

How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations

Methodological appendix

Overview

This report employs a two-pronged approach to data collection and analysis of state civil court responses to the COVID-19 pandemic. To understand how rapid adoption of online processes affected the ways in which litigants interacted with the civil legal system, researchers from The Pew Charitable Trusts examined pandemic-related emergency orders issued by the supreme courts of all 50 states and Washington, D.C., from March 1 through Aug. 1, 2020; state court information related to the adoption of electronic filing before the pandemic (from 1990 through 2019); and data on court operations during the pandemic, which was gathered by researchers from Wesleyan University through an analysis of state supreme, appellate, and trial court orders.

Pew's study focused on two broad areas: technological tools related to court processes, including electronic filing (e-filing), virtual hearings, and electronic notarization (e-notarization), and management of case types known to affect economic outcomes for individuals and families, specifically eviction, debt collection, and child support modifications. The analysis of these topics, in turn, emphasized the importance of two functions—court appearances and document submission—to litigants' efforts to advance their cases.

In addition, Pew researchers reviewed about 100 academic and gray literature sources describing the implementation and uses of court technology before and during the pandemic. About half of these sources related to how technology adoption affected the experiences of litigants in the three case types, including advantages and barriers to online court processes. The other half helped to place pandemic-related adoption of virtual hearings and e-filing within the broader historical context of courts' use of technology.

Analysis of state court sources

Supreme courts' emergency orders

Using the National Center for State Courts' repository of COVID-19 emergency orders as a starting point, Pew researchers scanned state supreme court orders from the 50 states and D.C. related to the pandemic from March 1 to Aug. 1, 2020, for information to answer the following queries:

- Did the state supreme court issue any emergency orders related to the COVID-19 pandemic?

- If state courts did not already allow litigants without attorneys to e-file, did the state create a mechanism during the pandemic for these users to electronically submit paperwork to the courts?
- Did any courts in the state provide physical drop boxes outside of courthouses where litigants could submit documents?
- Had the state adopted e-notarization before the pandemic?
- If not, did it adopt e-notarization during the pandemic?
- Did the state waive the notarization requirement during the pandemic?
- Did the state supreme court encourage or require the use of virtual hearings during the pandemic?
- Did the state supreme court allow litigants without lawyers to e-file in eviction cases during the pandemic?
- Did the state supreme court allow litigants without attorneys to e-file in debt collection cases during the pandemic?
- Does the state court system handle child support modification requests?
- If yes, did it allow parents or guardians to submit those requests electronically during the pandemic?

Two researchers each reviewed state supreme court orders for 25 states—and one examined D.C.—and recorded responses to the questions based upon the information contained in the orders.¹

A third researcher performed quality control by selecting a random sample of the data gathered from each group of 25 states as well as D.C. to ensure that the responses to the research questions corresponded with information in the orders using the hyperlinks provided and internet searches where appropriate. This researcher made corrections and comments where necessary.

Representatives from the courts in each state and D.C. then verified the data for their states. The researchers sent each contact an initial email providing that state’s data for verification and, if no response was received, sent a follow-up email within one week. Finally, if the researchers received no response to the follow-up email, they made a final attempt to contact state court representatives by phone. Once this verification outreach was complete, the researchers incorporated all corrections into an updated dataset. (See Table A.1.)

Table A.1
State Supreme Court Order Verification Outreach for 50 States and Washington, D.C.

| Research Question | Yes | No |
|-------------------|-----|----|
|-------------------|-----|----|

| | | |
|---|----|----|
| Did the state supreme court issue any emergency orders related to the COVID-19 pandemic? | 50 | 1 |
| If state courts did not already allow litigants without attorneys to e-file, did the state create a mechanism during the pandemic for these users to electronically submit paperwork to the courts? | 10 | 3 |
| Did any courts in the state provide physical drop boxes outside of courthouses where litigants could submit documents? | 29 | 22 |
| Had the state adopted e-notarization before the pandemic? | 34 | 17 |
| If not, did it adopt e-notarization during the pandemic? | 7 | 10 |
| Did the state waive the notarization requirement during the pandemic? | 8 | 43 |
| Did the state supreme court encourage or require the use of virtual hearings during the pandemic? | 49 | 2 |
| Did the state supreme court allow litigants without lawyers to e-file in eviction cases during the pandemic? | 42 | 9 |
| Did the state supreme court allow litigants without lawyers to e-file in debt collection cases during the pandemic? | 43 | 8 |
| Does the state court system handle child support modification requests? | 44 | 7 |

| | | |
|---|----|----|
| If so, did it allow parents/guardians to electronically submit child support modification requests during the pandemic? | 34 | 10 |
|---|----|----|

