

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

What the changes mean for the millions of people who interact with the civil legal system each year—and what remains to be done

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**The Pew Charitable Trusts** is driven by the power of knowledge to solve today's most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public, and invigorate civic life.

# Overview

The outbreak of COVID-19 in early 2020 forced public services to shift to online operations in a matter of weeks. For the nation's courts, that meant reimagining how to administer justice. Media coverage has focused mainly on the effects of the digital transformation in criminal courts, but a rapid deployment of new technology also took place in the civil legal system.

This adoption of digital tools in the civil courts has significant real-world implications. Unlike their criminal counterparts, civil courts do not guarantee a right to counsel, meaning they do not provide attorneys for those who cannot afford them. This leaves roughly 30 million Americans each year to navigate potentially life-altering legal problems, such as eviction, debt collection, and child support cases, on their own. For these litigants who are responsible for a variety of complex tasks—including finding the appropriate court to hear their case, filing motions, arguing before a judge, and interpreting laws—technology holds the promise of a more accessible system with better outcomes.

Even before the pandemic, national judicial groups such as the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) had called on courts to use technology to improve the experience of litigants, especially people who do not have attorneys. And just months after the pandemic began, states throughout the country moved to adopt a range of technological tools to keep their court systems available to the public, quickly shifting from requiring people to submit paper documents and appear in person before judges to widespread use of electronic filing (e-filing) systems, virtual hearing platforms, and other tools.

To begin to assess whether, and to what extent, the rapid improvements in court technology undertaken in 2020 and 2021 made the civil legal system easier to navigate, The Pew Charitable Trusts examined pandemic-related emergency orders issued by the supreme courts of all 50 states and Washington, D.C. The researchers supplemented that review with an analysis of court approaches to virtual hearings, e-filing, and digital notarization, with a focus on how these tools affected litigants in three of the most common types of civil cases: debt claims, evictions, and child support. The key findings of this research are:

- **Civil courts' adoption of technology was unprecedented in pace and scale.** Despite having almost no history of using remote civil court proceedings, beginning in March 2020 every state and D.C. initiated online hearings at record rates to resolve many types of cases.<sup>1</sup> For example, the Texas court system, which had never held a civil hearing via video before the pandemic, conducted 1.1 million remote proceedings across its civil and criminal divisions between March 2020 and February 2021. Similarly, Michigan courts held more than 35,000 video hearings totaling nearly 200,000 hours between April 1 and June 1, 2020, compared with no such hearings during the same two months in 2019.

Courts moved other routine functions online as well. Before the pandemic, 37 states and D.C. allowed people without lawyers to electronically file court documents in at least some civil cases. But since March 2020, 10 more states have created similar processes, making e-filing available to more litigants in more jurisdictions and types of cases. In addition, after 11 states and D.C. made pandemic-driven changes to their policies on electronic notarization (e-notarization), 42 states and D.C. either allowed it or had waived notarization requirements altogether as of fall 2020.

- **Courts leveraged technology not only to stay open, but also to improve participation rates and help users resolve disputes more efficiently.** Arizona civil courts, for example, saw an 8% drop year-over-year in June 2020 in the rate of default, or automatic, judgment—which results when defendants fail to appear in court—indicating an increase in participation.<sup>2</sup> Although national and other state data is limited, court officials across the country, including judges, administrators, and attorneys, report increases in civil court appearance rates.<sup>3</sup>

- **The accelerated adoption of technology disproportionately benefited people and businesses with legal representation—and in some instances, made the civil legal system more difficult to navigate for those without.** Although all states and D.C. took steps to allow court business to continue during pandemic lockdowns, those options were not always available in all localities, for all types of cases, or for people without attorneys.<sup>4</sup> Litigants with lawyers, on the other hand, found that technological improvements made it easier for them to file cases in bulk: For example, after courts briefly closed, national debt collectors who file suits in states across the U.S. quickly ramped up their filings, using online tools to initiate thousands of lawsuits each month.

By contrast, litigants without legal representation, especially those with other accessibility needs, faced significant disadvantages, even when systems were technically open to them. For instance, users without high-speed internet service or computers faced significant hurdles when trying to access courts using the newly available tools. And although technology holds promise to improve the legal system for people with disabilities and limited English proficiency, courts—like various other government services—have struggled to ensure that their technology is accessible to all users.<sup>5</sup> Of nearly 10,000 state and local pandemic-related orders reviewed for this study, none specifically addressed technology accommodations for people with disabilities and limited English proficiency.

Court officials have made clear that improvements in technology must benefit all parties. CCJ and COSCA approved a resolution in July 2020 recommending that their members “ensure principles of due process, procedural fairness, transparency, and equal access are satisfied when adopting new technologies.”<sup>6</sup>

Based on research and in consultation with CCJ, COSCA, and other experts, Pew has identified three key steps courts could take to realize the full potential of improvements in technology-driven tools:

1. Combine technological tools with process improvements to better facilitate resolution of legal problems.
2. Before adopting new tools, test them with and incorporate feedback from intended users.
3. Collect and analyze data to help guide decisions on the use and performance of the tools.

