



SCHOOL OF GOVERNMENT

Criminal Justice Innovation Lab

# Virtual Court Proceedings In North Carolina

Adapting to a Global Pandemic

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## Executive Summary

During the COVID-19 pandemic, criminal court systems across the world moved to virtual proceedings to maintain essential court operations while minimizing the spread of COVID-19. The purpose of this study was to gather information to inform policy decisions about the continued use and/or expansion of virtual criminal court proceedings in North Carolina. We distributed an online survey in the summer of 2020 to North Carolina superior and district court judges, district attorneys, public defenders, private assigned and contract counsel, and clerks of court. The survey included quantitative and qualitative questions about changes to criminal court proceedings since the start of the pandemic. We also asked about the benefits of, concerns about, and suggestions for best practices related virtual proceedings, support for various virtual proceedings, experiences with using various technology platforms, and about other aspects of virtual proceedings. Key findings include:

- **Change in Use of Virtual Proceedings.** Respondents indicated that virtual first appearances<sup>1</sup> were the most common type of virtual proceeding, both before the pandemic and while it was occurring. 64% of respondents indicated that they had participated in virtual first appearances before the pandemic; that rate went up to 86% during the pandemic. Prior to the pandemic, relatively small numbers of respondents had participated in virtual guilty plea proceedings, bond motion hearings, counsel advisements,<sup>2</sup> probation violation hearings, capacity hearings or search warrant proceedings. During the pandemic, some of those numbers changes considerably. For example, while only 4% of respondents had participated in virtual guilty plea proceedings before the pandemic, 46% had done so during the pandemic. Respondents reported that only one proceeding type—grand jury proceedings—was unaffected by this trend.
- **Overall Advantages of & Concerns with Virtual Proceedings.** Across all types of proceedings, respondents identified the most common advantages of virtual proceedings as increased efficiency, increased safety due to decreased exposure to COVID-19, and alleviated transportation needs. Across all types of proceedings, the most common identified concerns were problems with effective communication generally, Sixth Amendment right to counsel issues, lack of access to necessary technology, and inefficiency.
- **First Appearances.** The vast majority of respondents indicated support for virtual first appearances, though district attorneys indicated stronger support than public defenders. The most frequently reported advantages of virtual first appearances were alleviating transportation needs for in-custody defendants, other increases in efficiency, and increased safety by reducing risk of COVID-19 exposure. Over one-quarter of respondents indicated that they had no concerns about virtual first appearances. For those who reported concerns, the most frequently reported issues pertained to the defendant's ability to effectively communicate, understand and present themselves in court; technology issues; and concerns about the defendant's Sixth Amendment right to

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<sup>1</sup> In North Carolina, a first appearance is the first judicial review of the charges. At the first appearance, the judge, among other things, informs the defendant of the charges, addresses counsel issues, and reviews conditions of pretrial release.

<sup>2</sup> As used here, a counsel advisement proceeding refers to a proceeding separate from the first appearance where counsel issues are addressed.

counsel. The most frequently reported suggestions for best practices for virtual first appearances were using adequate equipment and technology and preparing in advance.

- **Guilty Plea Proceedings.** Most respondents indicated support for virtual plea proceedings, and that support was similar across court actors. The most frequently reported advantages of virtual guilty plea proceedings were increased safety by reducing risk of COVID-19 exposure; alleviating transportation needs for in-custody defendants and other proceeding participants; and increased efficiency. The most frequently reported concerns about virtual plea proceedings related to the defendant's constitutional rights, including concerns about the defendant's understanding of the guilty plea, the judge's ability to determine whether or not the defendant's waiver of constitutional rights is knowing, voluntary and intelligent, and the defendant's ability to communicate privately with counsel. Other reported concerns included decreased efficiency and technology issues. Among the most frequently reported best practices suggestions for virtual plea proceedings were: facilitating effective attorney-client communication before and during the proceeding; using equipment and technology allowing for clear audio and video and efficient "transfer of documents and signatures"; preparing in advance, including reviewing and completing all paperwork, having paperwork ready for completion, and ensuring that all participants are on-time and that defense attorneys have communicated with clients before the proceeding; and using hybrid implementation both as to offenses and participants.
- **Bond Motions.** Almost two-thirds of respondents indicated support for conducting bond motion hearings virtually, and there was no significant difference in support among court actors. The most frequently reported advantages of virtual bond motion hearings were reducing risk of COVID-19 exposure, increased efficiency, and alleviating transportation needs for in-custody defendants. The most frequently reported concerns pertained to the defendant's Sixth Amendment right to counsel; issues with effective communication; and technology issues. The most frequently reported best practice suggestions for these proceedings pertained to access to and use of adequate equipment and technology and making necessary advance preparations.
- **Counsel Advisements.** Almost three-quarters of respondents indicated that they supported conducting counsel advisements virtually, with judges and prosecutors indicating slightly higher support on average than public defenders. The most frequently reported advantages of virtual counsel advisements were increased efficiency by eliminating travel; increased safety by reducing the risk of COVID-19 exposure; and alleviated transportation needs for defendants. The most frequently reported concerns were constitutional issues regarding the defendant's knowing, voluntary and intelligent waiver of the right to counsel and decreased efficiency due to delays or issues with paperwork, including completion of the Affidavit of Indigency. Best practice suggestions for virtual counsel advisements included preparing paperwork in advance and use of adequate equipment and technology for completing paperwork and hosting video meetings.
- **Probation Violation Hearings.** Support for virtual probation hearings was mixed. A little over half of respondents indicated support or strong support for conducting probation violation hearings virtually, about one-third of respondents indicated that they did not or strongly did not support conducting these hearings virtually, and 15% were neutral. There were no statistically significant differences in the average level of support reported between court actors. The most frequently reported advantages of conducting virtual

probation revocation hearings were increased safety by reducing the risk of COVID-19 exposure; increased scheduling efficiency; and alleviated transportation needs for in-custody defendants. The most frequently reported concerns were issues with effective communication, particularly as to the defendant's ability to understand and to be heard, the judge's ability to observe the defendant, and the ability of the defendant and the probation officer to discuss and negotiate a resolution; the ability of defense counsel and clients to communicate privately and effectively; and the ability to enforce court orders. Although listed less frequently, respondents also expressed concern about the ability to conduct a contested probation violation hearing virtually, including concerns about the defendant's right to be heard and to confront witnesses, and self-incrimination issues. The most frequently reported suggestions for best practices when conducting virtual probation violation hearings was to do so only when the defendant is not facing jail time and/or consents to a virtual proceeding. Other suggestions included ensuring that defendants have direct and private contact with counsel and ensuring that probation officers prepare necessary paperwork and make that paperwork available to participants in advance.

- **Grand Jury Proceedings.** Over 80% of respondents indicated that they were neutral, did not support, or strongly did not support holding virtual grand jury proceedings. Only 16% of respondents indicated that they supported doing so. There were no significant differences in the average level of support for virtual grand jury proceedings between court actors. No respondents indicated that they had participated in virtual grand jury proceedings. The most frequently reported advantages of doing so were increased safety by reducing risk of COVID-19 exposure and increased efficiency resulting from ease in scheduling and convenience for grand jurors. The most frequently reported concerns about virtual grand jury proceedings were compromising the secrecy of the proceeding; the grand jurors' ability to communicate effectively without having their attention diverted; and the perceived seriousness or legitimacy of the proceeding by the public and the grand jury members.
- **Capacity Hearings.** Most commonly, respondents indicated that they were neutral in their support of conducting virtual capacity hearings. The most frequently reported advantages of conducting virtual capacity hearings were increased safety by reducing the risk of COVID-19 exposure; increased efficiency due to ease in scheduling and alleviated need for transporting in-custody or hospitalized defendants; and alleviated transportation needs for other proceeding participants. The most frequently reported concerns about virtual capacity hearings were issues related to effective communication, particularly the judge's ability to assess the defendant's competency; and the defendant's Sixth Amendment right to counsel. The most frequently reported suggestions for best practices for virtual capacity hearings were to employ hybrid implementation with respect to cases and participants; and use adequate equipment and technology.
- **Search Warrants.** Almost 90% of respondents indicated neutral to strong support for issuing search warrants virtually, with almost two-thirds indicating support or strong support. Prosecutors most frequently indicated strong support for virtual search warrant proceedings, while public defenders most frequently indicated neutral support. The most frequently reported advantages of virtual search warrant proceedings were increased efficiency by reducing officers' travel time; convenience for officers and judges, particularly for warrants completed outside of normal business hours; and increased

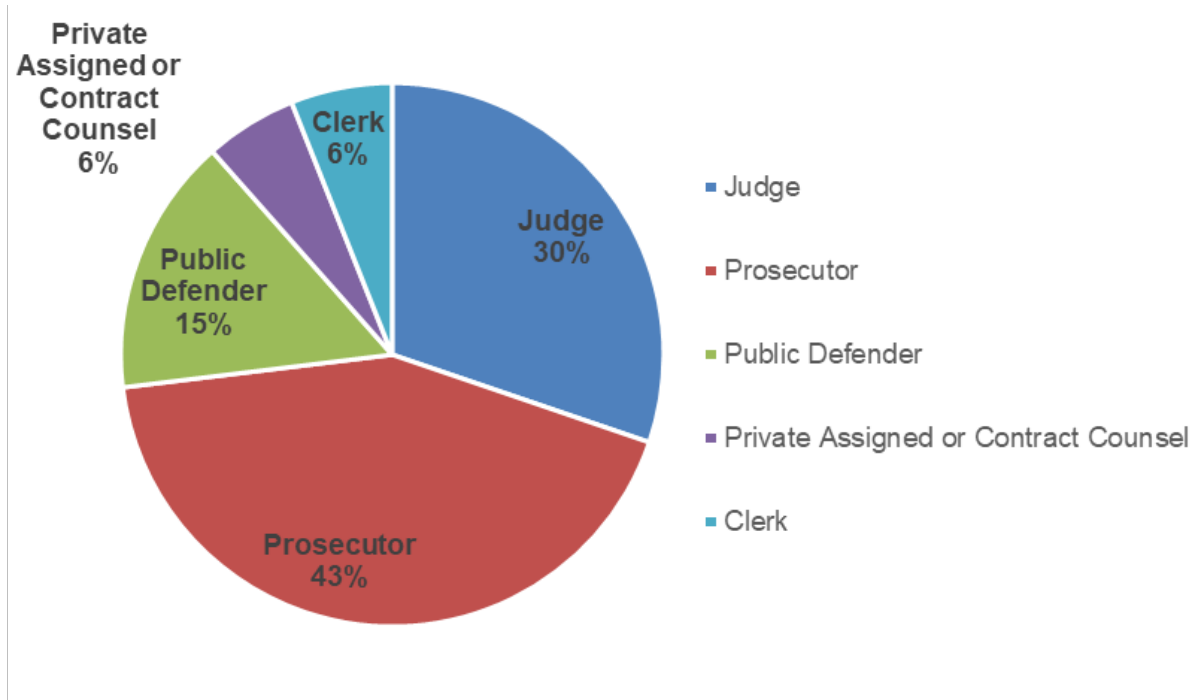
safety by reducing risk of COVID-19 exposure. The most frequently reported concerns were barriers to effective communication, including the judges' ability to pose questions to officers and observe the affiant when probable cause is presented; and decreased efficiency due to issues related to receiving, reviewing, and filing paperwork. Best practice suggestions for virtual search warrant proceedings included using adequate equipment and technology for accessing all relevant information and signing and filing necessary paperwork; and ensuring that officers complete all paperwork and that the judge reviews all information before issuing the warrant.

- **Virtual Proceeding Technology.** Respondents reported that Closed Circuit Television was the most common platform used for virtual proceedings prior to the pandemic. However, they reported that WebEx was the most common platform used for virtual proceedings during the pandemic. A little over half of respondents experienced WebEx technical difficulties less than 25% of the time, and a little over 11% indicated that they experienced technical difficulties more than half the time. The most common technical difficulties with WebEx were internet conductivity and audio feedback issues.

## Survey Participants

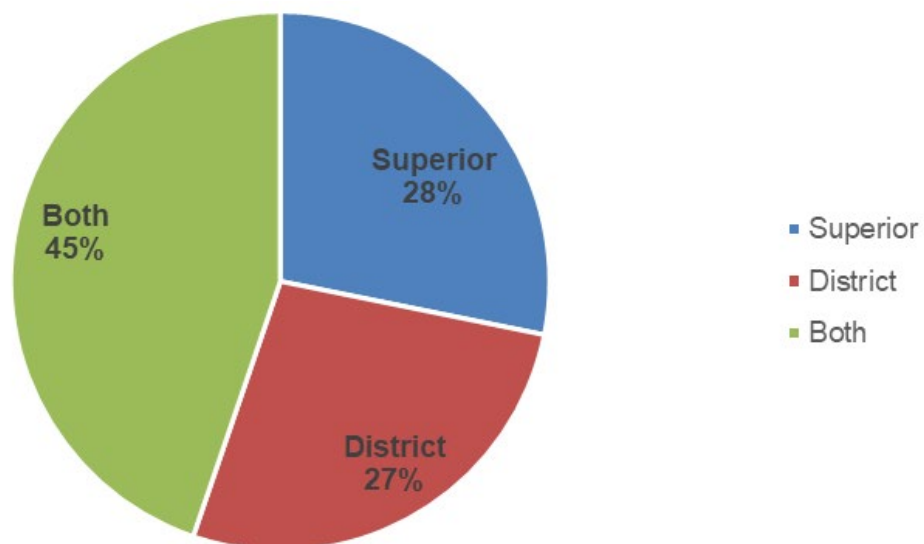
We sent the online survey to criminal court actors across North Carolina. 182 people responded. Most respondents were either district attorneys or assistant district attorneys (43%), judges (30%), or public defenders or assistant public defenders (15%) (Figure 1). The remainder of participants were clerks (6%) and private and assigned contract counsel (6%).

**Figure 1. Respondents' Current Role in the Criminal Justice System**



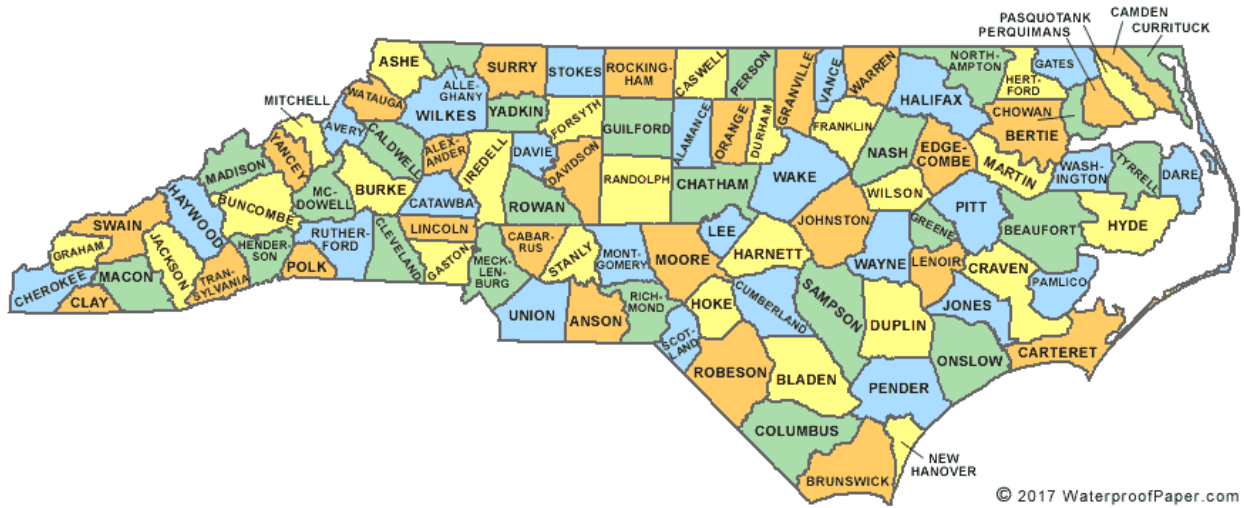
Many respondents work in both superior and district court (45%) (Figure 2). About 28% of respondents work only in superior court and 27% work only in district court.

**Figure 2. Type of Court Where Respondents Work**



All 100 North Carolina counties were represented by survey respondents. Figure 3 below displays all North Carolina counties and their location.

**Figure 3. North Carolina Counties**





## Survey Findings

We asked survey participants to respond to questions about specific criminal court proceedings that could be conducted virtually. We identified these proceedings in discussions with North Carolina criminal court professionals and through a brief review of virtual court practices in other U.S. jurisdictions.

Specifically, for each included proceeding, participants were asked to report:

- if their jurisdiction(s) conducted the proceeding virtually before and during the COVID-19 pandemic;
- if they personally have participated in the proceeding virtually;
- how long the proceeding typically lasts when conducted virtually compared to in-person (if they indicated they have personally participated);
- their level of support for conducting the proceeding virtually; and
- open-ended questions regarding advantages of, concerns about, and suggestions for best practices when conducting the proceeding virtually.

Participants also responded to questions about their experiences with specific virtual meeting platforms.

The sections below present our findings. First, we identify the proceedings that respondents indicated were being held virtually before and/or during the pandemic. Second, we describe the general advantages, concerns, and suggestions for best practices for virtual court proceedings reported by respondents. Third, we present findings for each specific criminal court proceeding. These include participants' support for conducting the proceeding virtually; the length of time required to conduct the proceeding virtually compared to in-person; and any reported advantages, concerns, or best practice suggestions specific to that type of proceeding. Finally, we detail participants' reported experiences with specific virtual meeting platforms.

### Proceedings Conducted Virtually

Respondents indicated which proceedings had been conducted in their jurisdiction(s) before and during the COVID-19 pandemic (as of August 2020) (Table 1).

Note that the numbers in Table 1 represent the number of respondents who endorsed each item and not the number of jurisdictions.