Source: Pew analysis of state supreme court COVID-19 pandemic emergency orders issued from March 1 through Aug. 1, 2020

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Electronic filing

To further contextualize courts' use of e-filing during the pandemic, Pew researchers considered the following questions:

- Which state court systems adopted e-filing for attorneys between 1990 and 2019? (Note: Many states have decentralized court systems in which administration, funding, or both are handled at the local or county levels. Therefore, the researchers considered a state to have adopted e-filing if one or more counties had done so within the identified time frame.)
- Which of the states that adopted e-filing for attorneys between 1990 and 2019 also allowed litigants without lawyers to use their e-filing systems, and in what year did they begin allowing it?

To answer these questions, the researchers first looked to the National Center for State Courts' Court Technology Bulletin and then examined state court websites for each of the 50 states and D.C. to determine when e-filing was adopted for attorneys and litigants without lawyers. After a round of source collection and analysis, a second researcher reviewed the dataset to confirm accuracy, and finally all data collected in this process was verified by contacts in each state and D.C. (See Table A.2.)

Table A.2

State Court Website Verification of Electronic Filing, 50 States and Washington, D.C.

| State | In what year did the state (or the first jurisdiction in the state) adopt e-filing for attorneys? | In what year did the state (or at least one jurisdiction in the state) adopt e-filing for litigants without lawyers (if at all)? |
|----------------|---|--|
| Alabama | 2005 | 2012 |
| Alaska | 2019 | 2019 |

| | | |
|-----------------------------|------|---------------|
| Arizona | 2009 | 2009 |
| Arkansas | 2012 | 2012 |
| California | 1996 | 1996 |
| Colorado | 2001 | 2019 |
| Connecticut | 2004 | 2013 |
| Delaware | 2003 | 2017 |
| District of Columbia | 2005 | 2006 |
| Florida | 2011 | 2014 |
| Georgia | 2019 | 2019 |
| Hawaii | 2010 | 2010 |
| Idaho | 2016 | 2016 |
| Illinois | 2003 | 2003 |
| Indiana | 2016 | 2016 |
| Iowa | 2017 | 2017 |
| Kansas | 2010 | Not permitted |
| Kentucky | 2013 | 2018 |
| Louisiana | 2012 | Not permitted |
| Maine | 2018 | 2018 |
| Maryland | 2014 | 2014 |
| Massachusetts | 2015 | 2015 |
| Michigan | 2012 | 2012 |
| Minnesota | 2015 | 2015 |
| Mississippi | 2009 | Not permitted |
| Missouri | 2011 | Not permitted |
| Montana | 2014 | Not permitted |

| | | |
|-----------------------|---------|---------------|
| Nebraska | 2015 | Not permitted |
| Nevada | 2006 | 2007 |
| New Hampshire | 2014 | 2014 |
| New Jersey | 2015 | Not permitted |
| New Mexico | 2014 | Not permitted |
| New York | 2013 | 2015 |
| North Carolina | 1999 | Not permitted |
| North Dakota | 2010 | 2010 |
| Ohio | 2015 | 2015 |
| Oklahoma | 2012 | 2012 |
| Oregon | 2008 | 2016 |
| Pennsylvania | 2008 | 2008 |
| Rhode Island | 2014 | 2014 |
| South Carolina | 2017 | Not permitted |
| South Dakota | 2013 | Not permitted |
| Tennessee | 2009 | Not permitted |
| Texas | 1998 | 1998 |
| Utah | 2010 | 2010 |
| Vermont | 2010 | 2013 |
| Virginia | 2010 | 2011 |
| Washington | 2003 | 2011 |
| West Virginia | Unknown | Not permitted |
| Wisconsin | 2016 | 2016 |

| | | |
|----------------|-----------------------|--------------------|
| Wyoming | 2008 for appeals only | 2017 by email only |
|----------------|-----------------------|--------------------|

