned

## Challenge 1

### Navigating Variation in County Practices

Many stakeholders reported difficulty navigating the variation in local court practices during the pandemic. Although county-level variation in basic legal and procedural practices existed prior to the pandemic, the pandemic created additional uncertainties in a number of areas. For instance, many practitioners and litigants were uncertain about whether parties, attorneys, and court staff were required to wear masks, whether court proceedings were being held remotely or in person, how the public should view court proceedings, and how documents should be filed with the court. While a reasonable amount of local control over basic court practices is generally favored, significant differences in practice during times of extreme disruption or emergency can cause even more stress and frustration for court system employees and users.



## Lessons Learned

- ▶ Guidance regarding circuit court operations should be clear and consistent. This includes both guidance issued by the county and guidance issued by the state through Supreme Court Orders and/or Director of State Courts Office Informational Bulletins.
- ▶ State-issued guidance should clarify what practices are intended to be standardized across counties and what practices are subject to local discretion.
- ▶ Use a standard format for state and county orders so attorneys and interested parties can quickly discern the information they need to know.
- ▶ Ensure state and county orders have a unique order number and date of issuance so the orders can be easily identified and referenced. Display all orders on state and county websites in a manner that makes it clear which orders are active and which have expired or been repealed.
- ▶ When applicable, identify a potential enforcement mechanism for non-compliance with the orders.

# Challenge 2

## Transitioning to Remote Court Proceedings

Following the initial installation of Zoom software, judges and clerks began to conduct court proceedings remotely. In some counties, judges and court staff operated Zoom proceedings from within the courthouse, with some or all participants appearing remotely. In other counties, court officials and staff, attorneys, and parties participated from locations other than the courthouse. Almost immediately, it became clear that targeted training and support documentation was needed by the judges, court staff, attorneys, and parties to clarify how to effectively conduct court proceedings through Zoom.

In addition to software challenges, there were also hardware challenges that had to be addressed to effectively transition to remote court proceedings. Counties discovered they needed external cameras and microphones, additional display screens, and improved courtroom audio systems, including the ability to use Zoom in conjunction with existing Polycom videoconferencing systems. Counties also discovered it was only possible to successfully hold remote proceedings if all parties, attorneys, and court staff had access to the necessary hardware (e.g., computers, tablets, and smartphones) and adequate internet connectivity.

Finally, based on feedback from judges, clerks, and attorneys, it became apparent that certain types of court proceedings, such as evidentiary hearings with numerous exhibits and/or witnesses, as well as proceedings with pro se litigants on both sides, were more challenging to hold remotely. Additionally, conducting hearings remotely created additional work for judges and clerks to schedule and manage the logistics of Zoom proceedings.

### Lessons Learned

- A. Create, disseminate, and update guidance statewide to support remote court proceedings. (See more information below under “Zoom Best Practices Guide.”)
- B. Ensure courtrooms are equipped with the necessary hardware to effectively conduct remote proceedings, including sufficient cameras, display screens, audio, and video capabilities.
- C. Ensure that courtrooms, as well as conference rooms and meeting spaces, are equipped with strong WiFi connectivity and adequate bandwidth to support multiple, simultaneous remote proceedings and meetings.
- D. Provide judges and court staff with the necessary, technology, hardware, and training to conduct remote proceedings.
- E. Establish clear standards for decorum during the remote court proceeding.



- F. Clearly notify attorneys and parties how to appear at a particular hearing using the Notice of Hearing, or by sending additional instructions. For remote proceedings, provide a phone number for attorneys and parties to contact if they require assistance.
- G. Establish areas in the courthouse or other public buildings with the equipment and technology necessary to allow litigants who do not have computers or adequate internet to participate in remote court proceedings. Provide information regarding the availability of these resources on the Notice of Hearing.
- H. Ensure public access is maintained for appropriate remote proceedings (e.g., through livestreaming platforms such as Dacast) and clearly inform the public and the media about how to gain access by including information on county websites and in the additional text for each case on the Wisconsin Circuit Court Access (WCCA) website.
- I. Protect the integrity and security of remote hearings by restricting the public's access to the remote platform and allowing the public to only observe using the approved livestreaming methods.
- J. Develop county policies indicating which hearings will be held using videoconferencing and which will continue to be held in person. When making this determination, consider the length and complexity of the hearing, the number of exhibits and/or witnesses, where the parties and litigants will be traveling from, whether the parties are represented, and the likelihood of easy access to reliable technology and internet.