**Table 1. Specific Proceedings Conducted Virtually Before and During the Pandemic**

<b>Proceeding</b>	<b>Number of Respondents who Indicated their Jurisdiction(s) Conducted the Proceeding Virtually Before COVID-19 Pandemic</b>	<b>Number of Respondents who Indicated their Jurisdiction(s) Conducted the Proceeding Virtually During COVID-19 Pandemic</b>
<b>First Appearance</b>	116 (64%)	157 (86%)
<b>Guilty Plea Proceeding*</b>	7 (4%)	84 (46%)
<b>Bond Motion</b>	26 (14%)	91 (50%)
<b>Counsel Advisement*</b>	9 (5%)	55 (30%)
<b>Probation Violation</b>	4 (2%)	43 (24%)
<b>Grand Jury</b>	1 (0.5%)	0
<b>Capacity Hearing</b>	4 (2%)	26 (14%)
<b>Search Warrant</b>	2 (1%)	34 (19%)
<b>No court proceeding conducted virtually</b>	57 (31%)	10 (5%)

*\*other than at first appearance*

Respondents indicated that the proceeding most frequently conducted virtually was the first appearance, and this was true both before and during the pandemic. Responses indicate that all of the included criminal court proceedings had been conducted virtually somewhere in North Carolina before the pandemic. Further, responses indicate that the use of virtual criminal court proceedings has largely increased in North Carolina during the pandemic.

### **Advantages of Virtual Proceedings—Generally**

Participants were asked to indicate the recognized advantages of conducting each type of criminal court proceeding virtually (i.e., first appearance, guilty plea proceedings, bond motions, counsel advisements, probation violation hearings, grand jury proceedings, capacity hearings, and search warrant proceedings). Across all types of proceedings, the most common identified advantages were increased efficiency, increased safety, and alleviated transportation needs. This section describes, generally, participants’ reported advantages of virtual proceedings. Descriptions of the recognized advantages specific to certain proceedings are provided in the sections below.

#### ***Increased Efficiency***

Across all proceedings, the most common advantage of virtual proceedings noted by respondents was increased efficiency. Respondents indicated that conducting proceedings virtually increases efficiency by saving time and money.

First, respondents believed that virtual proceedings would be more concise and “streamlined” than in-person ones (results on the length of time required to conduct proceedings virtually versus in-person are provided in each court proceeding section below). Many participants stated that they would spend “*less time waiting*” for the proceeding to begin. Participants also believed that court proceedings would be more to-the-point, as people would be less likely to engage in irrelevant or unnecessary discussions. In the same vein, many participants indicated that conducting court proceedings virtually would require court actors to prepare more in advance,

thus eliminating time spent in the proceedings getting familiar with relevant information, looking for paperwork, and/or preparing necessary documents.

Second, respondents noted that conducting proceedings virtually could also save time through scheduling. Respondents indicated that virtual proceedings would “*allow more flexibility in scheduling*”, make it “*easier to schedule for a time [that is] certain*”, and would “*require less coordination*” since fewer people would need to be present. Many respondents indicated that virtual proceedings could be scheduled faster and sooner; one respondent even noted that “*the matter may be resolved quicker than if not virtual*”.

Finally, respondents noted that virtual court proceedings may decrease overall costs, primarily as a result of time savings and less staff needing to be present. Cost savings were especially noted for proceedings that require the presence of law enforcement officers and/or transportation of defendants.

### ***Increased Safety***

Respondents frequently reported that conducting proceedings virtually would increase safety for all participants. Respondents primarily noted safety in the reduced risk of exposure to COVID-19; frequently including statements about “*social distancing*”, “*spread of COVID*”, “*reduced interactions with people*”, and “*limiting exposure*”. Examples of statements regarding COVID-19 safety include:

- “*the advantage is that especially during COVID-19 crisis, there is an increase in safety, security and health of everyone involved*”
- “*Keeps multiple people from having to be in the same place at one time. Would allow someone with health concerns to continue to serve.*”
- “*my [family] is very concerned about my exposure and it would be much more difficult for me to convince them that I am safe continuing to do this work if people were being transported to and from the jail on a regular basis*” (identifiers in this quotation were removed)
- “*It protects everyone from exposure and allows people to feel more comfortable about continuing to perform their jobs. That is a critical factor now during this pandemic. People’s stress levels are outrageously high to begin with which is not good for anyone.*”
- “*I think there is no safe way to do hearings otherwise*”

For proceedings that involve defendants who are incarcerated in jail, respondents were especially concerned about the spread of COVID-19 between the courtroom and jail. This concern was amplified by responses noting outbreaks of COVID-19 in detention centers. One participant indicated that their jurisdiction has “*had detention officers in our jail test positive for COVID-19*”. Respondents indicated that courthouses may not be adequately equipped to safely transport defendants to the courthouse during the pandemic, with one respondent stating that “*the courthouse has very limited holding cell capacity, which was an issue even prior to COVID-19.*”

Some respondents also noted safety advantages of virtual proceedings beyond COVID-19 considerations. These responses indicated that conducting specific court proceedings virtually may alleviate risks of physical or mental harms for court actors, defendants, or victims. These responses were specific to certain types of proceedings and are described in more detail in the relevant proceeding sections below.

### ***Alleviated Transportation Needs***

Respondents frequently noted that a major advantage of virtual proceedings was that they removed the need for transportation and thus greatly reduced the time and resources needed to conduct court proceedings.

For proceedings that involve defendants, respondents often discussed transportation needs in regard to in-custody individuals. Respondents reported that conducting proceedings virtually would remove the need for law enforcement officers to transport defendants between the jail and the courthouse. Responses indicated that doing so would “*free up LEO [law enforcement officers]*”, would save “*valuable time*” that would otherwise be spent “*transporting defendant to and from jail*”, and would “*minimize transportation costs*”. One respondent noted that “*the human capital required to move inmates to the courthouse . . . is monstrous.*” Further, respondents related alleviated transportation efforts to increased efficiency of court proceedings, with one participant stating that “*bringing an inmate from the jail is much more time consuming than the proceeding itself.*”

Respondents noted that virtual proceedings also would alleviate transportation needs for court actors and individuals who are not in custody. This advantage was particularly noted for people who live in different counties, court actors who are required to travel to many different locations, and individuals with less resources for traveling. One respondent stated that “*it might be convenient for people to attend from different locations and not have to travel*”, and another stated that it would be “*easier for people to attend when they have conflicts coming to [the] courthouse.*” Respondents noted that witnesses have to travel to the courthouse, sometimes from other counties, and that being able to attend virtually would prevent them from having to leave work or other important obligations. Respondents also reported that some court actors (e.g., “*law enforcement officers*”, “*judicial officials*”, “*attorneys*”) are frequently required to “*drive a long distance*” for in-person proceedings, and conducting court proceedings virtually would thus reduce this travel time. Some respondents also mentioned that it may be easier for defendants who are not in custody, family, or victims to attend proceedings virtually, particularly if they live outside of the county, have work or family obligations, or do not have the means to travel to the courthouse.

### ***Other Advantages***

Other advantages of virtual proceedings reported by respondents included accessibility accommodations and comfort or convenience of proceeding participants. Nuanced advantages that were reported for specific virtual proceedings are presented in the sections below.

### **Concerns of Virtual Proceedings—Generally**

Participants were asked to indicate their concerns about conducting court proceedings virtually. Across all types of proceedings, the most common identified concerns were effective communication during virtual proceedings, effective and confidential communication between defense attorneys and their clients, access to technology needed for virtual proceedings, and efficiency. This section describes, generally, participants’ reported concerns about virtual court proceedings. Descriptions of the recognized concerns that are specific to certain proceedings are provided in the sections below.

### ***Barriers to Effective Communication***

Respondents frequently reported a concern that conducting proceedings virtually would inhibit effective communication between court participants. This was primarily linked to the importance

of non-verbal communication in court proceedings, which participants were concerned would not translate virtually as it does in-person. One respondent stated, "*The ability to read body language, facial expressions, etc. are probably needed.*" Another agreed saying, "*I trust in the powers of observation and I am not confident that remote hearings can adequately convey information.*" Additionally, many respondents related the importance of non-verbal communication to assessing credibility of witnesses and defendants.

Respondents also voiced this concern regarding the defendant's understanding of virtual court proceedings. Respondents were concerned that defendants would not fully understand the information presented to them, their rights, and/or what is required of them. Further, respondents expressed concern that defendants would be unwilling or unable to ask clarifying questions. One respondent expressed the concern that "*the client may feel marginalized by being left out of the actual court room.*" Respondents also were concerned that conducting proceedings virtually would "*allow the defendant to be dehumanized.*" One person stated, "*the judge may be more willing to hand down a harsh sentence without the physical presence of the accused.*"

Finally, when discussing concerns about effective communication, many respondents indicated that it would be too easy for participants to be distracted during virtual proceedings. Respondents were concerned that court participants would be "*not as present*" or "*zoned out*". These responses frequently cited potential distractions that could be present in virtual proceedings, such as "*dogs barking*", "*a package delivery*", "*play[ing] a game on [the] computer*", or "*family around talking.*" Respondents were concerned that there would be no way to tell if someone was actually paying attention to the virtual proceeding, thus impacting their understanding of the information being presented and/or their decision-making abilities.

### ***Attorneys' Ability to Communicate with Clients***

Many respondents indicated concerns about defense attorneys' ability to communicate effectively and confidentially with their clients. Respondents were concerned about private and effective attorney-client communication both before and during virtual proceedings. Examples of comments indicating respondents' general concern about attorney-client communications include:

- "*Securely and privately communicating with Counsel is my biggest concern with all virtual hearings.*"
- "*the attorneys cannot communicate privately with the respondents prior to or during the hearing. The inability of the lawyers to assess their clients or to communicate with their clients violates the respondents [sic] due process rights.*"
- "*inability of the defendant to speak directly to counsel without delaying the proceedings. There needs to be a system devised to allow direct, secure communication.*"

For proceedings in which defendants do not yet have an attorney, respondents expressed concern about the timeliness of defendants being able to connect with counsel. Respondents were concerned about defendants' understanding of their right to counsel and their ability to initiate contact with appointed counsel. One respondent stated, "*a defendant, being confused, declines counsel, simply because there is no attorney present to signal that this may be a disadvantage to him.*" Further, respondents were concerned that virtual proceedings would delay contacts between defendants and counsel because of issues "*getting attorney information to the client*" and because "*[the] inmate does not have immediate access to their assigned*

*attorney*". Another respondent echoed this concern, stating that they were not sure how the defendant would receive their attorney's contact information because *"getting the phone numbers and addresses to the defendants would normally be done in person by handing them a business card."*

Respondents were also concerned about lawyers' ability to speak privately and confidentially with defendants during virtual court proceedings, noting that attorneys often need to clarify or discuss aspects of the case with their client and remind them what they should (or should not) say in court. One stated, *"Having the attorney and the defendant in a separate place concerns me during the proceeding in case there are any questions or the defendant needs to speak with his/her attorney confidentially."* Further, even if the attorney is able to speak with their client virtually, respondents expressed concerns that the communication would not be private. One respondent indicated that *"the telephone really does not work well when the attorney is in the courtroom"* and that they were *"not sure how much privacy the defendant has on the jail end of the phone."* Additionally, many respondents indicated the importance of smaller, more immediate attorney-client communications, particularly to nudge or inform defendants regarding what to say or withhold during proceedings. One respondent stated, *"it's hard [for] an attorney to jump in and provide advice if a person is saying things they shouldn't or if something happens that shouldn't."* Another stated that attorneys often *"spend a lot of time interrupting defendants and reminding them not to talk about their case on video"*.

### **Technology Access**

Respondents often indicated that they were concerned about the ability to access and use the technology needed to conduct effective virtual proceedings. Respondents voiced concerns about access to good technology and equipment, as well as the potential failure of the necessary technology.

Respondents expressed concern about the *"widespread availability of technology"*, noting that certain jurisdictions may not have the necessary equipment and that people outside of the courtroom may not have access to the required technology. For example, one respondent stated, there is *"not enough remote equipment and some districts have no capability for remote hearings because county would not provide [it]."* Respondents also frequently indicated that many people, particularly victims, family members, and the public, do not have access to the technology needed to attend virtual proceedings. In voicing this concern, one respondent noted that *"the victim and/or victim's family has a right to be present and to be heard."* Others stated that *"there is no chance for family of defendant to be present"*, and that *"court watchers like MADD have not been able to participate actively in [virtual] court proceedings"*. Additionally, respondents expressed concern that, even if the jurisdiction has the appropriate technology, people would not have the proficiency required for operation.

Many respondents expressed concern about technological issues or failures during virtual proceedings. One respondent stated that courts *"do not have the IT infrastructure to conduct these hearings virtually"*, and another indicated that they were *"very concerned that technology would not work right and that could cause constitutional issues."* Respondents indicated concern about multiple technological issues, including *"technological glitches"*, *"feedback issues"*, *"sound [going] in and out"*, and *"dragging internet"*. Concerns about technological failure were amplified by participants' own experiences with technology issues during virtual court proceedings:

- *“More often than not, the video equipment does not work or does not work properly . . . When the equipment does not work properly, especially the audio portion, it is extremely frustrating for the judge and the defendant. It also causes the jail to have to bring the defendant to the courtroom and causes delays in the court proceedings and disrupts the flow of court”* (identifiers in this quotation were removed).
- *“Our experience with it was horrible. The sound was in and out and the connection was not good. We had to restart and go back and redo multiple times.”*
- *“Our bandwidth is very slow here and it was difficult for that reason. It was a lot of work to get it set up with the prison system and I was sure it would not happen up until the last minute”* (identifiers in this quotation were removed).

### **Decreased Efficiency**

As reported above, many respondents identified increased efficiency as a benefit of virtual proceedings. However, many respondents thought otherwise, indicating that virtual proceedings would be less efficient than in-person ones. These concerns were primarily voiced regarding logistical aspects of court processing, particularly completing and filing necessary paperwork. Some respondents also expressed concern that the logistics of setting up virtual court proceedings and transitioning between cases would take more time than if proceedings were conducted in-person.

The most common efficiency concern indicated by respondents was accessing, completing, and filing paperwork. Respondents noted that the *“logistics of moving documents is more complicated”* in virtual proceedings. Respondents expressed concern that having to complete paperwork remotely would *“slow the process down”*, as it *“can be cumbersome to get completed and shared virtually”*, requires coordination from *“multiple parties”* that have to fill-in and sign paperwork, and would *“take longer to obtain”*. Further, respondents indicated that *“paperwork issues”* (such as not being *“filled out correctly”* or *“properly filed”*) would cause longer delays than if the proceeding was conducted in-person. Additionally, respondents were concerned that *“participants do not have access to the court files”* during virtual proceedings and that virtual proceedings would *“minimize thorough review of paperwork”*.

Some respondents also expressed concerns that virtual proceedings would require more time and thus decrease their efficiency. The main reasons provided for this concern was that virtual proceedings would require more set-up time at the beginning of each proceeding and require more time to transition between cases. One respondent described this concern by saying *“virtual hearings take longer. Getting a case tee'd up takes getting the defendant, defense counsel, Judge, and DA on the line with varying grades of internet connections and equipment . . . it takes about 5-10 minutes to get everyone synced up”* (identifiers in this quotation were removed). Another respondent stated that *“transition between multiple defendants can take time”*.

### **Other Concerns**

Other reported concerns about virtual proceedings included enforcement of judicial orders, increased likelihood of appeals, and perceived legitimacy of proceedings, among others. Nuanced concerns reported for specific virtual proceedings are presented in the sections below.

## **Best Practice Suggestions—Generally**

Participants were asked for their best practice suggestions for virtual proceedings. Across all types of proceedings, the most common suggestions included using good technology and ensuring sufficient advance preparation. This section describes, generally, participants' reported suggestions for best practices when conducting virtual court proceedings.

### ***Good Technology***

Many of the suggestions for how to best conduct virtual proceedings centered around logistical aspects of equipment, technology, and paperwork. Respondents indicated that *“counties [should] be required to provide working equipment”* and that there must be an assurance that *“all counties and their jails have working equipment”*. Technology also was discussed regarding completing paperwork. Some respondents had specific suggestions regarding the technology and equipment required for conducting virtual court proceedings:

- *“Centralized email dropbox accessed/managed by 2-3 staff members”*
- *“have more courtroom[s] wired to do remote”*
- *“it would be helpful to have a Dropbox on WebEx where clerk's [sic] could drop the documents to judges/adas as opposed to emailing them”*
- *“we are looking at jurislink technology so that forms can be completed electronically during the hearings. I think this will become a best practice. Affidavits of indigency, waivers of counsel, appointment of counsel and other forms can all be done electronically”*
- *“scanner/printer at each end so that inmates can receive documents from the court, and sign and transmit documents to the court”*
- *“we need to be sure we have access to good quality speakers and high speed internet”*
- *“larger screens rather than a tiny little screen on a stand that is being used like the inmates use for video visits”*
- *“the ‘stations’ need to be professionally installed and the connections need to be either wired or lots of bandwidth”*
- *“need something on the walls or floor in the jail room so that there is not an echo”*
- *“High quality audio system with stereo microphones at each station (judge, defendant, defense attorney, prosecutor) which would help eliminate background noise and improve quality.”*

More general comments in the same vein suggested making sure that equipment is *“up to date”*, the *“connection is clear”*, everything is secure, and that paperwork can be completed and shared in real-time (or as efficiently as possible). Some respondents suggested that individuals or entities should be put in charge of the logistical aspects of technology, equipment, and paperwork. One participant suggested that courts should *“Put an entity / agency in charge of making sure the tech works and the defendants are coordinated on that end of things. That someone is accountable to the court to ensure that things run smoothly”*. Another suggested *“having a clerk or other clerk's office official at the facility where the person is located so that any documents are appropriately identified and provided to the person”*.

### ***Preparation***

Many respondents indicated that advance preparation would be essential for efficient virtual proceedings. This largely included having *“the paperwork ready”* and emailed or delivered to the parties in advance of the virtual proceeding. Many respondents stressed this suggestion



multiple times, continually stating the importance of having paperwork completed, filed, and provided to all parties before the proceeding begins. Respondents also indicated that having the appropriate paperwork ready ahead of time is especially important for “*giving the judge time to review documents*”. In addition to having the paperwork completed, some respondents noted that “*it would be important to be able to see the paperwork on screen*”.