The monumental efforts made by state courts in 2020 and 2021 represent an important step toward modernization. This report examines courts’ transformation during the pandemic and assesses the extent to which it has made the civil legal system more open, with operations and procedures that are clear and understandable; equitable, so that all users can assert their rights and resolve disputes even without legal representation; and efficient, to ensure that people’s interactions with courts ensure due process and feel easy and timely. And finally, this report explores additional steps court systems could take to build upon their progress.

## Methods

This study employed a two-pronged approach to data collection and analysis of state civil court responses to the coronavirus pandemic. To understand how rapid adoption of online processes affected the ways litigants could interact with the civil legal system, Pew researchers examined pandemic-related emergency orders issued by the supreme courts of all 50 states and D.C. between March 1 and Aug. 1, 2020. That five-month period featured the greatest amount of decision making related to court operations, technology adoption, and the suspension and resumption of various types of cases, of any span since the onset of the pandemic.

The analysis focused on technologies adopted to address court processes that occur across case types, including e-filing, virtual hearings, and e-notarization, as well as the management of specific types of cases—eviction, debt collection, and child support modifications—that fill civil dockets and acutely affect economic outcomes for individuals and families. Which technological tools were examined reflects the importance of two functions—court appearances and document submission—to litigants’ efforts to advance their cases.

Further, the research included a review of about 70 academic and “gray literature” sources (i.e., studies that have not been peer reviewed). About half of those related to how technology adoption affected the experiences of litigants in the three types of cases, including advantages and barriers to online court processes. The other half helped to place pandemic-related adoption of virtual hearings and e-filing within the broader historical context of courts’ use of technology.

Pew researchers also examined data from the U.S. Census Bureau and the Federal Communications Commission (FCC) on broadband internet and related technologies necessary for accessing online court services as well as from a Wesleyan University database of state and local emergency court orders to identify how often those orders referenced accessibility for people with disabilities and limited English proficiency. Please see the separate methodological appendix, available on Pew’s website, for more details.

## Courts adopted technology at unprecedented speed and scale

In a typical court case, the first step in resolving a legal problem has been filing paperwork with the court clerk to initiate a lawsuit. The opposing sides then appear in court to learn the status of the case, report on whether they have been able to reach a settlement, and determine the steps needed before trial. The process also typically involves submission of evidence, including materials that need to be signed and witnessed by a third party, as well as status reports on negotiations, examination of evidence, and other tasks. And if the dispute is not resolved before the trial date, the parties then appear before a judge.

Even long before the pandemic, court officials recognized that technology would need to become a permanent feature of the legal system. In 2006, CCJ and COSCA called for courts to use technology to improve affordability, efficiency, and access.<sup>7</sup> Other judicial bodies, as well as individual judges, have made similar pronouncements and recommendations over the past 20 years.<sup>8</sup>

However, that guidance had not delivered the sort of sweeping change that could benefit a variety of users. During the first two decades of the 21st century, some courts had been slowly moving their processes online. Their efforts focused mainly on two sets of functions: the completion of discrete tasks, including filing and notarizing documents; and the hearing of disputes by a judge. (See Figure 1.)

Figure 1

## Digital Tools Can Help Courts Streamline Processes, Litigants Prepare for and Resolve Cases

Steps of a civil case and the technologies that support them



|                            | Filing of lawsuit | Defendant response | Hearings and discovery | Trial | Resolution |
|----------------------------|-------------------|--------------------|------------------------|-------|------------|
| <b>Discrete tasks</b>      |                   |                    |                        |       |            |
| E-filing                   | ✓                 | ✓                  | ✓                      |       | ✓          |
| E-signatures               | ✓                 | ✓                  | ✓                      | ✓     | ✓          |
| E-notarization             |                   |                    | ✓                      | ✓     | ✓          |
| E-payment                  | ✓                 | ✓                  |                        |       | ✓          |
| E-discovery                |                   |                    | ✓                      |       |            |
| E-records                  |                   |                    | ✓                      | ✓     | ✓          |
| <b>Virtual proceedings</b> |                   |                    |                        |       |            |
| Online dispute resolution  |                   |                    | ✓                      |       | ✓          |
| Virtual hearings           |                   |                    | ✓                      |       | ✓          |
| Remote oaths               |                   |                    | ✓                      | ✓     |            |
| Virtual testimony          |                   |                    | ✓                      | ✓     |            |
| Virtual trials             |                   |                    |                        | ✓     |            |

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### Navigating Civil Courts Without an Attorney

Even before the pandemic, the many steps and complex documentation required to proceed in a case made the civil legal system difficult to navigate for people without lawyers. The National Center for State Courts (NCSC) estimates that 3 in 4 civil cases involve at least one party without an attorney.<sup>9</sup> People without counsel are perhaps the largest and most diverse group affected by court processes, and, whether plaintiffs or defendants, they face myriad barriers.