## Zoom Best Practices Guide

The Director of State Courts convened a task force to identify challenges and successes with using Zoom for conducting remote court appearances. The group, comprised of court system representatives from several counties and partner agencies, approved a Zoom Best Practices Guide that provides instructions for conducting successful remote appearances, and directs users to several forms, guides, and additional information.

The Zoom Best Practices Guide<sup>1</sup> addresses many of the frequently-identified issues when holding remote court appearances, including:

- a. Security of remote proceedings
- b. Providing access to remote court proceedings to the public and/or media
- c. Notifying parties and attorneys of how to appear
- d. Allowing victim access and participation in remote court proceedings
- e. Waiver of defendants'/respondents' right to be physically present
- f. Parties not having adequate technology or internet speed to participate remotely
- g. Having proper technology in courtrooms to facilitate remote appearances
- h. Using Zoom with Polycom or other courtroom videoconferencing technology and equipment
- i. Coordinating technology needs when working with other agencies (e.g., DOC facilities, mental health institutions, etc.)
- j. Handling exhibits during remote proceedings
- k. Ensuring courtroom decorum is maintained

<sup>1</sup> Available on the "Zoom information & Dacast support" CourtNet page: <http://courtnet.wicourts.gov/education/ccap/dacast.htm>

# Challenge 3

## Fulfilling the Duties of the Clerk of Circuit Courts Office

Clerks of circuit court are required to keep their offices open during usual business hours to accept filings and allow the public to examine all records kept by the office.<sup>2</sup> To promote the safety of the public and its employees, many counties closed their courthouses in the early months of the pandemic, which was particularly challenging for clerks of court offices in light of their statutory obligations. Clerk's Offices had to develop alternative methods for processing eFiled documents, accepting non-eFiled documents, accepting payments, and providing public access to court records.



When clerk staff were required to work from home, many counties experienced challenges if employees did not have remote access to the CCAP case management system and the equipment necessary to perform their duties from home. Counties varied considerably in the extent to which employees were provided with the technology and equipment necessary to work from home. Some counties provided laptops to staff, whereas others required employees to use their personal devices.

### Lessons Learned

- A. Establish well-defined policies and procedures for how Clerks of Circuit Court Offices will perform statutory responsibilities, including accepting filings and providing access to court records, particularly if the office must close or function with limited staff. For example, provide a secured “drop box” in a location accessible to the public that is regularly checked by staff where people can file documents and make payments with the court. Post phone numbers for people to call to request assistance.
- B. Clearly communicate these changes in procedures to attorneys, parties, the public, and the media by providing information on the county website, courthouse and office doors, and outgoing phone messages.
- C. Create a Clerk's Office “to-go bag” that contains all of the necessary items needed to perform the duties of the clerk in the event that the Clerk's Office must close. Include items such as Filed and Received stamps, the court seal, a certification stamp, etc.
- D. Provide employees with remote access to CCAP, laptops, and any other equipment necessary to perform their job responsibilities while working from home.
- E. Have a clear remote work policy in place and ensure any remote work and/or software policy documents or user agreements are signed.

<sup>2</sup> See Wis. Stats. §§ 59.20(3)(a) and 59.40(2)(a).

# Challenge 4

## Locating Alternative Spaces for In-Person Court Activities

During the pandemic, many counties were required to use alternative courtroom or jury room space to accommodate the need for physical distancing and protective barriers. Relocating court proceedings was especially challenging for counties with limited options for accessing larger spaces. The need for alternative spaces for court is not specific to the COVID-19 pandemic and may be required for any number or reasons, including a future public health emergency, natural disaster, civil unrest, or a planned renovation project. In any of these situations, locating alternative spaces where court activities can be conducted is essential.

### Lessons Learned

- A. Identify alternative spaces, such as county boardrooms, municipal courts, flexible meeting spaces, schools, and conference rooms or centers, both within and outside of the courthouse, which could be used for court purposes if necessary.<sup>3</sup>
- B. Coordinate with law enforcement and the county sheriff to provide the necessary security and inmate transportation, as necessary.
- C. Provide flexibility in scheduling to rotate the use of larger courtrooms for in-person proceedings to accommodate specific emergency needs, such as social distancing.
- D. If court is held at another location outside of the courthouse, identify what items are needed to conduct court remotely. (E.g., file stamps, court reporter equipment, forms, computers, etc.)
- E. Clearly communicate any changes in the location of court to attorneys, parties, the public, and the media by providing information on the county website, courthouse and office doors, and outgoing phone messages.