Respondents indicated that all participants should review proceeding materials and prepare in advance. One respondent suggested that there be a “*standardized checklist for the prosecutor and defense attorney to complete in advance*”. Respondents also noted the importance of defense attorneys meeting with clients before certain proceedings, and that there should be an assurance that the defendant has had a chance to review and understand necessary information ahead of time.

### ***Other Suggestions***

Other suggestions for best practices included hybrid implementation of virtual proceedings, encouraging the defendant’s participation in proceedings, and facilitating confidential attorney/client communication.

Hybrid implementation of virtual court proceedings was discussed in two main ways. First, respondents suggested conducting virtual court proceedings in which some participants attend virtually and others attend in-person. Second, respondents suggested using virtual court proceedings on a case-by-case basis, with some proceedings occurring virtually and others occurring in-person.

Respondents also suggested that virtual court proceedings must encourage the defendant’s participation to ensure that the defendant understands the proceedings, has the opportunity to ask questions or voice concerns, and feels like an active participant in the proceeding. Respondents suggested intentionally addressing the defendant to inquire if they understand and/or have any questions and provide multiple opportunities for defendants to speak during virtual proceedings.

Respondents indicated that virtual proceedings need to properly facilitate confidential communication between defense attorneys and their clients. However, most respondents noted that they did not have specific suggestions for how to best do this. Respondents who provided concrete suggestions for the facilitation of attorney/client communication most commonly suggested that the attorney and defendant be together when attending virtual proceedings. Some respondents suggested that attorneys and their clients have a separate phone line to pause the proceeding and communicate, though they also noted that may cause virtual proceedings to be take longer and be more disjointed, and that the communication may not be completely private.

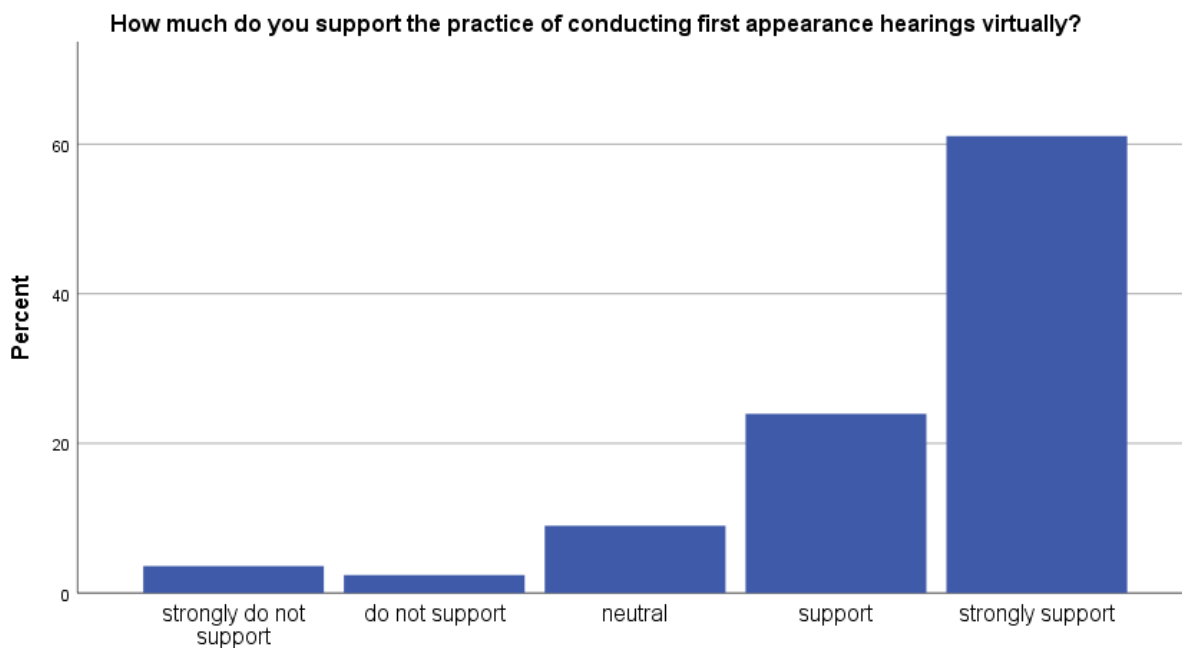
Nuanced suggestions reported for specific virtual court proceedings are presented in the sections below.

## Specific Court Proceedings

### ***First Appearances***

167 participants responded to survey questions about first appearances. The vast majority indicated support for conducting these proceedings virtually, with most expressing strong support for virtual first appearances (Figure 4). This level of support may be unsurprising given the high number of respondents who indicated that virtual first appearances were being conducted before the pandemic (see previous section). Many participants indicated that their jurisdiction(s) have been conducting virtual first appearances for years for in-custody defendants. As one respondent noted, “*it has been an accepted practice for many years.*”

**Figure 4. Support for Virtual First Appearances**

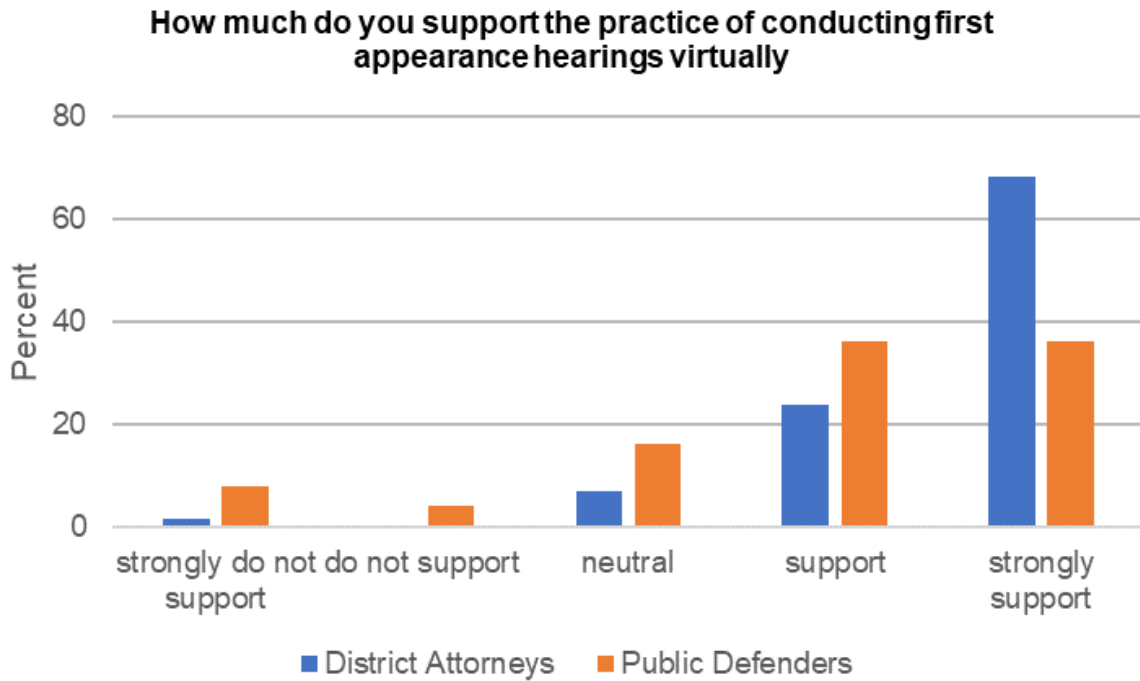


Although most respondents indicated support or strong support for virtual first appearances, district attorneys, on average, indicated stronger support for virtual first appearance than public defenders, and this difference was statistically significant.<sup>3</sup> Over two-thirds of district attorneys indicated that they strongly support virtual first appearance hearings, while most public defenders were split between “support” and “strong support” (Figure 5).

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<sup>3</sup> “Statistical significance” refers to results that are unlikely to have occurred by random chance. One-way analysis of variance (ANOVA) was calculated on court actors’ indicated level of support, and Tukey’s HSD was used to test differences between the court actors. Significance was determined using a 95% confidence interval threshold.

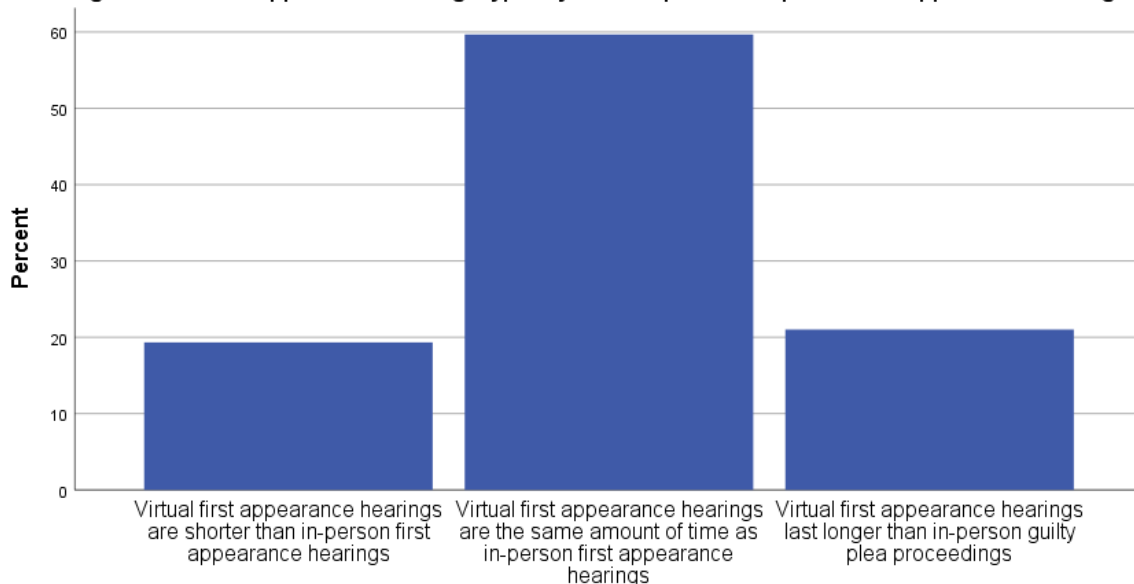
**Figure 5. Support for Virtual First Appearances Between District Attorneys and Public Defenders**



Respondents who indicated that they had participated in virtual first appearances before or during the pandemic were asked how long virtual first appearance hearings typically last compared to in-person hearings. Of the 119 participants who responded to this question, the majority (60%) indicated that virtual and in-person hearings take the same amount of time (Figure 6).

**Figure 6. Time Required for Virtual and In-Person First Appearances**

How long do virtual first appearance hearings typically last compared to in-person first appearance hearings?



The most frequently reported advantages of virtual first appearances were:

1. Alleviated transportation needs for in-custody defendants.
2. Increased efficiency through other alleviated transportation needs, reduced amount of coordination required to get all participants in the courtroom at the same time, less pressure on holding cell capacity, and eliminating the need for a bailiff.
3. Increased safety for participants by reducing risk of COVID-19 exposure.

Another less frequently reported advantage of virtual first appearances related to enhanced communication between the judge and the defendant during the hearing, as it would allow the judge to give their “*full attention*” to the defendant. Some respondents also noted that by decreasing the number of people in the courtroom, virtual first appearances could cut down on distractions and security issues, and that virtual first appearances can be scheduled more quickly than in-person hearings.

Sample comments regarding advantages of virtual first appearances are provided in Table 2.

**Table 2. Sample Comments—Advantages of Virtual First Appearance Hearings**

Comment
<i>“court transitions [are] smoother to a virtual first appearance than with a proceeding where the person is brought to the courtroom”</i>
<i>“conducting virtual first appearance hearings reduces the time it takes for bailiffs and detention officers to present the individual who is in custody for their advisement”</i>
<i>“defendants can be made available more quickly if there was miscommunication about their need for a first appearance”</i>
<i>“could be conducted sooner than the scheduled in person hearings”</i>
<i>“defendants aren’t exposed to possible contagions in the courtroom (and vice versa)”</i>
<i>“I can have just as in depth a conversation on video as when someone is standing in front of me”</i>
<i>“The courthouse has very limited holding cell capacity, which as an issue even prior to COVID-19”</i>
<i>“I believe [virtual first appearance hearings] are more secure even absent Covid 19”</i>

Over one-quarter of respondents indicated that they did not have any concerns about conducting first appearance hearings virtually. Of those that did report concerns, the most frequently reported were:

1. The defendant’s ability to effectively communicate, understand, and present themselves to the court.
2. Access to adequate technology for completing necessary paperwork and conducting video conferences without failure or delays.
3. Defendants’ Sixth Amendment right to effective and confidential communication with their attorneys.

Less frequently reported was the concern that conducting first appearances virtually would inhibit people’s ability to attend the proceeding: namely, the defendants’ family members and/or victims. Also reported was the potential for the defendant to be “dehumanized” through virtual attendance, as well as concerns about the use of interpreters.

Sample comments regarding concerns about virtual first appearances are provided in Table 3.

**Table 3. Sample Comments–Concerns about Virtual First Appearances**

Comment
<i>"inmates may not feel as comfortable to ask questions through the screen"</i>
<i>"the accused may not think they had a chance to be heard"</i>
<i>"People say things they shouldn't on video because they don't understand who else is in the room."</i>
<i>"it is possible that receiving information from a face on a monitor may not have the same impact upon the Defendant, as it would if done in person."</i>
<i>"technology can always be a barrier to understanding the nuances of a specific charge, maximum punishment, procedure, etc."</i>
<i>"has the potential to dehumanize the individual in custody. A person who simply appears on a screen is not as present as a person right in front of the judge."</i>
<i>"limited ability to assess nonverbal communication and assess pretrial release factors"</i>
<i>"a defendant, being confused, declines counsel, simply because there is no attorney present to signal that this may be a disadvantage to him."</i>
<i>"the defendant is on their own against the judge and DA. This is awful for obvious reasons"</i>
<i>"we are working off faxed copies and getting original paperwork after the hearings. As a result of all the copies being generated and then adding originals, the case files are getting cumbersome"</i>
<i>"More often than not, the video equipment does not work or does not work properly . . . When the equipment does not work properly, especially the audio portion, it is extremely frustrating for the judge and the defendant. It also causes the jail to have to bring the defendant to the courtroom and causes delays in the court proceedings and disrupts the flow of court."</i>
<i>"families would like to see their loved ones in-person"</i>
<i>"The ability to actually privately speak with a defendant is nearly impossible. So is the ability to tell a client not to speak regarding their case. Another problem is that the [Public Defender] does not have the ability to speak to Defendants ahead of time to prepare them"</i>
<i>"no counsel is provided at the hearing"</i>
<i>"pressure on defense attorneys to do them quickly which often leads to less time speaking to defendants"</i>
<i>"non-English speaking Defendant's [sic] may not fully understand the phone interpreters when in-person interpreter not available."</i>
<i>"it IS harder to have to call the interpreter hotline than to have a live interpreter in front of me in the courtroom"</i>

The most frequently reported suggestions for best practices when conducting first appearances virtually were:

1. use adequate equipment and technology; and
2. make necessary advance preparations.

Other less frequent suggestions included enhancing technological capacity for more virtual first appearances, ensuring that the defendant can hear and understand, ensuring that defense attorneys are communicating with their clients, protecting the right against self-incrimination, coordinating with the Sheriff, following procedures for in-person hearings, protecting the defendant's right to be heard, and encouraging the defendant's participation in the hearing.

Sample best practice suggestions for virtual first appearances are provided in Table 4.

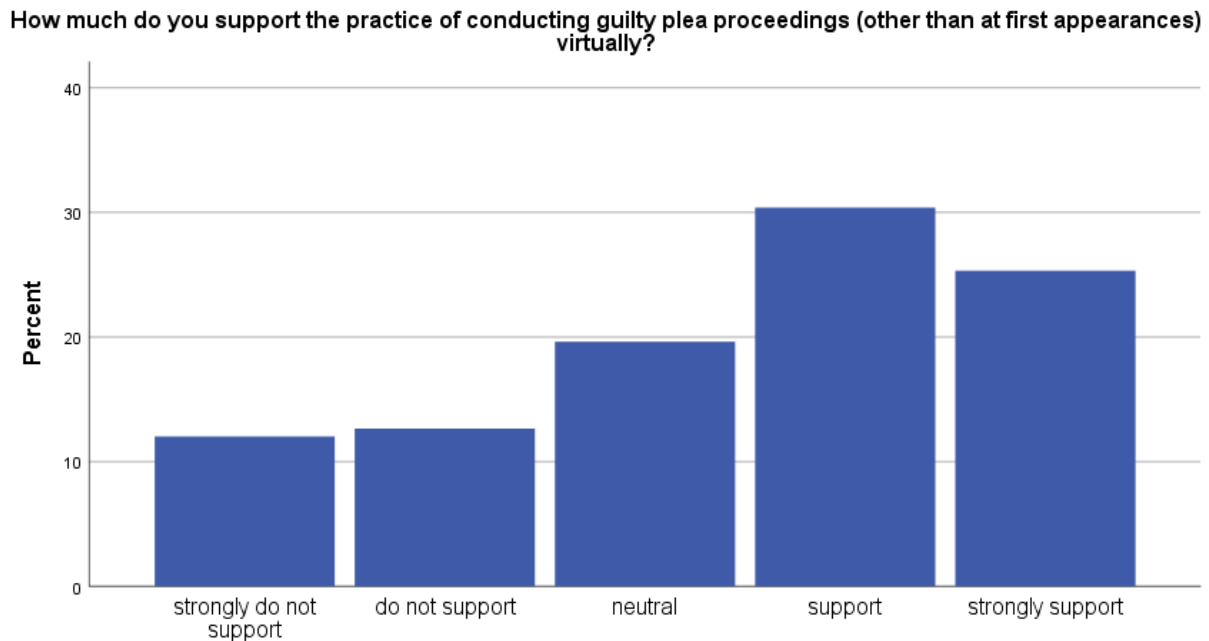
**Table 4. Sample Best Practice Suggestions–Virtual First Appearances**

<b>Comment</b>
<i>“improve technology and have more courtroom[s] wired to do remote 1<sup>st</sup> appearances”</i>
<i>“we need to be sure we have access to good quality speakers and high speed internet”</i>
<i>“Defendant be seated and on-camera from the beginning.”</i>
<i>“The judge needs to confirm the identity of the defendant to make sure that they have the correct paperwork for the person on the screen.”</i>
<i>“Make sure all important information – pre-trial assessments, charging documents, docket, is provided to the parties before court starts. . . . this gives the [Public Defender] time to look up information about clients that could be very relevant to bond conditions.”</i>
<i>“Make sure all the stakeholders have a process to handle the first appearances to whatever extent they are being done virtually – whether entirely virtual or just the defendant appearing remotely.”</i>
<i>“Conduct them as you would an in-person first appearance.”</i>
<i>“get buy in from Sheriff”</i>
<i>“Scripts that invite a defendant to ask questions or express concerns.”</i>
<i>“The judge needs to let the defendant be heard on the proposed bond/release conditions, and the judge needs to make sure that the defendant understands what has been decided.”</i>
<i>“Allow the person to be heard, without incriminating themselves”</i>
<i>“Have a public defender present to answer questions and explain things like probable cause for felony cases”</i>

### Guilty Plea Proceedings

158 survey participants responded to survey questions about plea proceedings. Most respondents indicated support or strong support for virtual plea proceedings (Figure 7). Conversely, only one-quarter of respondents indicated that they do not support or strongly do not support conducting plea proceedings virtually.