People seeking to initiate cases in civil courts are met with a byzantine process that presumes a basic level of legal knowledge. Understanding complex language and knowing the correct forms to file and how to submit them are prerequisites for civil plaintiffs. And the civil court system is at least equally difficult for individuals who are being sued. Defendants may not receive, or may be confused by, notice of a lawsuit against them, which can result in a failure to appear in court and a default judgment in favor of the plaintiff.<sup>10</sup> When courthouses were still open, litigants without lawyers often endured long lines, struggled to complete complicated forms without legal help, or could not get the necessary time off of work, find child care, or arrange transportation to even make it to a courthouse.<sup>11</sup>

Although courts clearly recognize the need to be useful to all litigants, they were designed by and for lawyers and have historically had difficulty meeting the needs of people without counsel—and even more so certain subpopulations within that group. Unrepresented people who have disabilities or limited English proficiency encounter additional barriers to access that civil courts overall have not addressed. Although court officials have long acknowledged the issues faced by people without lawyers and the potential of technology to remove some of those barriers, changes had been halting before the pandemic.

Further, the extent to which court systems were already online before the pandemic struck—and the types of technologies they were using—varied widely from one state to the next and between cities and counties within the same state.

However, as COVID-19 swept across the country, courthouses shut their doors, and state court systems moved swiftly to digitize their processes. Beginning in March 2020, all 50 states and D.C. adopted statewide or local rules to govern digital operations, shifting civil court business online in two areas: moving from in-person to virtual hearings and digitizing practical tasks—such as preparing and tendering court documents—that litigants must complete before a hearing. In particular, e-filing tools allow litigants to submit documents online, and e-notarization systems facilitate electronic verification of documents.

For evictions, one of the most common types of civil case, no jurisdiction in the country had consistently used virtual meeting technology for these proceedings before the pandemic, but by November 2020, 82% of all state courts were permitting or encouraging remote hearings, with 15% mandating them.<sup>12</sup> (See “Evictions Proceeded During the Pandemic.”)

And similar shifts took place across civil court dockets, as states quickly moved to use virtual meeting technology. For instance, neither Michigan nor Texas had conducted a single video hearing for a civil court case before the pandemic, but between April 1 and June 1, 2020, they conducted more than 35,000 and 122,000 video hearings, respectively.<sup>13</sup>

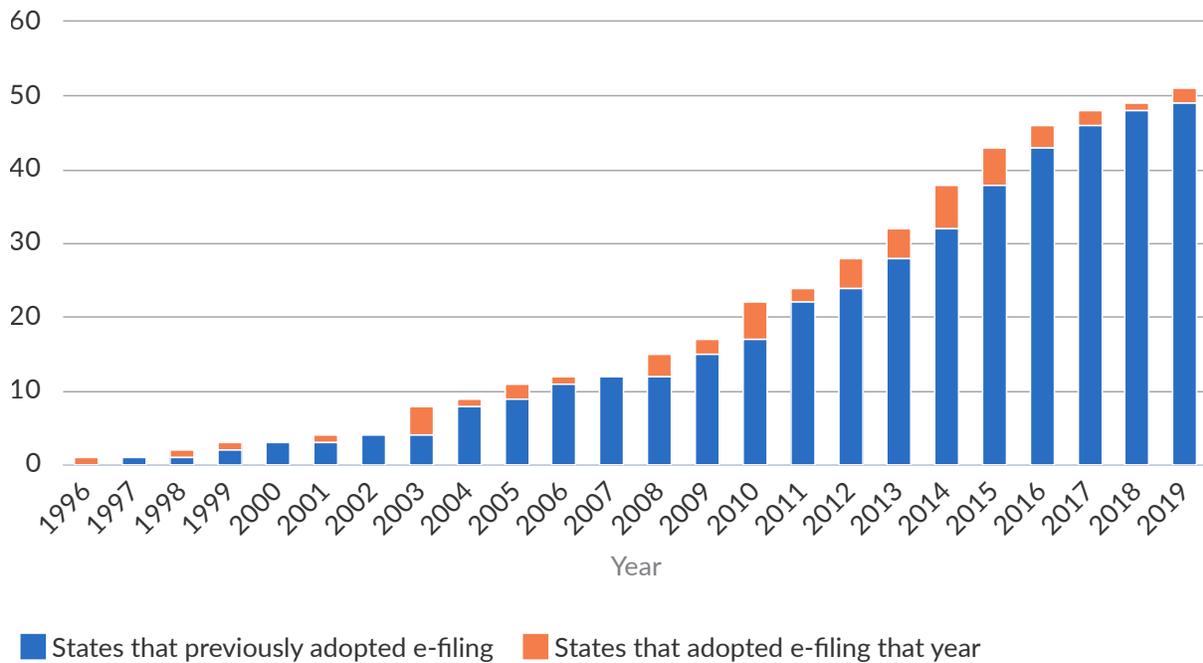
Further, before the pandemic, many states had some procedures for the electronic submission and verification of documents, but the COVID-19 lockdowns forced the adoption of additional tools and systems to allow business to continue. And the changes reflect court officials’ ability to put user needs before their own preferences and traditions, namely, complex paper-based and in-person functions.