<sup>3</sup> See Wis. Stat. § 757.12.





# Challenge 5

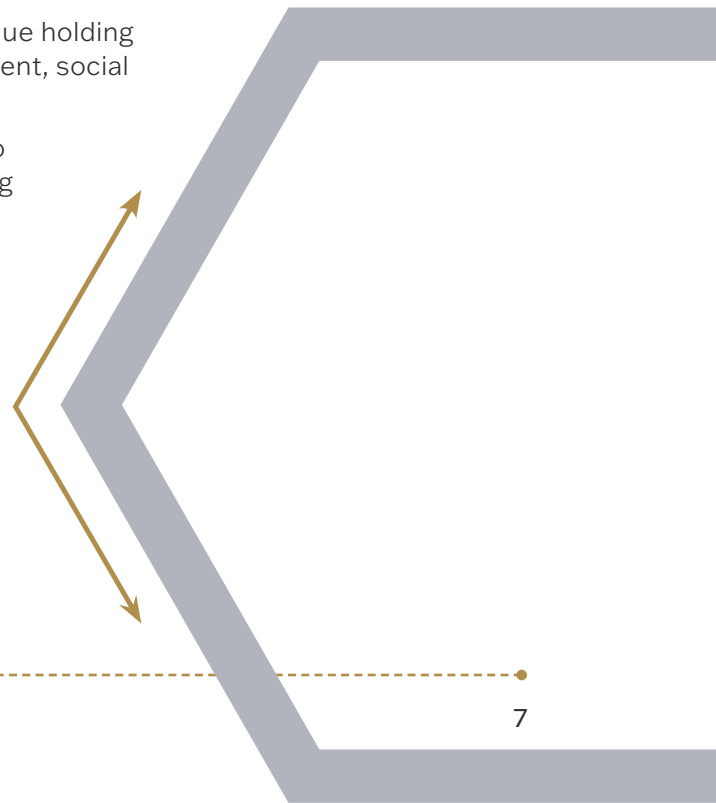
## Maintaining Case Processing and Continuing Jury Trials

Due to restrictions on mass gatherings and the need to have large spaces to allow for social distancing, several counties significantly reduced or suspended jury trial operations for some period during the pandemic. As a result, most counties were unable to maintain pre-pandemic case disposition rates and a considerable backlog of criminal cases occurred. Once courts reopened, the case backlog created significant challenges in terms of scheduling proceedings, court system and justice partner resources, and delays for parties.



### Lessons Learned

- A. Even if situations are not ideal, continue to hear cases and hold jury trials to the best of the county's ability, while keeping the public and court staff safe.
- B. As mentioned in Challenge 4, consider alternate locations to accommodate the court and jury trial process if the courthouse space is unavailable or insufficient.
- C. Implement safety precautions as needed to continue holding jury trials (e.g., require personal protective equipment, social distancing measures, physical barriers, etc.).
- D. Modify documentation sent with juror summons to set expectations and provide information regarding safeguards for jurors. Post information related to alternative juror practices on the county website.
- E. Survey jurors immediately following trials to collect feedback and identify concerns that can be addressed.
- F. Temporarily enact more liberal excusal/deferment policies for jurors.
- G. Establish a stakeholder committee that meets regularly to discuss recurring issues and develop or modify policies in response.



# Challenge 6

## Maintaining Up-to-Date Emergency Planning Documents

Several stakeholders reported challenges arising from not having updated emergency plans in place in their counties. Additionally, the counties that did have a Continuity of Operations Plan, or COOP, reported that the plans were not sufficiently broad to address the type of long-term disruption caused by the pandemic.