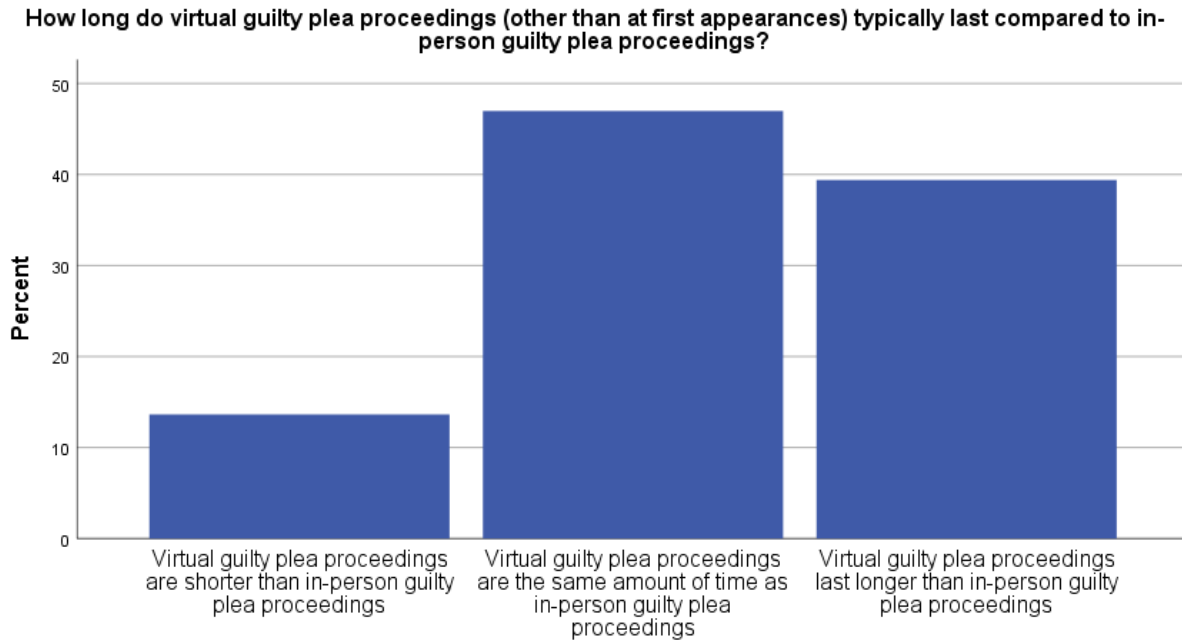
**Figure 7. Support for virtual guilty pleas**



On average, different court actors reported similar levels of support for virtual guilty pleas. That is, there were no statistically significant differences in the average level of support endorsed by judges, district attorneys, public defenders, contract attorneys, or clerks.

Respondents who indicated that they had participated in virtual plea proceedings before or during the pandemic were asked how long virtual guilty plea proceedings typically last compared to in-person proceedings. 66 survey participants responded to this question, with almost half (47%) indicating that virtual and in-person pleas take the same amount of time (Figure 8).

**Figure 8. Time Required for Virtual and In-Person Guilty Pleas**



The most frequently reported advantages of conducting guilty plea proceedings virtually were:

1. Increased safety for participants by reducing risk of COVID-19 exposure.
2. Alleviated transportation needs, primarily for in-custody defendants and for participants who live outside the county.
3. Increased efficiency because of better advance preparation, alleviated transportation needs, and ease of scheduling.

Less frequently, respondents reported that virtual plea proceedings could reduce instances of defendants failing to appear. Respondents also indicated that virtual proceedings could be more accessible for participants with disabilities and participants who would otherwise need to take time off work or arrange childcare.

Sample comments regarding advantages of virtual guilty plea proceedings are provided in Table 5.



**Table 5. Sample Comments—Advantages of Virtual Plea Proceedings**

Comment
<i>“Out-of-state clients benefit from a remote proceeding for obvious reasons.”</i>
<i>“As long as the defendant has executed any needed waivers, it streamlines the process without having to wait on the defendant to be transported from jail to the courthouse.”</i>
<i>“As with virtual first appearance hearings, if the defendant is incarcerated, having a virtual guilty plea proceeding can cut down on the travel time between detention facilities and between the jail and the courthouse.”</i>
<i>“Easier for defense attorney if s/he is in another county. Same for defendant.”</i>
<i>“I think it’s the best opportunity for getting pleas done in a timely manner without exposing anyone, clients or court staff alike, to extra risks of infection. Transportation restrictions and risks would leave clients sitting in jail for significantly longer than reasonable if we were unable to conduct the virtual hearings.”</i>
<i>“easier to schedule for a time certain, which helps defendant, jail staff, attorneys. Allows pleas without transport to courthouse or even county if defendant is out of county. Permits victim observation/participation without having to be in the same room.”</i>
<i>“Guilty plea proceedings in both District and Superior Courts are faster than in person hearing because defense counsel and the District Attorney have to be prepare in advance.”</i>
<i>“requires greater preparation for hearings generally, makes it evident if one party is unprepared”</i>
<i>“people who have disabilities could attend court much easier and without having to miss so much work and expend money for gas, etc.”</i>
<i>“allows defendants to not have to take off work or [get] child care for an entire day”</i>

The most frequently reported concerns about conducting plea proceedings virtually primarily related to the defendant’s constitutional rights, including:

1. The defendant’s understanding of the guilty plea and the determination of whether the defendant’s waiver of rights is knowing, voluntary and intelligent.
2. The inability to have confidential attorney-client communications.

Other frequently reported concerns included:

3. Decreased efficiency as a result of delays in completing paperwork and scheduling difficulties.
4. Access to necessary technology.

Many respondents indicated that these concerns raised questions about the legitimacy of virtual pleas, with some expressing the concern that virtual pleas would lead to more appeals. Other less frequently indicated concerns included the ability to enforce judgments, the security or privacy of the online proceedings, the ability of victims to attend virtual proceedings, the need to obtain a waiver from the defendant before conducting a virtual proceeding, and the fact that a virtual proceeding may undermine the seriousness of the proceeding and the issues being addressed.

Sample comments regarding concerns about virtual plea proceedings are provided in Table 6.

**Table 6. Sample Comments—Concerns about Virtual Plea Proceedings**

Comment
<i>"I would have concerns about accepting guilty pleas in district court because it is not a court of record. There needs to be additional effort (and this is true even for non-virtual pleas) to ensure the pleas are being entered into voluntarily, knowingly, etc."</i>
<i>"it's important on the record for potential appellate issues that the defendant completely understand and hear every single word of that plea hearing."</i>
<i>"It potentially can be harder for the Judge to read the body language and tone of a defendant remotely to be sure that he/she understands the nature of the plea."</i>
<i>"The current system does not provide a convenient mechanism for defense counsel and client to communicate securely and privately."</i>
<i>"It is common for defendants to want to talk to their attorney multiple times (especially in superior court) before entering the plea"</i>
<i>"Counsel not submitting signed waivers for remote pleas and the Court not realizing until after the plea has occurred. What impact does this have on the validity of the plea?"</i>
<i>"If any problems arise during the plea proceedings, either the courtroom will have to be cleared for the attorney to speak with the client or the matter will have to be postponed."</i>
<i>"There is . . . a sense of the seriousness of the issue when a defendant is present in court, in front of the judge and having to potentially face the victims of his crime. Video pleas tend to make it more transactional."</i>
<i>"[There are] guilty pleas that get appealed as it is, or other post-conviction relief is filed despite a thorough in-person plea colloquy. . . . [W]hat it would look like with this."</i>
<i>"For defendants not in jail - I don't see how it can be done as they are not present in court to have the sentence carried out - if they get jail time or probation who's to say they will show up to actually go forward with the sentence."</i>
<i>"In cases where jail time is required, I fear failure to report to the jail"</i>
<i>"Without physically coming into an open courtroom to view the proceedings, victims, victims' families, and members of the public are unable to view the proceedings virtually. If there were an online platform in which individuals could log in and see the court proceedings, I believe these stakeholders would be better served than our current system."</i>
<i>"we need to be careful that defendants know that at any time they can still stop the proceedings and have private conversations with their attorneys."</i>
<i>"Having the attorney and the defendant in a separate place concerns me during the proceeding in case there are any questions or the defendant needs to speak with his/her attorney confidentially."</i>
<i>"Ensuring that the individual that is taking the plea is certain of what they are doing and entirely understands what the plea entails."</i>
<i>"I am concerned that people could not clearly hear all that was being said. I am concerned that there was a barrier to people asking questions or for clarification. Everyone was clearly frustrated. I am concerned that there could be issues for future post-conviction challenges or appellate issues that could undo the plea."</i>
<i>"I believe that we would be opening ourselves up to multiple [Motions for Appropriate Relief] in the future if we do guilty plea proceedings virtually"</i>

The most frequently reported best practice suggestions for conducting virtual plea proceedings were:

1. Use equipment and technology that allow for clear audio and video for all parties and efficient "transfer of documents and signatures".

2. Facilitate effective attorney-client communication before and during the proceeding.
3. Prepare in advance, including reviewing and completing all paperwork or having paperwork ready for completion and ensuring that all participants are on-time and that defense attorneys have communicated with their clients before the proceeding.
4. Hybrid implementation.

Respondents who suggested hybrid implementation had a variety of suggestions: that virtual plea proceedings should only be used for lower-level offenses; that defense attorneys and clients attend together, while all other court participants attend virtually; that the decision to proceed virtually should be made on a case-by-case basis and only with the defendant’s consent; and that virtual proceedings should only occur for in-custody defendants. Other, less frequently provided suggestions included encouraging the defendant’s participation in the proceeding; obtaining written consent to proceed virtually from the defendant; providing training to all involved court professionals; ensuring that the defendant understands the proceeding and modifying the transcript of plea to record that fact; and ensuring that proceedings are recorded.

Examples of suggestions for best practices when conducting virtual plea proceedings are provided in Table 7.

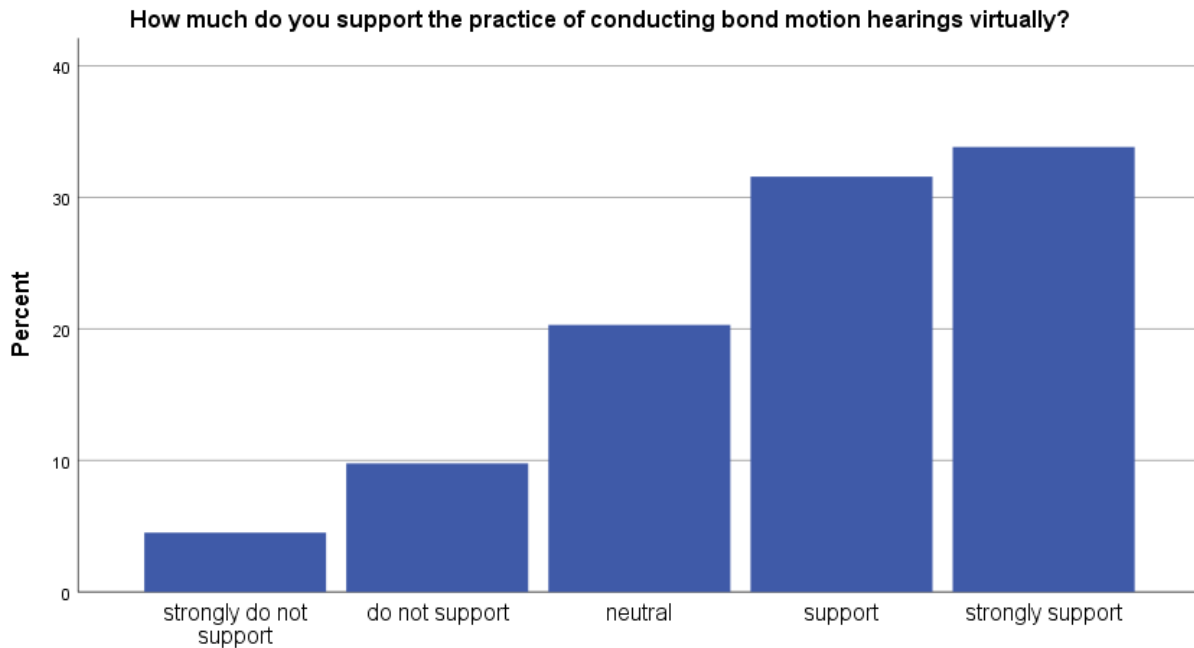
**Table 7. Sample Best Practice Suggestions–Virtual Plea Proceedings**

Comment
“A ‘public’ laptop could be provided for defense attorneys to use in court to communicate with their clients via a background texting app. Defense attorneys would need to be masked/gloved to use this terminal (and I suppose it would need a wipe down after every attorney).”
“Make sure there is some way for the defendant to speak to counsel if they have a question and make sure the defendant understands that the plea hearing will stop if he has a question that needs to be addressed with counsel.”
“Mandate all defense attorneys must see clients in advance and have all paperwork in court, ready to go, before plea can start.”
“Be sure to have written transcript and have the judge review it verbatim to ensure clarity and understanding. Also, the court could require the inmate to have a copy of the transcript in front of them so they can also read along with the judge during the review of the transcript.”
“Training for all court personnel with standard protocols so that all cases handled consistently. [T]his includes jail personnel who would be assisting the Defendant.”
“give the defendant the option to opt out of virtual. No defendant should be required to enter [guilty pleas] virtually.”
“I generally feel that the legal risks are higher taking pleas virtually then [sic] they are with doing probation and/or first appearances or motion hearings by camera. If we continue with it we may need to add a question or paragraph on the plea dialogue between Judge and Defendant at the end where Defendant certifies to the Judge that he understood everything and had no problems hearing or seeing, did not wish to consult privately with counsel etc.”
“Defendant needs to sign a waiver or notice of some form agreeing to the virtual hearing (that defense counsel would file with the clerk or present to the Court).”
“In district court (and less critically in superior court) virtual guilty pleas should be video recorded. . . . [D]oing them virtually adds an extra layer of illegitimacy that can be overcome in part by video recording.”

### **Bond Motion Hearings**

133 survey participants responded to survey questions about bond motion hearings. Almost two-thirds of respondents (65%) indicated support or strong support for conducting bond motion hearings virtually (Figure 9).

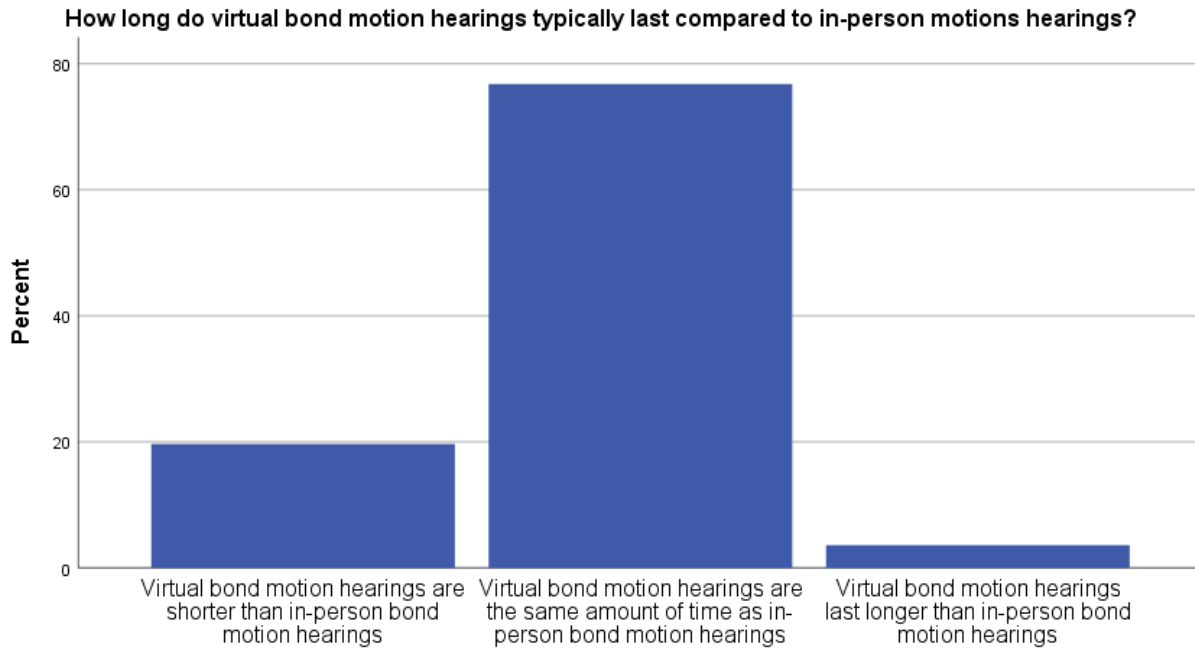
**Figure 9. Support for Virtual Bond Motion Hearings**



There were no significant differences in the average level of support for virtual bond motion hearings between different court actors.