As of 2019, 37 states and D.C. allowed litigants without lawyers to use e-filing to upload complaints, responses, and other documents directly to court systems, and 34 states had authorized e-notarization for official documents, such as written testimony and statements. (See Figure 2.)

Figure 2

## Before COVID-19, Courts Were Slow to Embrace Online Document Submissions

Electronic filing adoption by number of states, 1996-2019



Source: Pew analysis of state court e-filing websites and related administrative orders issued from 1996 through 2019 for all 50 states and D.C.

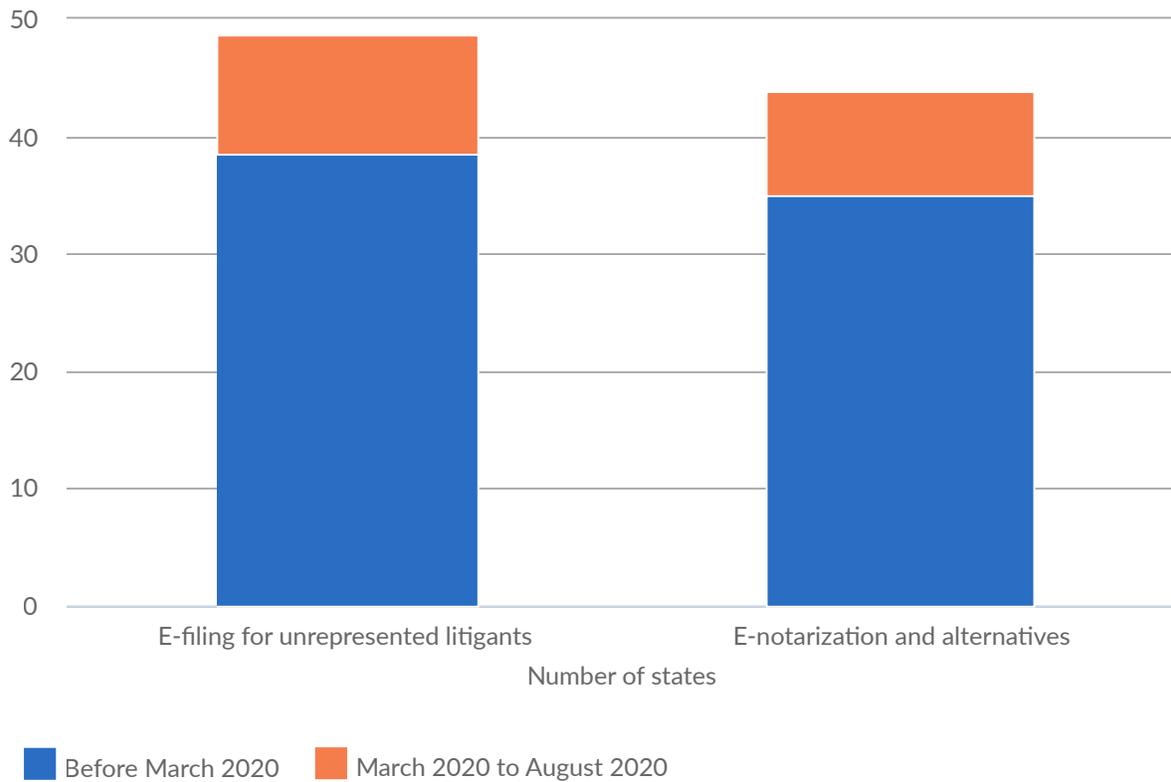
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As a result of the pandemic, 10 states created new paths for people without lawyers to file papers electronically using dedicated software or other mechanisms, such as email, because either they previously had no e-filing system or their existing tools were accessible only by attorneys. And beginning in March 2020, seven states began allowing electronically notarized documents for the first time.<sup>14</sup> (See Figure 3.) For instance, Alabama courts had long allowed electronic signatures but did not accept electronically, remote, or virtually notarized documents before April 2020; in New Jersey, a 2020 law allowed for temporary use of e-notarization.<sup>15</sup>

Figure 3

## Beginning in March 2020, Courts Deployed Tools to Help Some People Without Lawyers Perform Essential Tasks Online

States where at least one jurisdiction allowed unrepresented litigants to use electronic filing and notarization



Source: Pew analyses of state supreme court COVID-19 pandemic emergency orders issued March 1-Aug. 1, 2020, and of state court e-filing adoption between 1996 and 2019 for all 50 states and D.C.