Source: Pew analysis of state court e-filing adoption between 1996-2019

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Overall, before the pandemic, 49 states and D.C. had adopted e-filing for their trial courts in at least one jurisdiction (Wyoming implemented it for appellate courts only). Of those, 37 states and D.C. made e-filing available to attorneys and litigants without lawyers, while 13 states offered it only to attorneys.

ADA and language access

Finally, this analysis uses data on language access—that is, provision of services in multiple languages—and accessibility for persons with disabilities that was obtained via a 50-state, cross-level scan of 9,827 court documents related to pandemic operations gathered from Feb. 4 through May 22, 2020, by researchers from Wesleyan University. The scan included publicly released documents from trial, intermediate, and appellate courts of limited and general jurisdiction. Documents in languages other than English were not systematically collected.

To search the documents for information on courts’ efforts to improve language access, Wesleyan researchers used the following terms: “Spanish,” “Español,” “Vietnamese,” “Tiếng Việt,” “Chinese,” “中文,” “Arabic,” “عربي,” “Russian,” “русский,” “translat-,” “interpret-,” and “LanguageLine.” The search yielded 253 documents. Pew researchers then divided 253 by the total of 9,827 documents to calculate that approximately 2.5% of documents collected on court pandemic operations mentioned language access.

Similarly, the Wesleyan researchers employed the following terms to search the documents for information related to access for persons with disabilities: “disability,” “accessibility,” “ADA,” “accessibility widget,” and “reasonable accommodation.” The search yielded 154 documents. Pew researchers then divided 154 over the total of 9,827 total documents to calculate that approximately 1.5% of documents in the repository mentioned disability, accessibility, or reasonable accommodations.

Literature review

Pew researchers also conducted a literature review to understand how courts adopted and implemented technologies such as virtual hearings, e-filing, and e-notarization before the pandemic, as well as litigants’ experiences using these tools for eviction, debt collection, and child support cases during the pandemic.

The research team identified sources for the literature review through searches of Google, Google Scholar, Hein Online, EBSCO, and the websites of relevant organizations, including the National Center for State Courts, the National Association of Court Management, the Self-Represented Litigation Network, the American Bar Association, and Legal Services Corp. For pre-pandemic court technology adoption, the researchers searched for material published within the past 30 years and for litigant experiences during the pandemic, looking for sources published between March 1, 2020, and March 31,

2021, using the following terms: “courts,” “pandemic,” “eviction,” “debt collection,” “child support modification,” “online hearings,” “online court,” “electronic filing,” “e-filing,” “electronic notarization,” and “e-notarization.” These searches yielded 100 sources that met the criteria, 70 of which were ultimately identified as relevant.

Limitations

This study examined supreme court emergency orders between March 1 and Aug. 1, 2020, which was the period with the largest volume of activity related to pandemic court operations. However, additional state court orders related to the pandemic may have been issued after that period and would not be captured in the analysis. Further, because more than half of the states have decentralized court systems in which budget and decision-making authority are handled at the local level, the examination of supreme court orders probably did not capture all courts’ uses of technology for the three case types covered by the study during the pandemic. This analysis identifies potential local variations that were identified by state court contacts during the data verification process. Similarly, the assessment of state courts’ pre-pandemic adoption of virtual hearings, e-filing, and e-notarization may not capture all local or case type-specific uses of these technologies. Finally, this analysis focuses on three specific types of court technology—virtual hearings, electronic filing, and electronic notarization—as applied in three civil case types and as such is not a comprehensive assessment of court technologies as applied in all civil case types before or during the pandemic.

Endnote

¹ National Center for State Courts, “Pandemic-Related Administrative Orders,” <https://www.ncsc.org/newsroom/public-health-emergency/orders>.