Respondents who had participated in virtual bond motion hearings before or during the pandemic were asked how long virtual bond motion hearings typically last compared to in-person proceedings. 56 survey participants responded to this question, with over three-quarters (77%) reporting that virtual bond motion hearings take the same amount of time as in-person hearings (Figure 10).

**Figure 10. Time Required for Virtual and In-Person Bond Motion Hearings**



The most frequently reported advantages of conducting bond motion hearings virtually were:

1. Increased safety for participants by reducing risk of COVID-19 exposure.
2. Increased efficiency by saving time on transporting defendants and switching between cases, as well as easier scheduling for all court participants.
3. Alleviated transportation needs for in-custody defendants.

Samples comments regarding advantages of virtual bond motion hearings are provided in Table 8.

**Table 8. Sample Comments—Advantages of Virtual Bond Motion Hearings**

Comment
<i>“The biggest advantage is that they are SIGNIFICANTLY easier to get scheduled when we do them virtually - even as compared to scheduling them before the pandemic. . . . [B]eing able to handle these hearings well in advance of court dates that are often set months out without causing concern for the health and safety of really anyone has been great.”</i>
<i>“Potential cost and time savings by avoiding prisoner transport.”</i>
<i>“Remote hearings reduce inmate movement which is always a preferred result, both prior to COVID and during this crisis.”</i>
<i>“It is easier for the deputies because they do not have to bring defendants into the courtroom; which in turn limits the amount of people physically present.”</i>
<i>“hearings could be conducted sooner”</i>

At least 20% of participants indicated that they had no concerns about virtual bond motion hearings. Among those who had concerns, the most frequently reported concerns about conducting bond motion hearings virtually were:

1. The defendant’s Sixth Amendment right to counsel
2. Issues with effective communication, primarily related to the judge’s ability to observe the defendant, and the defendant’s ability to understand the proceeding and present themselves to the court, and all participants’ ability to actively participate and be heard.
3. Access to necessary technology.

Other less frequently reported concerns included undermining the perceived seriousness or legitimacy of the hearings; the ability to present evidence; the possibility that virtual bond motions will dehumanize the defendant and may result in more restrictive conditions of release; and that virtual proceedings impair the ability of the victim, their family members, and the defendant’s family members to observe and/or participate.

Sample comments regarding concerns about virtual bond motion hearings are provided in Table 9.

**Table 9. Sample Comments—Concerns about Virtual Bond Motion Hearings**

Comment
<i>“There are times when it is important for the judge to be able to better observe the client and see how genuine the client may be.”</i>
<i>“For in custody defendants, it is difficult for defense counsel and prisoners to communicate privately.”</i>
<i>“Need to be able to have counsel with defendant to communicate confidentially and also actively participate in the proceeding.”</i>
<i>“The judge may be more willing to impose harsher release conditions than otherwise without the accused's physical presence.”</i>
<i>“It can be difficult for victims and family members of victims to hear the defendant speaking or to see the defendant on the screen from where they have to sit socially distancing in the courtroom gallery.”</i>
<i>“more difficult to utilize exhibits, are attorneys equally persuasive in virtual format? [D]oes it affect the outcome when people are in NOT in the court room advocating for their position?”</i>
<i>“I have concerns about the dichotomy if the prosecutor, victim, defense attorney, and judge are all in person together but the defendant is virtual.”</i>
<i>“A lot of sensory and communication beyond just the words are lost. That seems to dehumanize the client.”</i>
<i>“Specific to bond hearings, I have concerns about family/community members of the Defendant or the victim who deserve to be heard, but cannot be present. I think it is a disservice to all involved to hold them virtually.”</i>
<i>“there is no practicable way for the attorney to speak to the defendant without everyone else hearing what is being said. In court, the attorney can lean over and whisper. You can't do that with a computer—you can't ask the judge to mute everyone but the attorney and his client.”</i>
<i>“the victim and/or victim's family has a right to be present and to be heard, if they choose, so that must be considered before a virtual hearing is conducted.”</i>
<i>“Holding them virtually would injure public faith in the process on all sides of the equation.”</i>
<i>“[It would be] harder to present physical evidence”</i>

The most frequently reported best practice suggestions for virtual bond motion hearings were:

1. Access to and use of adequate equipment and technology.
2. Make necessary advance preparations, including prosecutors and defense attorneys reviewing relevant information, “communication between all parties before the bond hearing”, and ensuring the judge has access to all necessary paperwork and exhibits.

Less frequently made suggestions included making sure that victims are able to attend and speak; facilitating confidential communication between the defense attorney and the client; enhancing capacity for virtual bond hearings; conducting the hearings virtually on a case-by-case basis; and not conducting contested hearings virtually.

Sample best practice suggestions for virtual bond motion hearings are provided in Table 10.

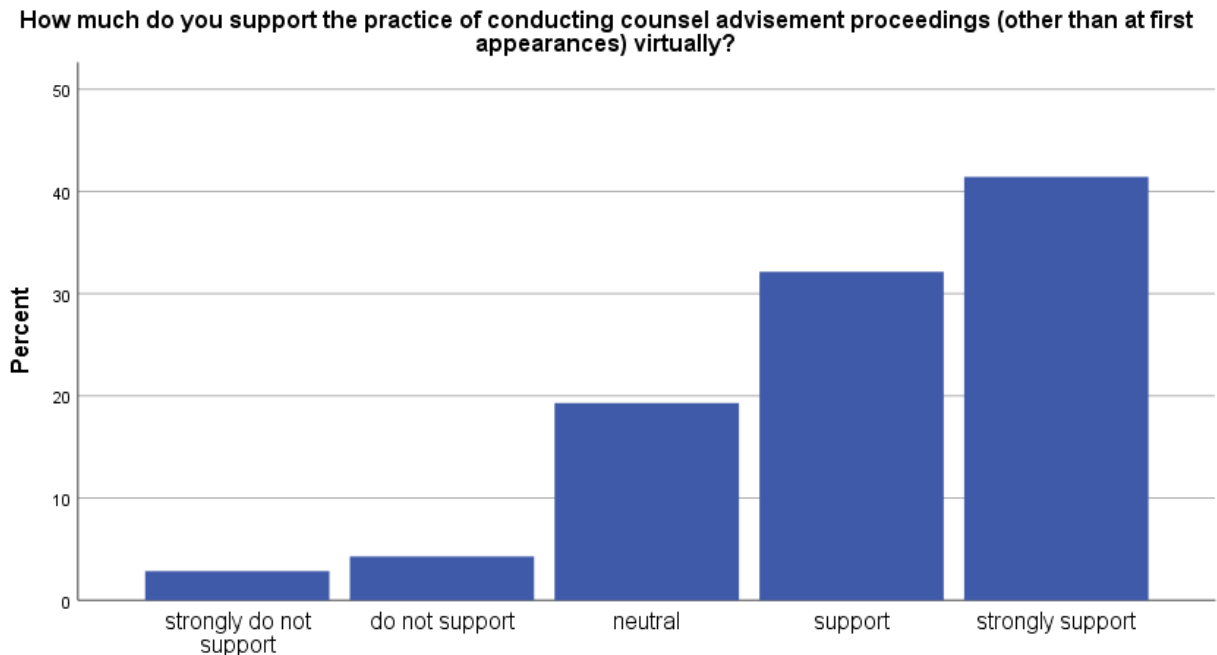
**Table 10. Sample Best Practice Suggestions–Virtual Bond Motion Hearings**

<b>Comment</b>
<i>“It would be great if [courts] could get more technology installed in the courthouse so that [they] could have bond hearings (and really all virtual hearings) on a more consistent basis during regularly scheduled court instead of during special hearing times.”</i>
<i>“Ensure current bond is known by all prior to hearing, and that all have an electronic copy of the motion”</i>
<i>“Standardized checklist for the prosecutor and defense attorney to complete in advance that outlines FTA history, prior record, age, family ties to community, living arrangements, employment history, ability to pay, and other pretrial release factors.”</i>
<i>“Require 48 hours notice before calendaring in order to give the DA's Office time to prepare.”</i>
<i>“include a phone line so that the defense can mute the hearing and have brief discussions about information brought out in the hearing”</i>
<i>“If attorneys have to go off the video to talk with clients, there is danger that other participants will continue to discuss and the attorney and client are not part of the conversation, leading to potential ex parte conversations that would prejudice defendant. Defense attorneys and clients need to be in same location, but also need to be able to actively and effectively communicate and be able to hear and see what is happening at all times during the proceeding.”</i>
<i>“Attorneys need to meet/talk directly with their clients PRIOR to the bond hearing.”</i>
<i>“Making sure that any victims receive notice and can be present virtually if they wish to do so.”</i>
<i>“Unless the bond modification has been agreed upon and the hearing is a formality, no bond motion, especially on felony cases, should be conducted virtually.”</i>

### **Counsel Advisement Proceedings**

140 survey participants responded to survey questions about counsel advisement proceedings. Almost three-quarters of respondents indicated that they supported or strongly supported conducting these proceedings virtually, with strong support endorsed most frequently (Figure 11). Less than 10% of respondents indicated that they did not support conducting counsel advisement proceedings virtually. Some participants' responses indicated unfamiliarity with counsel advisement proceedings.

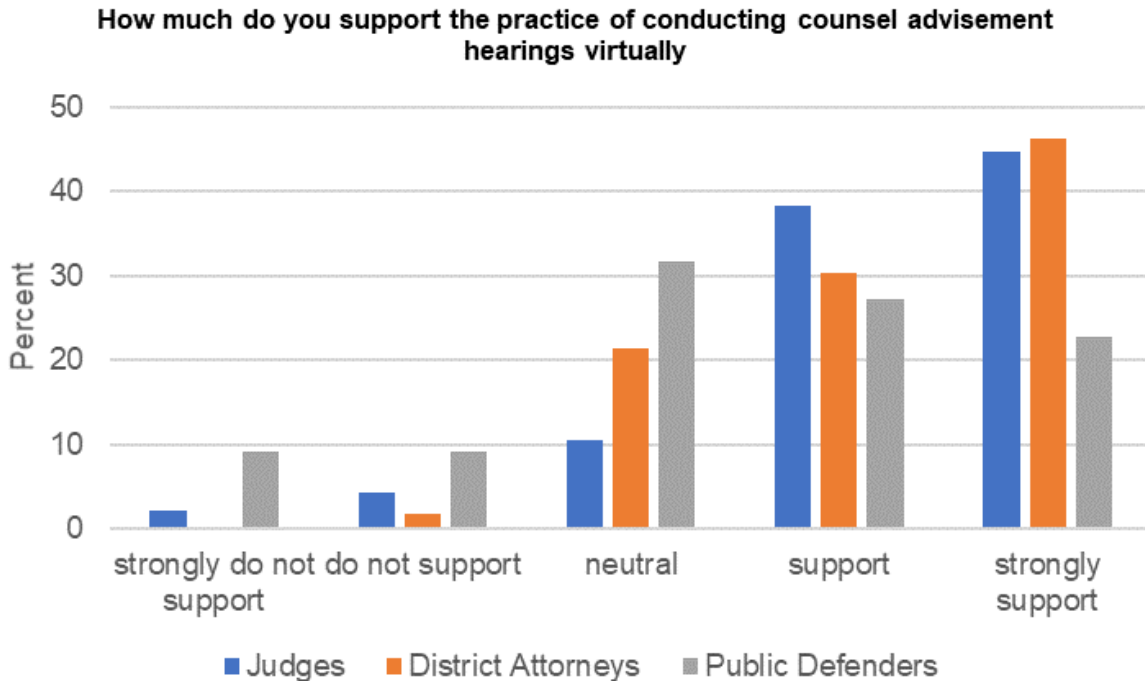
**Figure 11. Support for Virtual Counsel Advisement Proceedings**



While almost all respondents indicated support for virtual counsel advisement proceedings, there were statistically significant differences in the average level of support across court actors. Specifically, both judges and prosecutors indicated slightly higher support, on average, than public defenders. The most common level of support indicated by judges and prosecutors was strong support (Figure 12). Public defenders most commonly reported that they were neutral about virtual counsel advisement proceedings. In all three groups, less than one-third of respondents indicated that they did not support conducting counsel advisement proceedings virtually.



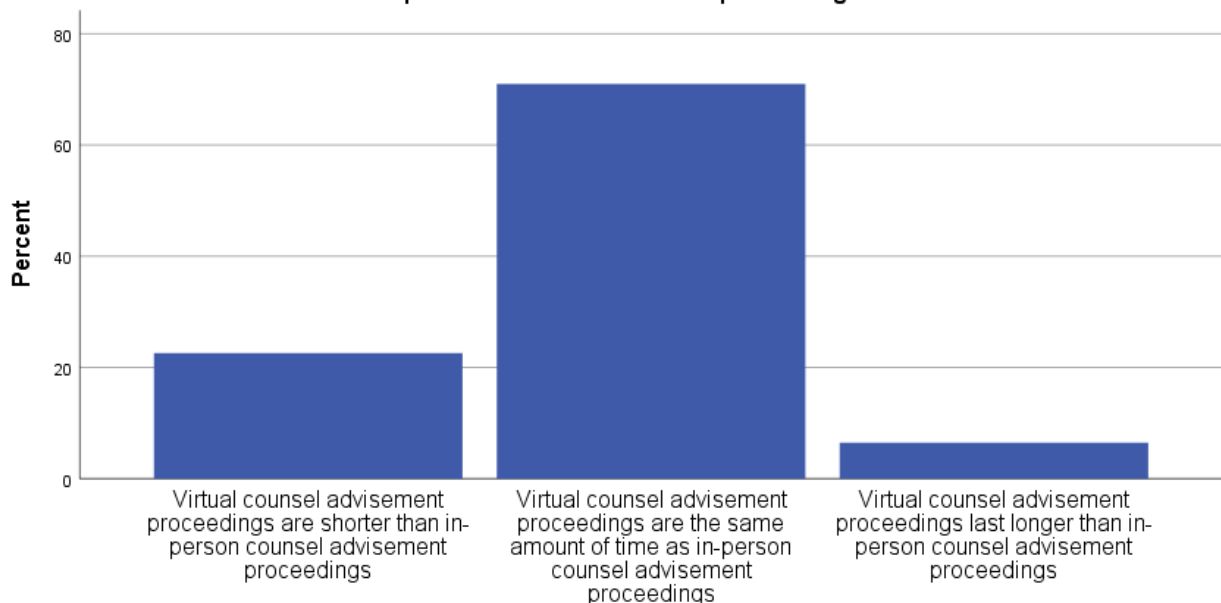
**Figure 12. Support for Virtual Counsel Advisements Between Court Actors**



Respondents who said that they had participated in virtual counsel advisement hearings before or during the pandemic were asked how long virtual hearings typically last compared to in-person hearings. 31 survey participants responded to this question, with most (71%) indicating that they require the same amount of time as in-person proceedings (Figure 13). Almost one-quarter (23%) reported that virtual counsel advisement proceedings are shorter than in-person proceedings, and less than a tenth reported that virtual proceedings take longer.

**Figure 13. Time Required for Virtual and In-Person Counsel Advisement Proceedings**

**How long do virtual counsel advisement proceedings (other than at first appearances) typically last compared to in-person counsel advisement proceedings?**



The most frequently reported advantages of conducting these hearings virtually were:

1. Increased efficiency, allowing the proceedings to occur more quickly, largely because court participants are not required to travel to court.
2. Increased safety for participants by reducing risk of COVID-19 exposure.
3. Alleviated transportation needs for defendants, especially in-custody defendants and out-of-county defendants.

Less frequently, respondents also noted that defendants would not have to take time off work. Sample comments regarding advantages of virtual counsel advisement hearings are provided in Table 11.

**Table 11. Sample Comments—Advantages of Virtual Counsel Advisement Proceedings**

Comment
<i>“It would be more convenient for defendants who might otherwise have to take a day off work just to come to court and be advised.”</i>
<i>“People do not have to travel to court, miss work, etc.”</i>
<i>“This is usually a quick procedure. Prevents large numbers of people from coming into the courtroom for quick, administrative procedures that can very easily be conducted online.”</i>
<i>“Virtual advisement would be faster and the court time could be used for disposition of cases rather than advisements.”</i>
<i>“It’s another way to be sure that clients are being seen and advised in a timely manner.”</i>
<i>“Bringing an inmate from the jail is much more time consuming than the proceeding itself.”</i>
<i>“It makes no sense at all to transport a defendant across the entire state for a three-minute hearing regarding their right to an attorney. Conducting these hearings virtually would doubtless save the taxpayers a ton of money.”</i>
<i>“It allows the Court to advise someone who may be scared to come to the courthouse.”</i>

The most frequently reported concerns about conducting these hearings virtually were:

1. Constitutional issues regarding the defendant’s knowing, voluntary and intelligent waiver of the right to counsel
2. Decreased efficiency due to delays or issues with paperwork, including completion of the Affidavit of Indigency.

Other less frequently stated concerns were issues with accessing good technology and the ability for effective attorney-client communication. Some participants also noted concerns regarding defendants who require an interpreter. Additionally, close to 20% of respondents indicated that they have no concerns about virtual counsel advisement hearings.

Sample comments regarding concerns about virtual counsel advisement hearings are provided in Table 12.

**Table 12. Sample Comments—Concerns about Virtual Counsel Advisement Proceedings**

<b>Comment</b>
<i>“The affidavit of indigency is already confusing for people. Doing it virtually seems even harder.”</i>
<i>“I think that sometimes it can be difficult for people to fully grasp their choices and the affidavit of indigency can be confusing, and the virtual hearings don't really lend themselves to a lot of questions being asked.”</i>
<i>“People might not fully understand the rights they might be waiving.”</i>
<i>“there needs to be private communications between client and counsel to form a bond of trust and cooperation</i>
<i>“The flow of paperwork for court appointed attorney including the financial affidavit and appointment order can be cumbersome to get completed and shared virtually”</i>
<i>“the defendant and attorney often engage in meaningful conversations at the table during those and that can often move things along with the case.”</i>
<i>“the defendant's contact information needs to be gathered in this proceeding so that it can be passed along to their attorney.”</i>
<i>“getting the phone numbers and addresses to the defendants that would normally be done in person by handing them a business card.”</i>
<i>“communication skills with clients who have trouble understanding English.”</i>
<i>“If the defendant needs an interpreter”</i>

Participants had minimal suggestions for best practices with respect to virtual counsel advisement hearings. The most frequently reported suggestions for best practices were:

1. Prepare necessary paperwork in advance and implement processes to facilitate that.
2. Use adequate equipment and technology for completing paperwork and hosting a video meeting.