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Additionally, seven states and D.C. responded to the paperwork challenge by identifying alternatives to notarization.<sup>16</sup> Ohio, for example, waived notarization requirements during the public health emergency, and South Carolina now allows court users to submit affidavits, which previously had to be notarized, with simple written certification from the filer that the affidavits' statements are true.<sup>17</sup> Such solutions reflect the courts' commitment to examining operations with users' experiences in mind and devising practical solutions to improve processes, especially for people without lawyers, rather than engaging in a blanket digitizing of all court tasks.

### Court officials demonstrated a commitment to a more open, equitable, and efficient civil legal system

These changes are impressive not only because they show the ingenuity of courts in the face of an emergency and allowed court operations to continue during the pandemic, but also because they upended long-standing court norms to better serve court users. And as courts deployed online tools, court officials set out goals for ensuring that those technologies were implemented in ways that addressed inequities in civil legal proceedings.

In July 2020, CCJ and COSCA adopted a resolution declaring that “state courts must ensure that all parties to a dispute—regardless of race, ethnicity, gender, English proficiency, disability, socioeconomic status, or whether they have professional legal representation—have the opportunity to meaningfully participate in court processes and be heard by a neutral third party who will render a speedy and fair decision.”<sup>18</sup>

CCJ and COSCA also jointly released the following six guiding principles to help courts build on the technological advances made during the coronavirus pandemic:<sup>19</sup>

1. Ensure principles of due process, procedural fairness, transparency, and equal access are satisfied when adopting new technologies.
2. Focus on the user experience.
3. Prioritize court-user driven technology.
4. Embrace flexibility and willingness to adapt.
5. Adopt remote-first (or at least remote-friendly) planning, where practicable, to move court processes forward.
6. Take an open, data-driven, and transparent approach to implementing and maintaining court processes and supporting technologies.

States are also working to create technology guidance. In September 2020, the Texas Judicial Council adopted a statewide framework for implementing online dispute resolution to which all county and local courts must adhere.<sup>20</sup> The document gives straightforward guidance on how cases that cannot be resolved online should proceed to court, including procedural requirements to ensure that all parties have an opportunity to be heard and to present their cases before a judge.

In April 2020, the Michigan Virtual Courtroom Task Force released the Michigan Trial Courts Virtual Courtroom Standards and Guidelines to ensure that virtual courtrooms operate efficiently and with transparency,<sup>21</sup> and published a comprehensive toolkit to help courts in the state comply with the new guidance. The guidelines are based on an assessment of best practices from courts across the country and the state and cover every step in the virtual hearing process, from notification and attorney-client communications to technical standards and press access.

And in June 2020, New York created the Commission to Reimagine the Future of New York’s Courts, a group of judges, lawyers, academics, and technology experts that is studying how courts operated during the pandemic. In April 2021, the group issued technology recommendations to “improve the efficiency and quality of justice services during the ongoing health crisis and beyond.”<sup>22</sup>

## **Technology increased participation in civil courts**

Early data indicates that court technology is beginning to deliver on its potential. During 2020, judges and other state court officials reported increases in case participation rates, which they have attributed to the move to remote proceedings.<sup>23</sup> Although recent data on participation in the civil system is limited, experts have noted an overall uptick across court settings. Before the pandemic, civil courts were plagued by a critical challenge to their integrity: low participation, particularly among defendants. From 2010 to 2019, more than 70% of respondents in debt collection suits across multiple jurisdictions failed to appear in court or respond to summonses, resulting in a default judgment for the plaintiff.<sup>24</sup> According to Michigan Chief Justice Bridget Mary McCormack, that rate of participation has “literally flipped. The number of people who now show up is as high as the number of people who didn’t show up in physical courtrooms.”<sup>25</sup>

Case participation is typically measured in two ways: by the number of people filing or initiating lawsuits and by the count of defendants in cases filed against them. Data reviewed by Pew researchers suggests that by the second metric, online proceedings may have driven an increase in participation.<sup>26</sup> In June 2020, for example, Arizona civil courts saw an 8% decline in the rate of default judgment resulting from litigants' failure to appear, compared with June 2019, indicating an increase in participation.<sup>27</sup> And the state found similar results at the local level. In Arizona's largest county, Maricopa, the failure-to-appear rate for eviction cases decreased from nearly 40% in 2019 to approximately 13% in February 2021.<sup>28</sup>

