

Jury Trials During COVID-19

2023

**State-of-the-States
Survey of Jury Improvement Efforts**

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Jury Trials During COVID-19

COVID-19 disrupted all aspects of American life, including the justice system, in ways that were unimaginable before March 2020. With the help of YouTube explainer videos, court staff quickly procured, installed, and ramped up their courts' technology infrastructure to conduct remote court hearings for matters that required immediate attention. Judges and lawyers who had resisted all previous efforts to learn and use innovative technology became Zoom-masters almost overnight. Although new case filings dropped precipitously in 2020, disposition rates fell even further, creating large backlogs in many courts across the country.

Jury trials, the most tradition-bound procedure in American legal culture, were especially disrupted. Of all court proceedings, jury trials are unique with respect to the number of people – a judge, lawyers, courtroom staff, parties, witnesses, prospective jurors, and often members of the public or media – who gather in the constrained space of a courtroom to decide the case. During the height of COVID-19, a jury trial risked becoming a superspreader event. The immediate impact of the pandemic was many fewer jury trials, while policymakers developed a

variety of strategies to protect the health and safety of trial participants. Even after vaccines became widely available, many citizens remained cautious about appearing in large crowds, making it challenging to persuade prospective jurors to appear for service.

This issue of the *State-of-the-States Survey of Jury Trial Improvements* focuses on how courts managed jury trials during the pandemic. The Local Court Survey included responses from 744 courts in 41 states plus three federal territories on the techniques and practices they employed to conduct jury trials. The survey asked about their plans to continue those techniques and practices now that the immediate impact of the pandemic has passed. It also features survey responses from judges and trial attorneys describing 2,038 jury trials (37% of the Judge & Lawyer Survey dataset) that took place from 2020 to 2023. Figure 1 describes the types of cases and courts in which these trials took place. Additional information about the data and methods employed are described in the *2023 State-of-the-States Survey of Jury Improvement Efforts: Project Overview, Data, and Methods (2023)* at www.ncsc.org/SOS2023.

KEY MILESTONES FOR COVID-19

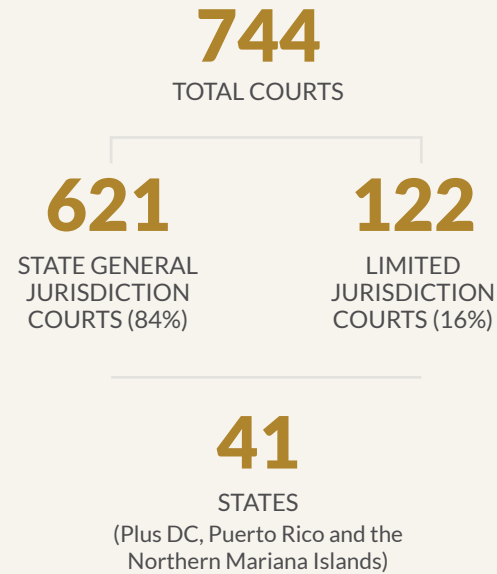
January 20, 2020
CDC reports first laboratory-confirmed case of COVID-19 in the US (Washington State)

March 13, 2020
Federal government declares a nationwide emergency

March 15, 2020
States begin to implement shutdown orders to prevent spread of COVID-19

LOCAL COURT SURVEYS

60% of the local court data was collected in 2022, and 40% was collected in 2019.



JUDGE AND LAWYER (J&L) SURVEYS

(37% of J&L dataset reported on trials that took place between 2020 and 2023): 107 trials in 2020, 284 trials in 2021, 1,522 trials in 2022, and 125 trials in 2023.



Court Types

- 84%** General jurisdiction
- 9%** Limited jurisdiction
- 4%** Federal
- 3%** Municipal
- 1** Tribal

Case Types

- 6%** Capital felony
- 42%** Noncapital felony
- 14%** Misdemeanor
- 36%** Civil
- 2%** Other

December 2020

CDC issues Emergency Use Authorizations for the Pfizer-BioNTech and Moderna COVID-19 vaccines

Summer 2021

Highly contagious Delta variant of COVID-19 creates a surge of new hospitalizations in the US

November/December 2021

Omicron variant overtakes Delta variant as the dominant strain, accounting for 60% of all variants