Other less frequently made suggestions included ensuring that defendants have access to counsel in connection with the proceeding; that defendants are provided appointed counsel's contact information; only holding virtual proceedings for in-custody defendants; providing training to court staff and/or the public on how to use the technology; encouraging the defendant's active participation; and recording proceedings.

Sample comments from participants about best practice suggestions are provided in Table 13.

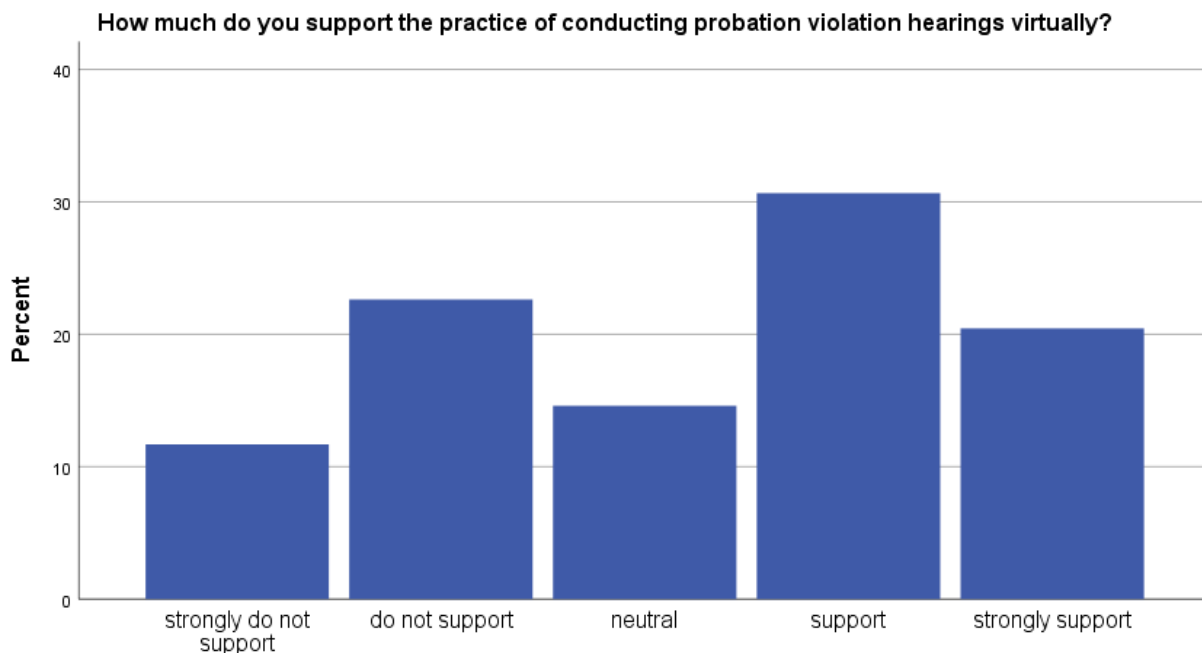
**Table 13. Sample Best Practice Suggestions–Virtual Counsel Advisement Proceedings**

<b>Comment</b>
<i>“Ensuring that all paperwork is completed before the defendant comes in front of the judge. Clearly defining the roles of the jail, clerk, judge, attorneys in relaying information and paperwork between two buildings.”</i>
<i>“It might be helpful to have some sort of training for the jail staff who is present at those proceedings in terms of helping clients to fill out all of the necessary paperwork.”</i>
<i>“If possible, allow defendants to download the affidavit and upload a completed one for the court to review.”</i>
<i>“Technology that allows for real-time document display, transfer, signature, and filing.”</i>
<i>“Possibly use closed circuit video instead of WebX so you could bring defendants to the monitor but still keep court personnel distanced.”</i>
<i>“Ensure technology and speakers, larger screens, in place to clearly hear, understand, and ask questions.”</i>
<i>“training for jail staff and court personnel helps in cutting down the time it takes.”</i>
<i>“If the courthouse administration could work out how to explain the technology to the public, I think this could work well.”</i>
<i>“If logistics can be worked out, I think it would reduce the number of defendants in the courtroom, but may increase the number in the clerks office, depending on where the kiosk is set up.”</i>
<i>“have appointed attorneys' cards in the jail available to the inmate as proceeding is taking place so if they are provided an appointed attorney they will have the information needed to contact them”</i>
<i>“Repeating the contact information a few times or asking the defendant to repeat it back to ensure understanding between all parties.”</i>
<i>“Public Defender must be available to answer defendant questions.”</i>
<i>“Record these so defendant's affirmation to the figures on the form can be confirmed.”</i>

### **Probation Violation Hearings**

137 survey participants responded to survey questions about virtual probation violating hearings. Overall, the level of support for virtual probation violation hearings was mixed. About one-third of respondents indicated they did not or strongly did not support conducting these hearings virtually, 15% were neutral, and a little over half indicated support or strong support for conducting probation violation hearings virtually (Figure 14). The most common level of support reported was “support” with 31% of respondents, and the second most common response was “do not support” with 23% of respondents.

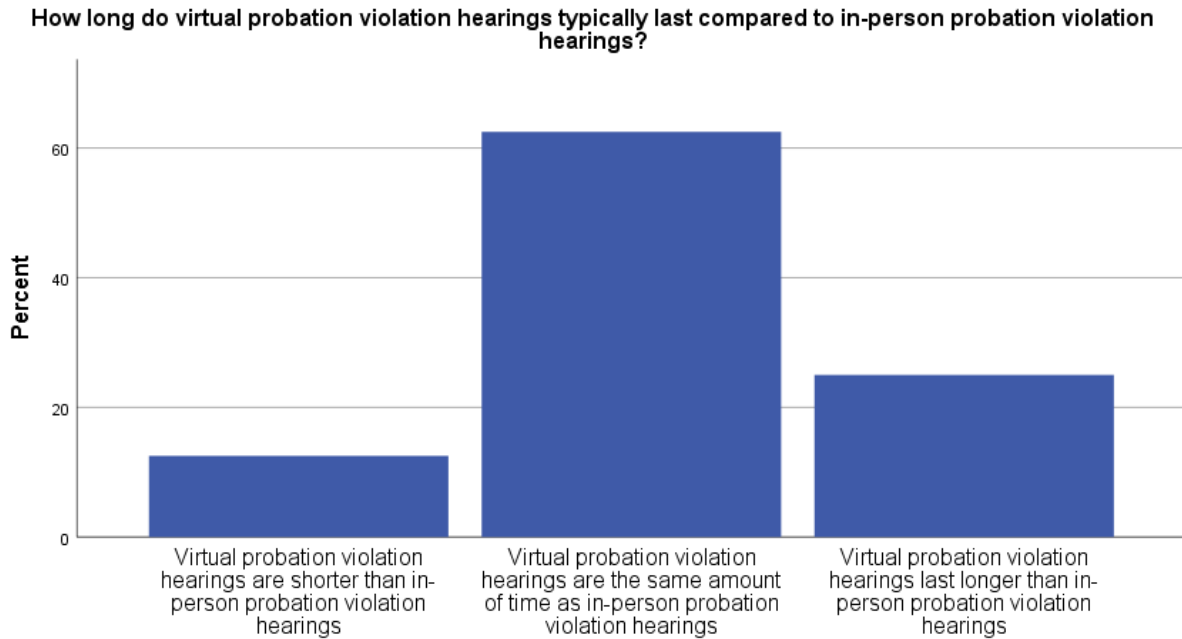
**Figure 14. Support for Virtual Probation Violation Hearings**



Despite the variety in respondents' indicated level of support for conducting probation violation hearings virtually, there were no statistically significant differences in the average level of support reported between court actor groups.

Respondents who had participated in virtual probation violation hearings were asked about the length of time to complete these hearings virtually versus in-person; only 24 survey participants responded to this question. The vast majority (88%) indicated that virtual probation violation hearings take more than or just as much time as in-person proceedings, with most (63%) reporting that virtual hearings require the same amount of time as in-person hearings (Figure 15).

**Figure 15. Time Required for Virtual and In-Person Probation Violation Hearings**



The most frequently reported advantages of conducting these hearings virtually were:

1. Increased safety for participants by reducing risk of COVID-19 exposure.
2. Increased efficiency as a result of ease in scheduling.
3. Alleviated transportation needs for in-custody defendants.

Other advantages that respondents noted less frequently were reduced failures to appear; reduced security issues associated with transportation; not requiring all parties and witnesses to appear in court; and quicker implementation of sanctions.

Sample comments regarding advantages of virtual probation violation hearings are provided in Table 14.

**Table 14. Sample Comments—Advantages of Virtual Probation Violation Hearings**

Comment
<i>“For in-custody defendants, there can be cost savings in avoiding transport. There may be security benefits by avoiding inmate transport. For out of custody defendants, perhaps time and cost savings if they are not required to be in court.”</i>
<i>“This would be good for cases where [the probation officer] is not asking for revocation. If individual needs more time to pay on money or complete some requirement and [the probation officer] agrees, virtual hearing would be very good for all parties.”</i>
<i>“Some of them are very rote, as everybody is in agreement about the outcome, such as revocation or termination, so doing them rapid-fire could be advantageous.”</i>
<i>“probation officers do not have to wait in court for the case to be called. can focus time on direct service to probationers”</i>
<i>“With scheduling potentially being more flexible, there could be a quicker response for failing to comply with the terms of probation and a quicker consequence for that behavior instead of waiting a month or more for probation hearing calendars to come around for behavior that may have occurred weeks/months prior to the sanction eventually entered.”</i>
<i>“Currently there is a backlog of probation violation hearings . . . . There is not enough court time for these to be handled. The case age of these violations is staggering. I believe remote proceedings for the probation officers testimony would be effective diligent disposition of these cases.”</i>
<i>“less likelihood that [defendant] would be detained”</i>
<i>“more likely to guarantee attendance”</i>
<i>“the fewer times that people have to miss work the better. Especially with cases where the outcome has been agreed to, it would be great for people to avoid a court date.”</i>

The most frequently reported concerns about conducting these hearings virtually were:

1. Issues with effective communication, particularly related to the defendant’s ability to understand and be heard, the judge’s ability to observe the defendant, and the ability of the defendant and the probation officer to discuss and negotiate a resolution.
2. The ability of defense counsel and the defendant to communicate privately and effectively.
3. The ability to enforce court orders.

Although listed less frequently, respondents also expressed concern about the ability to conduct a contested probation violation hearing virtually, including concerns about the defendant’s right to be heard and to confront witnesses, and self-incrimination issues. Other less frequently stated concerns included decreased efficiency because of paperwork delays/issues; issues accessing adequate technology and equipment; creating appellate issues; that eliminating the inconvenience of coming to court might result in officers filing more violation reports; and that judges may render harsher consequences when the defendant is not physically before them. Assuming that virtual hearings would be held only in uncontested cases, one respondent expressed the concern that this would coerce admissions to avoid an in-person hearing.

Sample comments regarding concerns about virtual probation violation hearings are provided in Table 15.

**Table 15. Sample Comments—Concerns about Virtual Probation Violation Hearings**

Comment
<i>“Often the defendant and officer can work it out if they meet”</i>
<i>“lack of access to court file for court, DA office to review judgments and violation reports. often have to carefully look at the paperwork to be sure court has jurisdiction and there are no errors. multiple violation reports are usually in the file.”</i>
<i>“It can be difficult to get the waivers of appearance completed in advance, especially for District Court cases.”</i>
<i>“It's difficult for the judge and the clerk to have access to the court file.”</i>
<i>“A defendant in a [probation violation] hearing is charged with violating a term of probation. He/she has certain rights for any hearing to be valid. I foresee motions for appropriate relief in cases where probation is revoked.”</i>
<i>“Right to confront would be greatly diminished for hearings”</i>
<i>“Larger likelihood of clients admitting to violations if denial means having to come to court, thereby waiving constitutional rights.”</i>
<i>“Probation violation hearings involve fundamental rights and the testimony of witnesses. People's liberty is on the line during a probation violation hearing. Virtual hearings might address safety concerns of the moment, but when someone's liberty is at stake they should be entitled to true confrontation of the witnesses and live advice from counsel.”</i>
<i>“These hearings are similar to a jury trial in their potential effects on the defendant. I do not think [probation violations] should be handled virtually at all.”</i>
<i>“[Probation Officers] more likely to file more violations since they wont [sic] have to come all the way to court to face the accused.”</i>
<i>“if absconding, how do you get them in to serve unless they are in jail? how do you get them to do any jail time?”</i>
<i>“If probation revoked and sentenced to [prison], this should be immediate since chances of absconding increases. Probation violations should be held in person since there is a strong likelihood of incarceration if found to violate probation.”</i>
<i>“Same as with guilty pleas and other hearings that are supposed to be done with counsel -- meaningful representation is not done virtually.”</i>
<i>“for the court to make a finding that the probationer knowingly violated probation, it is necessary to observe them in court and see their mannerisms, behavior, and physical demeanor.”</i>
<i>“The judge may be more willing to hand down a harsh sentence without the physical presence of the accused.”</i>
<i>“The limited ability for defense counsel and the probation officer to negotiate a resolution to the violation. . . . The parties, specifically the defense attorney, would need to make this effort to communicate with the PO [Probation Officer] prior to the virtual hearing and the PO would have to be open to this communication.” (Identifying information removed)</i>
<i>“Virtual hearings might address safety concerns of the moment, but when someone's liberty is at stake they should be entitled to true confrontation of the witnesses”</i>
<i>“Lack of clear and effective communication where defendants can confidentially consult with counsel”</i>
<i>“This is essentially a trial and should be done in a manner that reflects the serious nature of sending a person to prison for their acts or omissions. That is, the Judge, defendant and all witness should all be live and in the same space, in order for the final disposition to have the appearance of fairness.”</i>
<i>“Need face to face contact and conversation when conducting hearings where the defendants jeopardy is at stake, especially after judgment.”</i>



The most frequently reported best practice suggestion for virtual probation violation hearings was to proceed virtually only when the defendant is not facing jail time and/or provides consent to proceed virtually.

Other best practices suggestions included ensuring that defendants have direct and private contact with their attorneys, and ensuring that probation officers prepare and make available to the participants in advance all necessary paperwork. Less frequently, respondents also suggested obtaining consent for a virtual proceeding from all proceeding participants and giving the defendant multiple opportunities to speak or ask questions.

Sample suggestions for best practices for virtual probation violation hearings are provided in Table 16.

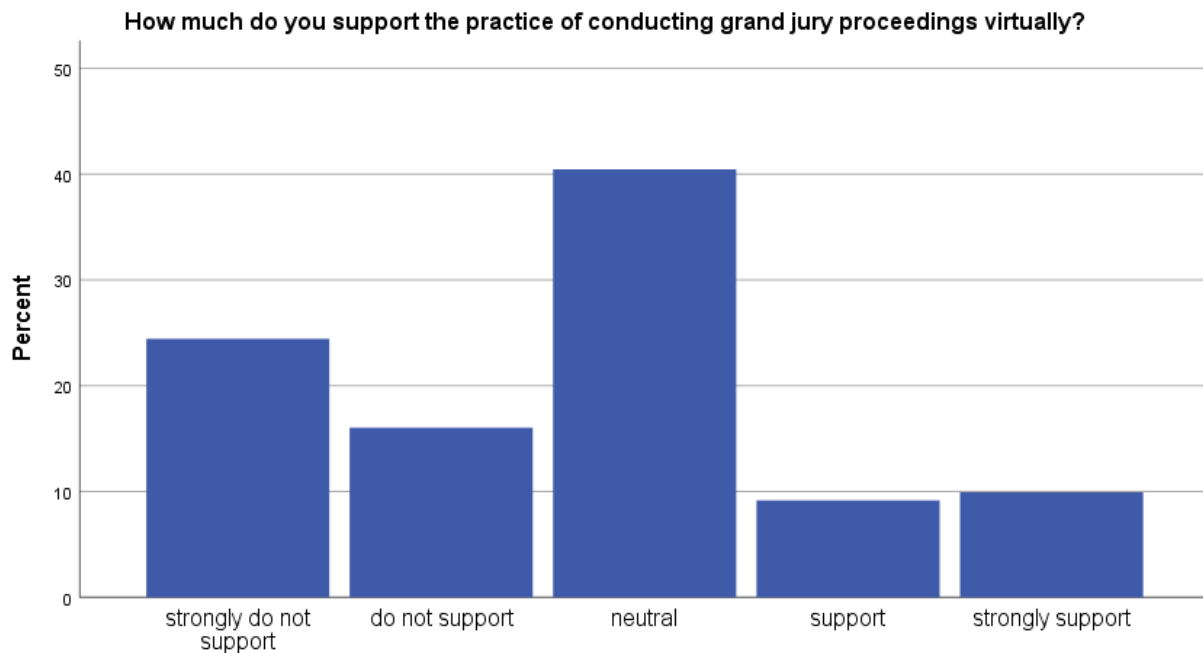
**Table 16. Sample Best Practice Suggestions–Virtual Probation Violation Hearings**

<b>Comment</b>
<i>“The violations that may be done remotely are those that do not allow for revocation and commitment to jail/[prison].”</i>
<i>“Identify those violations that will not end up in active time and utilize remote hearings for these”</i>
<i>“Those probation matters that could be handled without a court hearing (i.e., transferring monies to civil judgment, terminating probation, etc.) should be. So that leaves probation matters that are either revocable or in which the defendant could get active jail time. Those matters, for obvious reasons, should not be conducted virtually.”</i>
<i>“ensure that counsel shares space with defendant”</i>
<i>“Having a mechanism that defense attorneys could speak with clients virtually outside of the courtroom would be ideal so they had the opportunity to advise them before hearing confidentially.”</i>
<i>“Have parties consenting in writing to the procedure and set for same date”</i>

## Grand Jury Proceedings

131 survey participants responded to survey questions about grand jury proceedings. Unlike most of the other proceedings included in the survey, most respondents did not support conducting grand jury proceedings virtually (Figure 16). Over 80% of respondents indicated “neutral”, “do not support”, or “strongly do not support”. Specifically, 41% of respondents indicated they were neutral, 16% indicated they do not support, and almost one-quarter indicated they strongly do not support conducting grand jury proceedings virtually. Only 16% of respondents indicated that they support or strongly support virtual grand jury proceedings.