That finding is consistent with data from other court settings, which shows that failure-to-appear rates dropped dramatically in several states at the start of the pandemic. For instance in criminal courts, New Jersey reported that the no-show rate fell from 20% in the first week of March 2020 to 0.3% the week of March 16, when the state began using virtual hearings, and Michigan reported that its rate dropped from 10.7% in April 2019 to 0.5% in April 2020.<sup>29</sup> Similarly, court observers in Texas report that with the switch to video hearings, parent participation in child welfare cases increased in May and June 2020 compared with in-person hearings before the pandemic.<sup>30</sup> These state court reports of improved participation rates are consistent with national survey data in which judges cited increased participation as the leading improvement to come from the move to virtual proceedings.<sup>31</sup>

The boost in court appearances that followed the shift to virtual hearings is consistent with pre-pandemic assertions that reducing the day-to-day costs of coming to court—such as transportation, child care, lost wages, and travel time—would increase people's ability to meaningfully engage in court cases.<sup>32</sup> In addition, technology can be used to help people show up to court if tools are made available in multiple languages and are designed to serve people with a range of abilities. And although recent indications are promising, courts need more data to analyze and confirm the trend toward greater participation.

Further, the most active court users—attorneys—have reported a range of benefits associated with the move to online processes. According to one survey from Texas, most judges, prosecutors, and defense attorneys said that remote proceedings saved time and improved efficiency.<sup>33</sup> And in interviews, attorneys in Florida, Missouri, Montana, and Texas reported that not having to travel to and wait at court enabled them to serve more clients than before the pandemic.<sup>34</sup>

Further, examples from across the country indicate that technology, when implemented thoughtfully, can effectively help people navigate the civil court system, even when they are not represented by an attorney. For instance, Suffolk Law School in Massachusetts, in collaboration with courts in three states, developed Court Forms Online, a website that improves on typical e-filing tools by offering a more user-friendly interface that guides litigants through various court processes. The site walks users through the steps for obtaining a domestic violence restraining order, applying for eviction protection under the Centers for Disease Control and Prevention (CDC) moratorium, and even handling certain appellate matters.<sup>35</sup> In one example, a woman was able to use forms provided through the website to electronically file a motion to the state's Appeals Court and obtain a stay of her improper eviction just as the constable was beginning to move her out of her home.<sup>36</sup>

In recognition of technology's potential to make it easier for people to participate in court processes, more court officials plan to embrace virtual services. In 2021, CCJ and COSCA passed a resolution promoting the continued use of remote hearings; and in a June 2021 survey of 240 magistrates, trial judges, and appellate justices from across the country, a majority said they expect remote proceedings to become a permanent fixture of state courts.<sup>37</sup>

## Technology often made the civil legal system harder to navigate for people without lawyers

Although people using the civil legal system, regardless of whether they had legal representation, benefited from courts' rapid adoption of technology, the advantages were disproportionately enjoyed by parties with lawyers.

This gap between the promise of technology to make courts more equitable for individuals without attorneys and the reality of its implementation is consistent with previous analyses of pioneering court systems that adopted new technologies around the turn of the century. In 2010, the NCSC examined seven states—Iowa, Michigan, Minnesota, New Hampshire, Oregon, Utah, and Vermont—at the forefront of court “re-engineering,” a restructuring of services that included the expanded use of technology.<sup>38</sup> But most of the solutions that the center observed were either exclusively for lawyers—such as e-filing systems accessible only by attorneys—or required too much legal expertise to be helpful to people using the courts without professional assistance.

### Court processes are not fully open, transparent

Court administrators moved quickly to respond to the pandemic and communicate with the public about changes to court operations. But that rapid action also created some confusion for court users. Information shared on public websites and directly with litigants about online processes did not always fully explain key details, such as how and where documents should be submitted or which types of cases would be served by virtual hearings.

And in those instances, court users sometimes did not know where to turn for help and clarification.<sup>39</sup> As more operations moved online during 2020, courts worked to untangle complicated processes and used tools such as legal information portals, virtual help desks, and kiosks in public libraries to provide more usable and accessible public information, but these efforts have also been inconsistent.<sup>40</sup>

### Equity gaps

During the pandemic, technology has continued to disproportionately benefit parties with counsel and high-volume users of the court system, such as certain debt collectors, creating challenges to court officials' goal of ensuring equitable processes. Even before the pandemic, debt collection lawsuits—the most common type of civil case—presented a challenge to the integrity of the courts. A 2020 Pew analysis found that in the several states where data was available, less than 10% of consumers had a lawyer and more than 70% of debt suits ended in default judgment for the collector.<sup>41</sup>

However, since the pandemic began, these cases have shown the inequitable availability of electronic court processes.<sup>42</sup>