### Lessons Learned

- A. Regularly update county emergency planning guides, such as COOP documents, and involve all of the necessary county stakeholders in the planning process, including court system personnel.
- B. Create plans that address a number of emergency and non-emergency situations, including natural disasters and flooding, power outages, public health crises, and planned disruptions, such as building construction or renovation.
- C. Use the National Center for State Courts, or similar COOP planning guide and template, to develop a plan that includes a section on responding to a novel virus or pathogen.<sup>4</sup>
- D. Identify a clear plan for communicating with essential employees, including managers and staff.
- E. In the event of a short- or long-term closure or relocation, use multiple methods to communicate information to the public, including signage at the courthouse or county administration building, updates on the county webpage, and updates to the Wisconsin Court System web page with court closure information (<https://www.wicourts.gov/closures.htm>)
- F. Maintain emergency planning information in a paper and electronic format.
- G. Topics to address in planning documents include:
  - 1. Personal contact information for all essential staff (e.g., judges, court commissioners, court reporters, clerks of court, juvenile clerks, registers in probate, district court administrators, etc.) that is separate from work-issued email addresses or office phone numbers
  - 2. Alternative locations to hold court and other county functions in the event county buildings are not available
  - 3. Procedures for relocating jail inmates, if necessary
  - 4. How to handle power outages, including IT needs and data accessibility
- H. Gather local stakeholders and conduct a county-specific “lessons learned” session to identify what responses to the COVID-19 pandemic were adequate, what fell short, and what could be improved upon.

<sup>4</sup> See [https://www.ncsc.org/\\_data/assets/pdf\\_file/0021/60393/NCSC-COOP-Planning-Guide-and-Template\\_2021.pdf](https://www.ncsc.org/_data/assets/pdf_file/0021/60393/NCSC-COOP-Planning-Guide-and-Template_2021.pdf)

# Challenge 7

## Navigating County and Judicial Authority in Deciding Whether to Close Courthouses

During the early weeks of the pandemic, there were several questions raised regarding the authority of county boards to order courthouses closed, regardless of judicial support, in response to the public health emergency. The Office of Court Operations was asked to provide guidance on whether the judicial branch has the authority to not comply with these county orders.

### Lessons Learned

After reviewing Supreme Court Rules and case law, Court Operations concluded that the judicial branch has the power to either order judicial branch closings, or to resist them. The days and hours of court operation are areas of shared authority between the counties and the state judicial branch, acting through the chief judge.<sup>5</sup> Additionally, the court's inherent authority allows it to take actions necessary to enable the judiciary to accomplish its constitutional or statutory functions. Case law establishes that courts may reject any action that would materially impair the efficacy of the courts or the judicial system.<sup>6</sup>

# Challenge 8

## Employee Mental Health and Well-Being

In March 2020, most people believed that the pandemic would be over in a matter of weeks or months. Almost 18 months later, many court officials and staff continue to grapple with the pandemic and the significant toll it has taken on their mental and physical well-being. The pandemic dramatically altered “normal” professional and personal routines and upended healthy coping mechanisms such as travel, vacations, and gatherings with family and friends. This

<sup>5</sup> See, e.g., Wis. Stat. § 59.20(3)(a); Supreme Court Rules 70.19(3)(c) and (f), 70.20(1), 70.32.

<sup>6</sup> See, e.g., *Barland v. Eau Claire County*, 216 Wis. 2d 560, 579, 575 N.W.2d 691 (1998); *City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 748-749, 595 N.W.2d 635 (1999).



disruption has caused feelings of isolation, emotional and physical fatigue, and even “Zoom fatigue” caused by the need for frequent videoconferencing in people’s personal and professional lives.

## Lessons Learned

- ▶ Acknowledge the pandemic has had a significant negative impact on employee health and well-being. Management should exercise patience and flexibility to the greatest extent possible.
- ▶ Maintain communication and outreach with remote employees to ensure that they feel supported and connected to managers and other staff.
- ▶ Court system leadership should be familiar with resources available to assist themselves and employees, including:
  - Employee Assistance Program (EAP) offered through the Office of Management Services to state employees, including judges<sup>7</sup>
  - State Bar of Wisconsin’s Lawyer Assistance Program (WisLAP) for judges and attorneys<sup>8</sup>
  - National Center for State Court’s Judge and Court Employee Well-Being Resource<sup>9</sup>

<sup>7</sup> <http://courtnet.wicourts.gov/hr/eap.htm>

<sup>8</sup> <https://www.wisbar.org/formembers/wislap/Pages/lawyer-assistance-program.aspx>