**Figure 16. Support for Virtual Grand Jury Proceedings**



There were no significant differences in the average level of support for virtual grand jury proceedings between different court actors.

No respondents indicated that they had participated in virtual grand jury proceedings. Thus, no information was gathered about the length of time required to conduct virtual grand jury proceedings compared to in-person.

The most frequently reported advantages of conducting grand jury proceedings virtually were:

1. Increased safety for participants by reducing risk of COVID-19 exposure.
2. Increased efficiency resulting from ease in scheduling and convenience for jurors.

Sample comments regarding advantages of virtual grand jury proceedings are provided in Table 17.

**Table 17. Sample Comments—Advantages of Virtual Grand Jury Proceedings**

<b>Comment</b>
<i>“Not having to gather 18 people, plus witnesses in a single location and attempt to social distance”</i>
<i>“Keeps multiple people from having to be in the same place at one time. Would allow someone with health concerns to continue to serve.”</i>
<i>“It would save a lot of time if officers could appear remotely. It could also save time and money for grand jurors that wouldn’t have to leave home or work and worry about child care, etc.”</i>
<i>“I could foresee this enabling our counties to avoid having to cancel grand juries”</i>
<i>“Would make service on grand jury much easier and more convenient.”</i>
<i>“Easier for people to attend when they have conflicts with coming to courthouse.”</i>

The most frequently reported concerns about conducting grand jury proceedings virtually were:

1. Compromising the secrecy of grand jury proceedings.
2. Grand jurors’ ability to communicate effectively without having their attention diverted.
3. The perceived seriousness or legitimacy of the proceedings by the public and the grand juror members.

Other less frequently reported concerns included grand jurors’ access to the necessary technology; impeding deliberations among grand jurors; and decreased ability to assess witness’s credibility.

Sample comments regarding concerns about virtual grand jury proceedings are provided in Table 18.

**Table 18. Sample Comments—Concerns about Virtual Grand Jury Proceedings**

Comment
<i>“I am not sure how secure technology would be provided to grand jury members to enable their participation, and I don’t want it to be the case that only people who can afford the latest technology can serve on the grand jury.”</i>
<i>“By law they are secret and the virtual world doesn’t allow and protect for that, both digitally and physically</i>
<i>“significant opportunity for those who are not grand jurors to be able to see and hear the proceedings which is a complete violation of the secrecy required of grand jury proceedings.”</i>
<i>“potential for distractions to occur because the grand juror is not in a secure location; difficulty for grand jurors to communicate among themselves.”</i>
<i>“There is no way to control the grand jurors computers to limit their ability to search the web or engage in other activities while the grand jury proceedings are going on.”</i>
<i>“I believe there will be less deliberation between the jurors if the proceedings are presented remotely.”</i>
<i>“The grand jury has the right to personally assess the credibility of the witness who is testifying as to probable cause.”</i>
<i>“Being sure that all grand jurors can hear the proceedings, can ask questions, and do not have problems overtalking over another as can occur during virtual meetings with a decent number of participants.”</i>
<i>“This is one of the few things for which I think personal presence is necessary. The gravity of the proceedings is more pronounced on both witnesses and grand jurors if they take the testimony in person.”</i>
<i>“Impossible to guarantee the secrecy of virtual proceedings. What if a grand juror has other people in the room with them while they are participating?”</i>
<i>“These proceedings must be confidential and with a virtual meeting there is always the danger of a hearing being hacked into by someone who is not on the Grand Jury.”</i>
<i>“The secrecy of the proceedings being protected. Do we have the technology and IT support to keep it secure?”</i>
<i>“It cements the view that grand jury is not a thorough examination or questioning of the facts for probable cause and is a rubber stamp process.”</i>
<i>“I don’t believe it would be given the level of scrutiny it receives in person, and charging someone with an indictment should be taken more seriously, with more caution, than it does now, not less”</i>
<i>“Access is always a continuing concern in procedures where we are asking members of the community participate. Will we alienate potential grand jurors by requiring access to a digital devices?”</i>

Respondents provided few suggestions for best practices when conducting these proceedings virtually, likely due to the lack of support for virtual grand jury proceedings. Among the suggestions that were provided, respondents most frequently indicated that the proceedings must be secure, that grand jurors should only be allowed to attend virtually if necessary, and that grand jurors be required to confirm their identity, that they are viewing the proceeding in private, and that they are able to see and hear each other. Other less frequently made suggestions included requiring the grand jurors to meet as a group with witnesses appearing virtually; allowing in-person attendance for grand jurors who lack internet access; and having an assistant on hand to handle technology issues.

Sample best practice suggestions for virtual grand jury proceedings virtually are provided in Table 19.

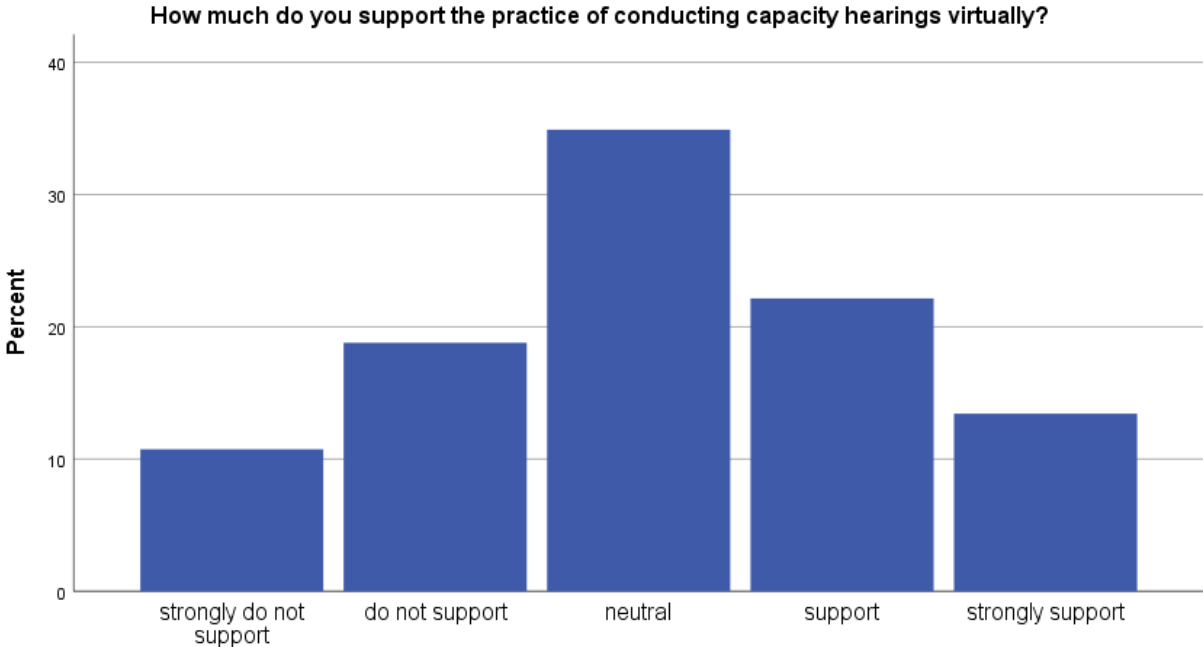
**Table 19. Sample Best Practice Suggestions–Virtual Grand Jury Proceedings**

<b>Comment</b>
<i>“Don't do them unless the grand jury members are located in the courthouse and witnesses are appearing remotely. Grand jurors shouldn't be indicting people from their dining room tables.”</i>
<i>“Technology needs to be improved and possibly have a location where the grand jurors can go to so that it is clear that they are in a location where there are no others around to hear what is happening or for them to be distracted.”</i>
<i>“Would need to allow in person participation for those who do not have internet access”</i>
<i>“would probably need a proctor on standby for any problems with equipment or attendees dropping out during the process.”</i>
<i>“Each person's identity needs to be verified initially and at each session of court. Photos of each grand juror with the clerk to identify person on the screen.”</i>
<i>“possibly have a location where the grand jurors can go to so that it is clear that they are in a location where there are no others around to hear what is happening or for them to be distracted.”</i>
<i>“would need to assure there is a good firewall, identity verification process, etc”</i>

**Capacity Hearings**

149 survey participants responded to survey questions about capacity hearings. Most commonly, respondents indicated that they were neutral in their support of conducting capacity hearings virtually (35%) (Figure 17). Only about one-quarter of respondents reported strong feelings about virtual capacity hearings, with 11% strongly not supporting virtual capacity hearings and 13% strongly supporting.

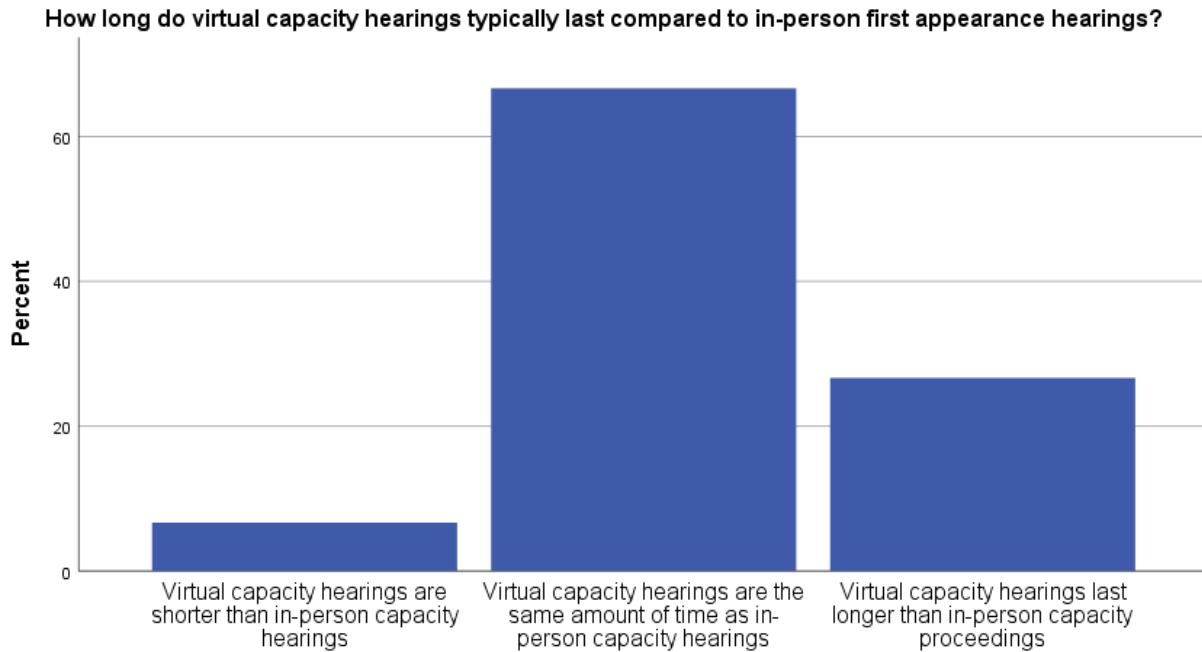
**Figure 17. Support for Virtual Capacity Hearings**



There were no significant differences in level of support for virtual capacity hearings between different court actors.

Respondents who indicated that they had participated in virtual capacity hearings before or during the pandemic were asked how long virtual capacity hearings typically last compared to in-person proceedings. Only 15 survey participants responded to this question, with the vast majority (67%) reporting that virtual capacity hearings require the same amount of time as in-person hearings (Figure 18). About 27% indicated that virtual capacity hearings take longer than in-person capacity hearings, and only 7% indicated that virtual capacity hearings are shorter.

**Figure 18. Time Required for Virtual and In-Person Capacity Hearings**



The most frequently reported advantages of conducting capacity hearings virtually were:

1. Increased safety for participants by reducing risk of COVID-19 exposure.
2. Increased efficiency due to ease in scheduling and alleviated need for transporting in-custody or hospitalized defendants.
3. Alleviated transportation needs for defendants, judges, and/or witnesses.

Respondents also reported that virtual capacity hearings would be better for the defendant's mental health and would reduce security concerns.

Sample comments regarding the advantages of virtual capacity hearings are provided in Table 20.

**Table 20. Sample Comments—Advantages of Virtual Capacity Hearings**

<b>Comment</b>
<i>“They don’t happen much, but they’re pretty simple and short and can be handled well remotely.”</i>
<i>“The hearings could be conducted much sooner during the process.”</i>
<i>“The advantage of allowing the professional to testify virtually, which may make scheduling a bit easier for the professional.”</i>
<i>“Recent case law (State v. Allen) requires that capacity findings not be stale, so it would greatly enhance our ability to keep capacity findings up to date.”</i>
<i>“The patient would not have to be transported and it might be convenient for people to attend from different locations and not have to travel and leave their work/hospital.”</i>
<i>“This would save time and expense in transporting defendants and would lessen concerns about the security of those defendants”</i>
<i>“allowing potentially mentally ill people to be located in less intimidating place than a courtroom”</i>
<i>“There would be less opportunity for the defendant to become agitated, upset, confused by being in a room full of people while s/he is in shackles.”</i>
<i>“If the client is not in a mental state to be transported to the jail and then to court for the hearing, it might be a better way to ensure the clients continuity of care if he is in a state of diminished capacity.”</i>

The most frequently reported concerns about conducting capacity hearings virtually were:

1. Issues related to effective communication, particularly the judge’s ability to gauge the defendant’s competency.
2. The defendants’ Sixth Amendment right to counsel

Other concerns included due process issues, marginalization of the defendant, the risk of procedural shortcuts, ensuring that the defendant understands the proceedings, issues regarding waiver of the right to be present, decreased efficiency as a result of paperwork issues or delays, and access to adequate technology.

Sample comments regarding concerns about virtual capacity hearings are provided in Table 21.



**Table 21. Sample Comments—Concerns about Virtual Capacity Hearings**

Comment
<i>“The client may feel marginalized by being left out of the actual courtroom.”</i>
<i>“the likelihood that all necessary procedures may not be conducted”</i>
<i>“If the attorneys are not present at the hospital with the respondents, the attorneys cannot communicate privately with the respondents prior to or during the hearing. The inability of the lawyers to assess their clients or to communicate with their clients violates the respondents due process rights.”</i>
<i>“It is imperative that the client is not left to his/her own devices at such a hearing.”</i>
<i>“In cases where capacity is a question, it is difficult for counsel to connect with his/her client on a perfect day, if you remove contact with the client and conduct virtual hearings, it opens the case up to appealable issues.”</i>
<i>“if Defendant is not present, appellate issues of whether a valid waiver of appearance could take place if person is not capable of proceeding”</i>
<i>“The certain capacity hearings it is important for the court to be able to observe the person while conducting the hearing. Virtual hearings are somewhat impersonal.”</i>
<i>“Limited ability to assess nonverbal communication and credibility with a potentially malingering defendant.”</i>
<i>“In order for a Judge to adequately determine capacity, the Judge must be able to have meaningful interaction with the Defendant. The limitations of virtual hearings make this very difficult.”</i>
<i>“in assessing capacity it is important for the court to be able to personally observe the defendant and their actions and how they interact. I don’t believe this level of observation can be made via remote proceedings.”</i>
<i>“Ensuring that the defendant fully understands everything that is occurring. A potentially incapable defendant by his/her nature may not fully understand the proceedings and may not be able to fully see/her all witnesses.”</i>

The most frequently reported best practice suggestions for virtual capacity hearings were:

1. Hybrid implementation – only conduct virtual capacity hearings when the judge, district attorney, defense attorney, and defendant decide it is appropriate and provide formal consent; and determine which participants will attend virtually and which will attend in-person.
2. Use adequate equipment and technology.

Less frequently, respondents also suggested that attorneys must be able to privately speak with their clients during the hearing; that all participants should review the case information in advance; and having the attorney and/or a medical professional with the defendant.

Sample suggestions for best practices when conducting capacity hearings virtually are provided in Table 22.