Large debt collectors, operating with significant professional legal assistance, leveraged new court technology to their advantage. A review of records from county and state court websites by ProPublica, an independent investigative news organization, found that some major collectors were able to accelerate their filings during the pandemic by using electronic systems to initiate lawsuits in bulk.<sup>43</sup> Texas court data likewise demonstrates that debt collectors were able to continue to bring lawsuits at the same rate in fiscal year 2020 as in the previous year.<sup>44</sup> And according to researchers in California, when courthouses in that state closed in April 2020, debt collectors were able to file as many suits against consumers as they had in April 2019, thanks to electronic filing.<sup>45</sup>

However, electronic filing was not equally available to all: In eight states, people without lawyers had almost no way to file court documents in debt claims against them, leaving most debt defendants in those states unable to participate in court proceedings so that the judges could hear all the facts and render verdicts accordingly.<sup>46</sup>

This research also found similar access and equity problems in eviction cases. Technology would ideally both allow plaintiffs to quickly file cases and give defendants a clear and easy way to respond. Instead, in nine states, people without lawyers had almost no avenue for filing paperwork in eviction cases. Such rules unintentionally advantaged landlords, who have representation in an estimated 90% of eviction cases, compared with 10% for tenants.<sup>47</sup> (See “Eviction Cases Proceeded During the Pandemic.”)

## Efficiency gaps

A lack of consistent rules and offerings of online tools has also limited the potential efficiency that people could gain from their use. For instance, parents who have child support obligations but experience job losses or wage cuts are required to seek a modification of their payments to reflect their change in circumstance. Online tools could offer these people a faster, easier way to request a change and save them the cost of a trip to the courthouse. But many courts did not include online filing for parents in their 2020 technology innovations. Of the 43 states plus D.C. in which courts normally handle child support modifications, 33 and D.C. issued pandemic-related orders or set up formal procedures to allow individuals without lawyers to submit modification requests electronically. The remaining 10 states effectively rendered parents without counsel unable to modify their payments in a timely fashion while courthouses were closed. (See Figure 4.) Parents who fail to modify and subsequently miss payments are subject to enforcement actions, such as garnishment of wages and even jail time.

Figure 4

## Online Tools Excluded Court Users Without Lawyers in the Early Months of the Pandemic

Count of states that prohibited unrepresented litigants from e-filing, by case type, March 1-Aug. 1, 2020



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

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Even before the pandemic, 1 in 3 U.S. households faced a housing, family, or debt issue serious enough to result in an interaction with the civil legal system.<sup>48</sup> The sort of planning that identifies and supports the needs of users involved in such high-volume, high-need cases in civil court may not have been possible leading up to and during the first months of the COVID-19 outbreak, but now that the foundational work of moving processes online is done, court officials have an opportunity to improve and enhance those systems to better serve all litigants.

## Eviction Cases Proceeded During the Pandemic

As the pandemic raged across the country, federal, state, and local officials put policies in place to halt eviction cases, with the goal of keeping people housed and preventing the spread of COVID-19. At the federal level, Congress enacted a nationwide moratorium on evictions from March to June 2020 as part of the coronavirus rescue package. After that expired, the CDC implemented another national freeze in September 2020, which was extended five times before being struck down by the U.S. Supreme Court in August 2021.<sup>49</sup> In addition, 13 state supreme courts and 11 governors issued orders as early as March 2020 postponing the filing of eviction and foreclosure cases, and 36 states suspended the enforcement of eviction orders—the stage in an eviction when residents lose their homes—by court or executive order.<sup>50</sup>

Yet eviction cases continued to dominate civil dockets during the pandemic despite these historic moratoriums.

### Why did eviction cases proceed?

A typical eviction process takes place in five stages: notice from landlord to tenant that eviction is forthcoming, filing of a case by the landlord, court hearing, issuing of a judgment and writ of eviction, and removal of tenants from their homes by the local sheriff's department. Except for the first and last, these steps play out in civil court.

Although most of the emergency government orders prevented the final stage of eviction, just 54.5% of jurisdictions suspended eviction filings during 2020.<sup>51</sup> And even policies that sought to freeze filings did not do so automatically. Instead, policies such as the CDC moratorium, which was in place from September 2020 until mid-August 2021, added new steps that tenants had to complete to have their cases paused.

As a result, millions of people had to assemble and submit paperwork to demonstrate to the court that they qualified for protection because of pandemic-related economic hardship, and data shows that very few successfully did so. For example, court data from Harris County, Texas, revealed that in 2020, tenants filed CDC declarations in only 16% of eligible eviction cases.<sup>52</sup>

Ultimately, about 1 million evictions moved through the civil court system during the first year of the pandemic.<sup>53</sup>

## Courts' technology choices hindered participation for some people without lawyers

During the pandemic, courts—like schools, government agencies, and some businesses—discovered that shifting processes from in-person to online does not necessarily make them easier to navigate. For people without the tools needed to use court technology, such as high-speed internet and a sufficiently powerful computer, the move toward modernization failed to improve their interactions with the civil legal system and may even have made them more difficult. And although technology can be used to make the courts more accessible to people with disabilities and limited English proficiency,<sup>54</sup> that promise remains largely unrealized. In practice, the new technologies often limited, rather than expanded, the ways in which these groups could interact with the civil system.