November 29, 2021

CDC recommends COVID-19 vaccine booster

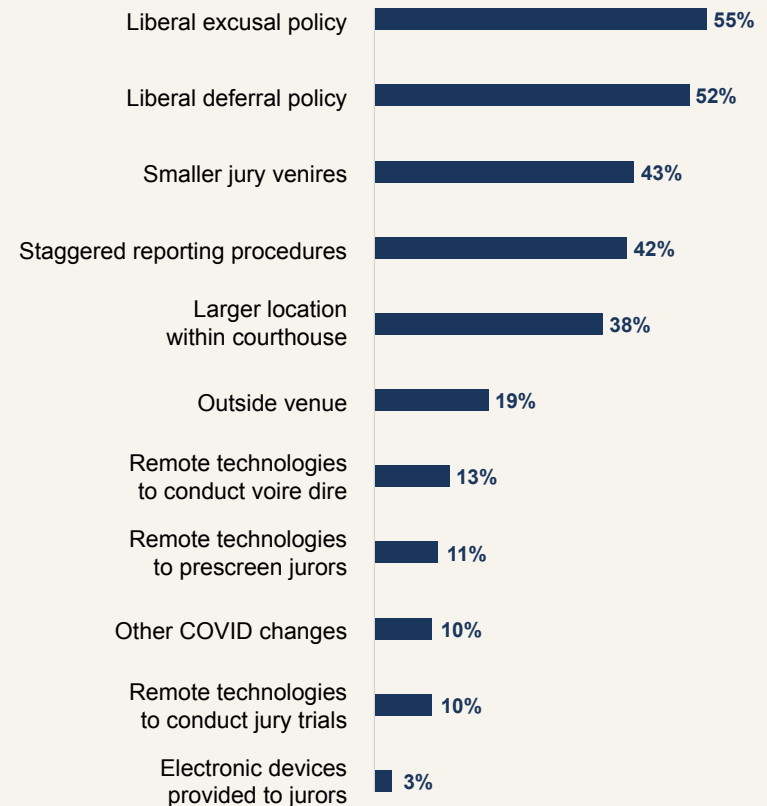
Operational Practices for Jury Trials during COVID-19

The most dramatic impact of COVID-19 on juries and jury trials was the sudden decrease in jury trials in 2020 and continuing into 2021. In 2019, state courts conducted an estimated 125,222 jury trials, but only 33,880 in 2020. Moreover, nearly three-quarters of jury trials conducted by state courts in 2020 likely took place on or before March 13, the date on which COVID-19 was declared a federal emergency. After COVID-19 vaccines became broadly available in 2021, the number of jury trials rebounded to an estimated 48,764, a 44% increase over 2020, but still less than half the number of 2019 jury trials.

Nevertheless, courts adopted a variety of practices, (e.g., use of facemasks, screening jurors for Covid-19 symptoms at the courthouse, implementing social distancing requirements) to be able to conduct jury trials. As shown in Figure 1, more than half of the courts reporting that they conducted jury trials in 2020 or 2021 implemented policies to excuse jurors at high-risk of severe health effects from COVID-19 or permit them to defer jury service to a later time. To accommodate social distancing requirements, 43% of courts reduced the size of venire panels sent to courtrooms for jury selection and 42% staggered the reporting times for jurors appearing at the courthouse. Thirty-eight percent conducted jury selection in a larger venue within the courthouse (e.g., ceremonial courtroom or large conference room) and 19% moved jury trials to a venue outside the courthouse, including public school auditoriums or hotel conference rooms.

FIGURE 1

Jury Trial Practices during COVID-19 (n = 361)



A smaller, but not insignificant, number of courts employed remote technologies for many aspects of jury operations, including prescreening jurors for hardship (11%); conducting voir dire, including for grand jury selection (13%); and conducting fully remote jury trials and grand jury proceedings (10%). Three percent of courts reported providing prospective jurors with electronic devices to bridge the digital divide.

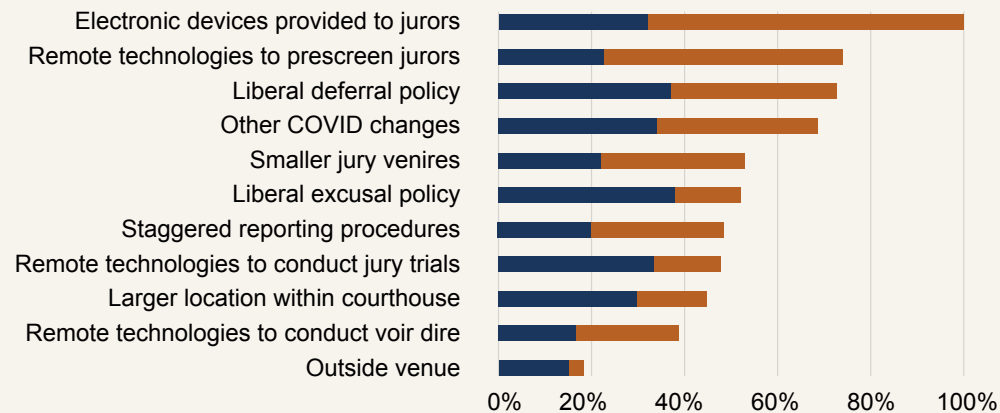
As the pandemic receded in 2022, most courts discontinued the COVID-19 precautions they had implemented. For each of the courts reporting COVID-19 policies for jury trials, Figure 2 shows the proportion that either intended to continue those policies in the future or might continue them. The only discernible pattern of preferences for continuing COVID-19 policies appears to be the degree to which the policy likely impacts court operations generally. Moving jury trials to an outside venue or even to larger spaces within the courthouse were the least favored policies, especially once social distancing requirements were