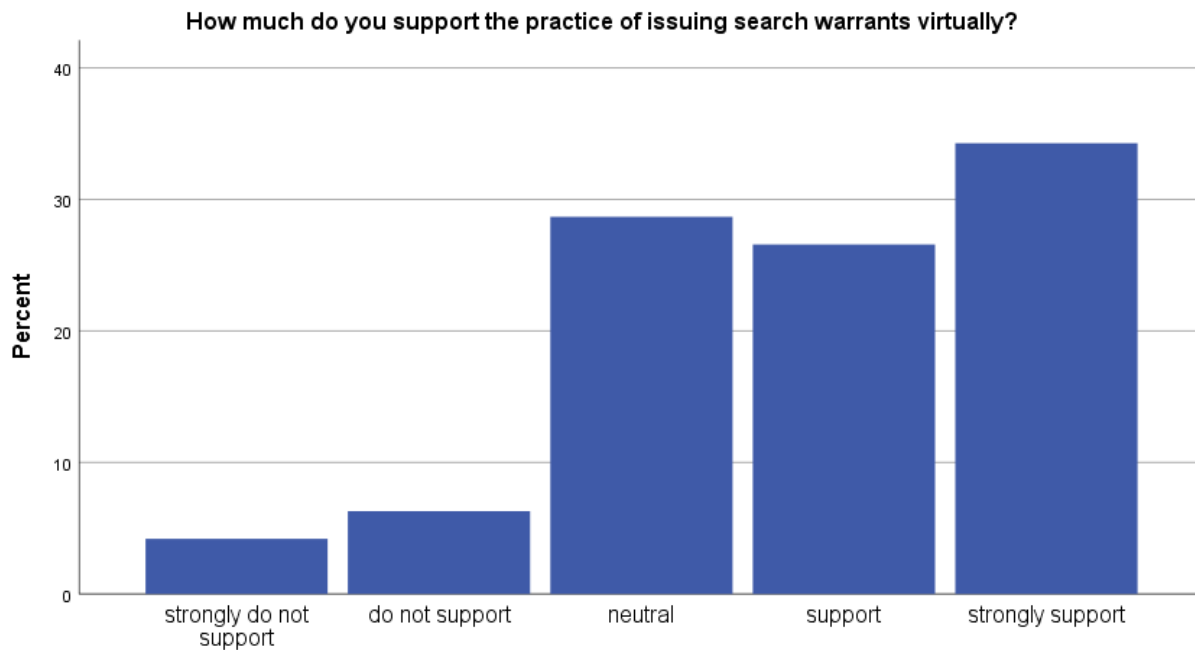
**Table 22. Sample Best Practice Suggestions–Virtual Capacity Hearings**

<b>Comment</b>
<i>“Have a thorough knowledge of the case, file, and background prior to conducting the hearing. Ensure that all parties have had the same.”</i>
<i>“A conference with the assistant district attorney assigned to the case and the person's attorney to determine whether a virtual hearing is appropriate.”</i>
<i>“Only use in limited circumstances.”</i>
<i>“I would not want to see any capacity hearing conducted without someone being with [the] client through the hearing: [the defense attorney], a treating psychologist or nurse. It is imperative that the client is not left to his/her own devices at such a hearing.”</i>
<i>“I think the attorney and physician need to be in the same location as the patient so that they can clearly communicate with them.”</i>
<i>“Wide angle camera view that allows a full body view of defendant and examiner, not just tight headshot. Technology that allows for real-time document display, transfer, signature, and filing.”</i>
<i>“Provide adequate technology to allow the judge to fully see and hear the remote defendant.”</i>
<i>“Ensure all parties agree in writing and be very clear in the objectives”</i>
<i>“Verify that the defendant has consented to the arrangement.”</i>
<i>“helpful if attorney and client are on same phone and screen. We can let attorney and client talk privately if in two locations but slows down process”</i>
<i>“Have a separate secure line that the attorney can speak with the clients about questions”</i>

### **Search Warrant Proceedings**

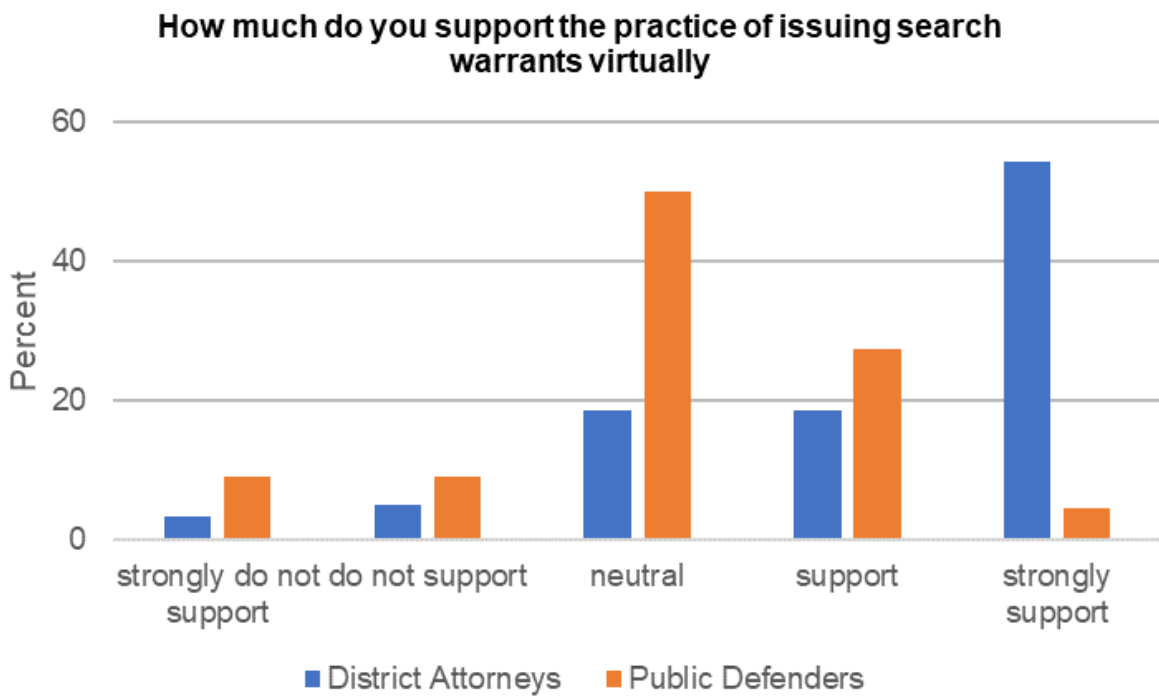
143 survey participants responded to survey questions about virtual search warrant proceedings. Almost 90% of respondents indicated neutral to strong support for issuing search warrants virtually, with almost two-thirds indicating support or strong support (Figure 19).

**Figure 19. Support for Virtual Search Warrants**



While most respondents were neutral or supported issuing search warrants virtually, there were significant differences in the average level of support indicated between prosecutors and public defenders. Prosecutors most frequently indicated strong support for virtual search warrants, while public defenders most frequently indicated neutral support (Figure 20).

**Figure 20. Support for Virtual Search Warrant Proceedings Between District Attorneys and Public Defenders**



The response rate to the question about the length of virtual versus in-person search warrants was too low to produce meaningful results.

The most frequently reported advantages of completing search warrants virtually were:

1. Increased efficiency by reducing the amount of time law enforcement officers spend traveling to a judge.
2. Convenience for law enforcement officers and judges, particularly for search warrants completed outside of normal business hours.
3. Increased safety for participants by reducing risk of COVID-19 exposure.

Less frequently, respondents also indicated the advantage of being able to record the meeting.

Sample comments regarding advantages of virtual search warrants are provided in Table 23.

**Table 23. Sample Comments—Advantages of Virtual Search Warrants**

Comment
<i>“Saves officers having to travel from the scene to the magistrate or Judge. Saves time for the Judge and Judges won’t have to have people come to their home late at night. Would make it so you didn’t have to have so many magistrates on duty at night, which could save money.”</i>
<i>“It is easier for law enforcement officers to make contact with judicial officials remotely, particularly when their jurisdiction is further removed from the courthouse or when the judicial officials are working remotely themselves.”</i>
<i>“This would reduce the time it takes to track down a judge for their signature, and time is of the essence sometimes”</i>
<i>“If there was an assigned judge to hear [search warrants] remotely this would make the process more efficient and also safer and less disruptive then having detectives appear at their [door]step in the middle of the night.”</i>
<i>“There is a record of what was told to the Judge during these search warrants [because] all virtual meetings are recorded and discovery.”</i>
<i>“When there are errors/omissions, [the judge] can let the officer know and they can fix without having to drive back to office, then drive back to [the judge]” (identifiers were removed)</i>

The most frequently reported concerns about virtual search warrant proceedings were:

1. Barriers to effective communication, including the judge’s ability pose questions to law enforcement officers and observe the affiant when probable cause is presented.
2. Decreased efficiency due to issues receiving, reviewing, and filing paperwork.

Respondents also indicated concerns about the security of a judge’s electronic signature on the warrant, diminished rigor of the judicial official’s inquiry and the perceived seriousness or legitimacy of the process, and that virtual search warrant proceedings may erode the exceptions for warrantless searches. Additionally, at least 20% of respondents indicated that they have no concerns about issuing search warrants virtually.

Sample comments regarding concerns about virtual search warrants are provided in Table 24.

**Table 24. Sample Comments—Concerns about Virtual Search Warrant Proceedings**

Comment
<i>“there is a fair amount of conversation between the affiants and the judges when search warrants are applied for. It appears that the affiants are giving the judge additional information, not included in the warrant. . . . This is why recording the process would be necessary for me to support virtual search warrant applications.”</i>
<i>“I think it's important for a Judge to observe the officer in person to judge for him/herself the veracity of the statements being made and the credibility of the officer.”</i>
<i>“the hard copy paper version of the warrant must be filed with the appropriate Clerk. If this does not occur, problems ensue”</i>
<i>“inability to read the entire warrant may be an issue. they can get long.”</i>
<i>“judges will need to avoid being less diligent in their review because of the remote nature”</i>
<i>“The ‘neutral and detached’ magistrate cannot adequately judge credibility unless the affiant is in their presence.”</i>
<i>“I feel the search warrant procedure requires the officer to swear to his or her affidavit in the presence of the judicial official in person for a reason, I think the impression of the seriousness of the procedure that personal presence creates is necessary”</i>
<i>“Could erode exceptions for warrantless searches.”</i>
<i>“lends more credibility and integrity to the process when seeking party must appear and swear to factual basis for the warrant”</i>

Participants had minimal suggestions for best practices for virtual search warrant proceedings. The most frequently reported best practice suggestions were:

1. Use adequate audio visual equipment and technology for accessing all relevant information and signing and filing necessary paperwork.
2. Ensure that the law enforcement officer completes all necessary paperwork and the judge reviews all information before discussing and issuing the search warrant.

Respondents also suggested retaining the oath or affirmation requirement and the “four corners” rule, requiring the meeting to be recorded, and training for law enforcement officers and judges.

Sample suggestions for best practices when completing search warrant proceedings virtually are provided in Table 25.

**Table 25. Sample Best Practice Suggestions–Virtual Search Warrant Proceedings**

<b>Comment</b>
<i>“officers and officials must be trained sufficiently”</i>
<i>“It must be a video virtual search warrant, the officer should still swear to it and there must be some way to get it virtually signed.”</i>
<i>“The ‘four corners’ of an application should remain whether or not the applicant is physically present.”</i>
<i>“Centralized email Dropbox accessed/managed by 2-3 staff members who then send an electronic meeting invitation.”</i>
<i>“Require the [officer] to submit the search warrant in advance so the judge can review it thoroughly before considering.”</i>
<i>“Make sure the search warrant is sent to the judge beforehand so they will be familiar with it, this provides for a more productive and efficient meeting”</i>
<i>“Officers could submit their documents electronically for review prior to appearance in front of a judge giving the judge time to review them documents. The officers could then schedule a time to meet virtually with the judge to submit information and evidence to support the search warrant and be sworn to the information”</i>
<i>“The officer seeking the search warrant should email the document ahead of time to the Magistrate. If the search warrant is for a Superior Court Judge, then the officer should email it to an ADA, who will review and send it electronically to the Superior Court Judge. The officer can virtually swear to the search warrant’s veracity virtually.”</i>
<i>“They should be recorded, and made a part of the discovery materials.”</i>

## Virtual Proceeding Technology

Participants were asked about specific virtual meeting platforms used for conducting virtual proceedings, and to report how frequently they experienced technical difficulties, what the difficulties were, and how they were handled. Their responses are summarized below.

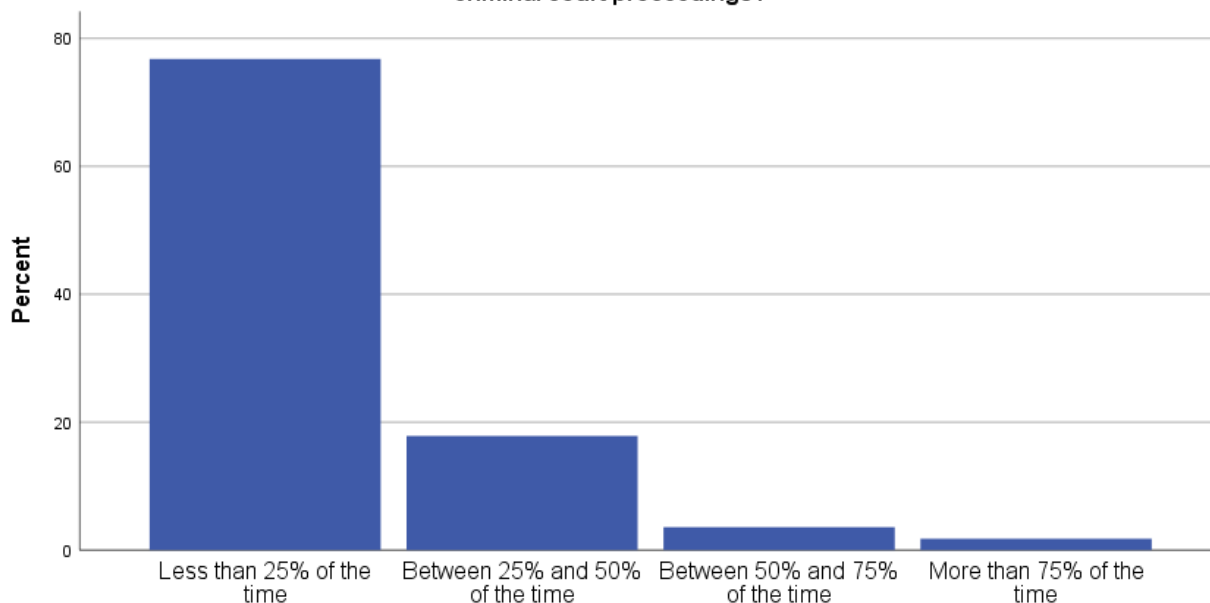
### ***Closed Circuit Television (CCTV)***

CCTV was the most common platform respondents reported using for virtual court proceedings prior to the pandemic, with 71 respondents indicating that they had participated in a virtual proceeding over CCTV before March 2020.

Most (77%) respondents that had used CCTV indicated that they experienced technical difficulties less than 25% of the time, and only about 5% indicated that they experienced technical difficulties more than half the time (Figure 21).

**Figure 21. Percentage of Time Participants Experienced Technical Difficulties on CCTV**

How frequently have you experienced technical difficulties while using Closed Circuit Television during virtual criminal court proceedings?



The most common technical difficulty reported was audio issues; specifically, that proceeding participants would struggle to hear or that audio would fail completely. Less reported technical difficulties included issues with connectivity, particularly at the jail, and issues with video connections. Most respondents indicated that the technical difficulties were resolved and the proceeding was able to continue, while a few indicated that the proceeding had to be moved to a different platform or conducted in-person.

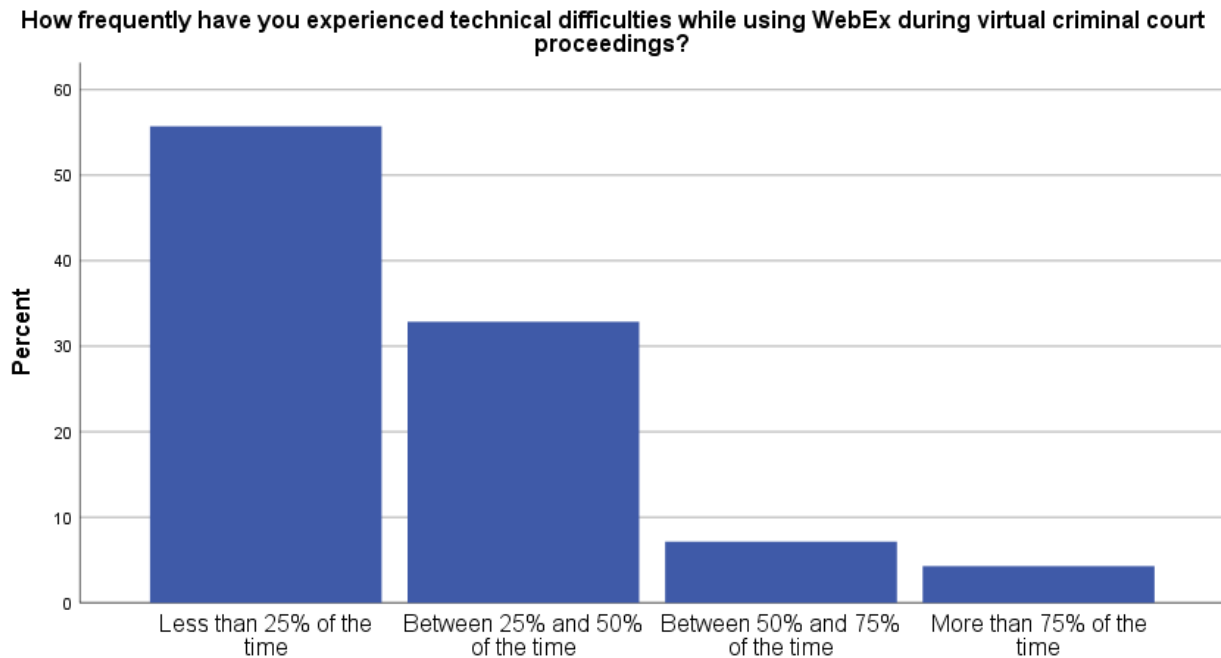
### ***WebEx***

WebEx was the most common platform respondents reported using for virtual court proceedings during the COVID-19 pandemic, with 91 respondents indicating that they had participated in a virtual proceeding over WebEx after March 2020.



A little over half (56%) of respondents that had used WebEx experienced technical difficulties less than 25% of the time, and 11% indicated that they experienced technical difficulties more than half of the time (Figure 22).

**Figure 22. Percentage of Time Participants Experienced Technical Difficulties on WebEx**



The most common technical difficulties with WebEx were internet connectivity and audio feedback issues. Respondents also reported technical difficulties connecting to the meeting, learning to use the platform, and loud background noise. Respondents consistently emphasized that WebEx required all participants to have a good internet connection and sufficient bandwidth. Most respondents indicated that when problems arose, the proceeding continued on WebEx, though almost one-third of these respondents indicated that the technical difficulties did not resolve and the proceeding continued despite the issues. Several respondents indicated that the proceeding either had to be rescheduled or that the proceeding had to restart one or more times.

### ***Other***

Platforms that respondents used less frequently for virtual court proceedings included Zoom, Microsoft Teams, Facetime, Jurislink, conference calls, CourtCall, and Google Hangouts.

Respondents that had used other platforms for virtual court proceedings most commonly reported that they experienced technical difficulties less than 25% of the time. Further, most of these respondents reported that the technical difficulties resolved and the proceeding was able to continue.

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