<sup>9</sup> [https://www.ncsc.org/\\_data/assets/pdf\\_file/0023/59603/Addressing-the-Mental-Health-and-Well-being-of-Judges-and-Court-Employees-Final.pdf](https://www.ncsc.org/_data/assets/pdf_file/0023/59603/Addressing-the-Mental-Health-and-Well-being-of-Judges-and-Court-Employees-Final.pdf)



# Unexpected Benefits

The pandemic unequivocally changed how the court system operates. From municipal courts to the Supreme Court, judges and court staff adapted to new and different ways of conducting business, including how and where court was held, how administrative meetings were conducted, and how training and education was delivered to judges and court staff. Despite the many challenges that arose during the pandemic, there were also a number of unexpected benefits. Many of these benefits have the potential to offer long-term solutions and overall improve the court system into the future.

## **1. Increased efficiencies from using videoconferencing and telephone for certain court proceedings**

Throughout the course of the pandemic, judges, court commissioners, attorneys, clerks, and parties have noted many benefits of using videoconferencing technology to conduct certain court proceedings remotely. For instance, the use of remote technology allows attorneys to participate in hearings across several counties in the same day. Additionally, several court officials have noticed a decreased in the non-appearance rates for defendants and other parties able to appear by phone or video. Allowing parties to appear remotely removes several of the barriers associated with attending court, including needing transportation, taking time off work, and securing child care. Moreover, many victim/witness offices and victim advocates have noted the availability of remote proceedings has improved victims' experiences in the court system by allowing victims to more easily and safely attend and participate in hearings.

## **2. Greater ability to provide counsel in remote areas**

Attorneys, and in particular, private attorneys appointed in public defender cases, are able to accept appointments in additional counties due to a decreased need to drive to distant parts of the state. This increase in available attorneys allows cases to proceed more quickly, reduces mileage expenses, and enables attorneys from areas of the state with a high concentration of lawyers to appear in areas with fewer attorneys.

## **3. Improved ability to provide court interpreters**

Videoconferencing technology positions courts to provide high-quality interpreters in any county, regardless of the interpreter's location. This is especially helpful for cases requiring rare language interpreters. Video remote interpreting significantly decreases costs to counties by eliminating the need for interpreter travel, while still providing parties with quality interpretation services.

## **4. Improved efficiency for cross-county judicial and court reporter coverage**

The ability for a judge to hear cases in non-adjacent counties on the same day would have been all but impossible prior to the pandemic, particularly in large, single-judge counties. Allowing judges, reserve judges, and court reporters to appear remotely reduces travel time and mileage costs associated with cross-county assignments. Remote technology also enables greater flexibility in scheduling because it increases the pool of available judges and court reporters who can provide coverage. As court reporter vacancies across the state persist, remote appearance by court reporters will result in fewer proceedings being rescheduled due to a lack of court reporter availability.

## **5. Conducting meetings and educational events via Zoom**

In addition to using videoconferencing to conduct court proceedings, Zoom provides a valuable tool to disseminate information quickly among justice system partners. Meetings and educational events can be held in a faster and more time efficient manner without the requirement for people to travel across the state. A further benefit is that Zoom-based educational seminars and classes can be recorded and watched by those who were unable to attend the initial session. This allows a far greater number of people to benefit from the content of these training sessions beyond those who were able to attend initially.

## **6. Increased efficiencies in training new clerk staff**

Clerks of circuit court can more efficiently train new staff by allowing them to observe real-time operations remotely and learn in-court processing in an unobtrusive way.

## **7. Increased use of electronic monitoring for inmates**

In response to outbreaks of COVID-19 in confined areas such as jails, prisons, and Huber facilities, several counties employed increased use of electronic monitoring. Where appropriate, this practice can result in lower county costs and may allow defendants to retain employment and ties with the community. While more research is needed to examine the cost-benefit associated with a change in practice in this area, anecdotal reports indicate that appearance rates were not negatively impacted. Similarly, for some types of treatment court programs, routine drug and alcohol testing was conducted using patch tests and other means to lower in-person contact.

## **8. Reduced transportation costs**

Counties realized savings by not transporting inmates to court for routine hearings. Use of remote technology also allowed proceedings to be scheduled more quickly and supported internal policies implemented by the jails during the pandemic that restricted inmate movement in an effort to reduce the spread of COVID-19.