no longer needed. Although many courts experimented with remote technologies for jury selection and jury trials, the practice involved substantial investment of staffing and technology infrastructure by the court as well as skills training for all trial participants. Although many courts have embraced remote hearings for status conferences and other minor matters, most appear to prefer in-person proceedings for jury selection and jury trials.

Policies in which the technology infrastructure could be easily maintained and did not otherwise disrupt court operations appear to be more sustainable. Thus, the courts that invested in electronic devices for prospective jurors overwhelmingly indicated their intent to continue those policies. Similarly, courts that learned to prescreen jurors remotely or expanded deferral policies without experiencing a negative impact on jury operations had no reason not to continue.

FIGURE 2
Will court continue policies implemented during COVID-19?

■ Yes
■ Maybe/unsure



COVID-19 policies in the SOS Judge & Lawyer Survey

The 2023 SOS Survey asked judges and lawyers about any COVID-19 practices employed in their most recent jury trial. None of the 2023 trials reported in the Judge & Lawyer Survey used COVID-19 practices, but 1,913 trials from 2020 to 2022 reported some type of altered practice. Table 1 describes the proportion of trials using common COVID-19 practices. Because the Judge & Lawyer Survey asked only the year in which the trial took place, not the month, the data for 2020 is difficult to interpret. Nationally, about three-quarters of the jury trials conducted in 2020 took place before March 13, the date on which the federal government declared COVID-19 a national emergency. Before March 13, there was no reason for courts to adopt COVID-19 practices for jury trials. Table 1, therefore, reports the actual percentage of trials in which COVID-19 practices were reported in 2020 as well as an adjusted percentage that assumes that only the 25% of trials that took place after March 13 used COVID-19 practices. According to these estimates, plexiglass barriers, mandatory facemasks on trial participants while speaking, and seating jurors in the courtroom rather than in the jury box were implemented in courtrooms in over half of the jury trials. Sixty percent (60%) of jury trials used more than one COVID-19 precautionary practices.

The use of remote technologies for jury trials was less common in trials reported in the Judge & Lawyer Survey (7% or less trials). Due to the controversial nature of these practices, we wanted to examine how their use affected judge and lawyer perceptions of the integrity of jury trial proceedings. For example, concerns about the impact of remote proceedings on jury pool diversity were frequently expressed by judicial and legal commentators. Anecdotal reports suggested that the increased convenience of remote voir dire to prospective jurors resulted in more diverse jury panels than judges and lawyers generally observe in in-person jury trials. Countering that argument were views that the digital divide excludes lower-income jurors who lack internet access or electronic devices as well as older jurors who might be less comfortable with remote proceedings.

In the Judge & Lawyer Survey, 26% of jury trials in which voir dire was conducted remotely involved a fair cross section challenge to the jury panel compared to 16% of trials in which voir dire was conducted in-person. The sample size of trials reporting the use of remote voir dire was too small to detect a statistically significant difference, but the numerical difference suggests that the novelty of remote voir dire policies may have prompted trial lawyers to raise more fair cross section claims than they would for in-person voir dire. When asked to rate the diversity of the jury venire, however, respondents' average score

TABLE 1
COVID-19 precautions implemented in jury trials

	2020 (n=107)	* 2020	2021 (n=284)	2022 (n=1522)	TOTAL (n=1913)
Outside venue	1%	4%	3%	1%	1%
Remote trial	2%	7%	2%	1%	1%
Remote voir dire	2%	7%	1%	2%	2%
Remote prescreening	1%	4%	4%	3%	3%
Other	8%	30%	7%	8%	8%
Facemasks ALL	12%	48%	23%	8%	10%
Moved to a larger courtroom	8%	30%	19%	11%	12%
Smaller Venires	8%	33%	23%	12%	13%
Facemasks except while speaking	13%	52%	37%	10%	14%
Jurors seated in gallery	13%	52%	31%	19%	20%
Plexiglass barriers	14%	56%	44%	20%	23%
Estimated trials before 3/15/2020	80				
Estimated trials after 3/15/2020	27				

* Adjusted for post-3/15 trial volume. All other years are listed as reported.

for trials using remote voir dire was 5.72 on a scale of 1 (not at all diverse) to 7 (extremely diverse) compared to 5.56 when voir dire was conducted in-person.

The 2023 SOS Survey asked judges and lawyers their opinions about juries and jury trials generally and specifically for the trial on which they reported. The trial-specific questions asked them how much they agreed with the jury's verdict and how well they thought the jurors understood the key evidentiary and legal issues in the trial. The general questions asked respondents to indicate their agreement or disagreement with the following statements:

- Jury trials are an important component of the American justice system;
- I have confidence in the jury's decision-making skills; and
- Jury verdicts are fair to litigants.

Several of the COVID-19 practices were significantly correlated with their opinions, as shown in Table 2. The direction of the correlations is difficult to interpret, however. For example,

respondents reporting on trials with remote prescreening and remote voir dire proceedings had significantly higher confidence in jurors' decision-making skills and comprehension of evidence and law, and significantly higher confidence in jury trials generally, than respondents reporting on trials with standard prescreening and in-person voir dire proceedings. But respondents reporting on fully remote jury trials rated juror comprehension and the importance and fairness of jury trials significantly lower than respondents in traditional in-person jury trials.

Respondent opinions also correlated with COVID-19 practices other than those involving remote technologies, again in different directions. Respondents had greater agreement with the jury's verdict when the trial was held in a larger courthouse space, but trials held in an outside venue correlated with significantly lower ratings for agreement with the verdict, jurors' comprehension of evidence and law, confidence in jury's decision-making skills, and fairness of jury trials. The use of facemasks and plexiglass barriers also correlated with lower respondent ratings of juror comprehension of the evidence and law.

TABLE 2 | Impact of COVID-19 Policies on Respondent Opinions about Juries and Jury Trials

	Remote voir dire	In-Person voir dire	
I have confidence in the jury's decision-making skills.	6.50	5.75	***
Jury verdicts are fair to litigants.	6.33	5.69	***
	Remote prescreening	Standard prescreening	
Jurors understood the key evidentiary and legal issues in the trial.	5.71	5.23	*
	Remote jury trial	In-person jury trial	
Jurors understood the key evidentiary and legal issues in the trial.	4.33	5.25	**
Jury trials are an important component of the American Justice system.	5.27	6.69	***
Jury verdicts are fair to litigants.	4.87	5.71	**
	Smaller jury panels	Standard panel sizes	
I agreed with the jury's verdict.	5.45	5.17	*
	Larger location within the courthouse	Regular courtroom	
I agreed with the jury's verdict.	5.46	5.17	*
	Plexiglass barriers	No plexiglass barriers	
Jurors understood the key evidentiary and legal issues in the trial.	5.11	5.29	*
	Mandatory facemasks	No facemasks	
Jurors understood the key evidentiary and legal issues in the trial.	5.03	5.27	*
	Facemasks except while speaking	No facemasks	
Jurors understood the key evidentiary and legal issues in the trial.	5.06	5.28	*
	Outside venue	Courthouse	
I agreed with the jury's verdict.	4.09	5.22	*
Jurors understood the key evidentiary and legal issues in the trial.	4.00	5.26	**
I have confidence in the jury's decision-making skills.	4.67	5.78	**
Jury verdicts are fair to litigants.	4.58	5.71	**

* p<0.05 ** p<0.01 *** p<0.001

Conclusions

The extent that COVID-19 disrupted the American justice system cannot be overstated. It provoked an historic embrace of remote technologies to conduct court hearings of all types, including jury trials and grand jury proceedings. Prospective jurors appeared to appreciate the increased convenience of remote jury service, especially for jury selection when only a proportion of the entire venire would ultimately be empaneled as trial jurors or alternates. At the same time, the difficulty of conducting jury trials under CDC-recommended practices to prevent the spread of the coronavirus greatly restricted the number of jury trials that courts could hold, causing substantial civil and criminal case backlogs. The mixed opinions of judges

and lawyers who participated in juries and jury trials under these conditions may reflect both their eagerness and enthusiasm for jury trials generally, but also misgivings about how the additional stresses and distractions caused by COVID-19 practices may have affected jurors' performance in individual trials. Some courts have indicated their commitment to continuing COVID-19 practices, ostensibly because they were more efficient and cost-effective than traditional procedures and offered greater convenience to citizens. It remains to be seen whether judges and lawyers in those courts ultimately gain the same level of confidence in jurors' performance under these conditions.

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