Despite their many documented benefits, the digital tools that courts implemented during 2020 often widened the chasm between people with and without attorneys. This was especially true of users with additional access needs.

## **Internet and computer access and experience**

Access to internet service is the baseline requirement for web-based court technologies. Yet, despite the steady growth of internet use over the past two decades, as of 2018, 42 million U.S. adults lacked reliable broadband connectivity, including disproportionately low rates of access for certain populations and locations.<sup>55</sup> For instance, U.S. Census Bureau research showed that 36.4% of Black households and 30.3% of Hispanic households had neither a computer nor broadband subscription, compared with 21.2% of White and 11.9% of Asian households.<sup>56</sup>

Further, families with incomes below \$25,000 were less likely than those with higher incomes to have even minimal internet connectivity, and tribal and rural regions lagged far behind urban areas in terms of internet access.<sup>57</sup> According to a 2018 FCC report, slightly more than 77% of rural populations had access to an internet connection that met the agency's benchmark for reliable connectivity, compared with 98.5% of urban populations. Tribal populations fared even worse, at 72.3%.<sup>58</sup>

In addition, many court users access the internet only via smartphone. Approximately a quarter of Hispanic adults identify as "smartphone only" internet users.<sup>59</sup> Notably, location is not a driver of disparities in mobile internet access, with figures close to 100% no matter where one lives: 99.4% for rural populations and 97.5% for tribal populations, provided they have a mobile phone. But mobile access has limitations, particularly related to streaming live content—such as meetings via Zoom, WebEx, or similar platforms—which are basic requirements for participation in virtual hearings.

Although the courts cannot expand people's access to broadband internet or computers, they can—and many do—recognize these roadblocks and adjust their processes to account for these challenges. For instance, 28 states and D.C. installed drop boxes outside courthouses to help litigants submit court documents during the pandemic.<sup>60</sup> And in some states, courts have permitted litigants for whom video technology is not an option to participate in hearings via telephone.

Even when users have sufficient tools to access a court's online services, e-filing or participating in a video hearing requires a level of digital experience that many people lack. A 2019 Pew Research Center report found that most U.S. adults could answer fewer than half the questions correctly on a digital knowledge quiz.<sup>61</sup> Younger adults and those with bachelor's degrees were more likely to know the answers to questions about internet privacy measures, such as two-factor authentication, which many users must navigate to take advantage of online court processes.

## **Access for users with disabilities and limited English proficiency**

State courts, like other public institutions, have specific obligations under the Americans with Disabilities Act related to access for people with disabilities, and federal law also requires courts to provide language assistance for those with limited English proficiency.<sup>62</sup> But according to the National Center for Access to Justice's 2021 Justice Index, which scores states from 0 to 100 on their adoption of specific policies related to disability accessibility and language access, including court access for people without lawyers, 44 states scored below 50 for accessibility, and 31 scored below 50 for language access.<sup>63</sup>

Research indicates that, during the height of the pandemic, people relying on court documents for information related to obtaining an interpreter, ensuring reasonable accommodations for a disability, or generally accessing the courts during courthouse closures would have found little.<sup>64</sup> In a review of nearly 10,000 court documents

from all 50 states and D.C., between February and October 2020, researchers from Wesleyan University found that only 253 documents mentioned language access and just 154 contained information for people with disabilities. In total, less than 3% of the documents referenced access for people with limited English proficiency, less than 1.5% mentioned the needs of people with disabilities, and none specifically addressed technology accommodations for these populations.

Now that courts have taken the step of adopting technology, they have an opportunity to use it to address long-standing inequities for these populations. By making sure their technology is accessible and multilingual, and offering a range of high- and lower-tech tools and resources to meet the diverse needs of their users, courts can ensure that technology improves the experiences of all litigants.

## **Recommendations**

CCJ's and COSCA's adoption of technology principles is an important first step toward ensuring that measures taken to modernize the civil legal system benefit all users. However, now that state courts have practical, firsthand experience with legal technologies, court officials realize the urgent need to apply such guidance. To that end, and drawing on work with state and local court systems across the country, Pew has identified three important steps court officials should take to make their processes more open, equitable, and efficient:

### **1. Combine technological tools with process improvements.**

Technology, if layered on top of complex court processes, will only reinforce the status quo: complicated, attorney-centered procedures that are difficult for people without lawyers to navigate. Court officials must examine the processes that litigants have to complete during various types of cases to identify opportunities to simplify forms and procedures.

One example of such an effort is that several states reviewed notarization policies, which in many instances led to the elimination of traditional verification requirements, such as in-person document review by a certified notary public. Another is how Hawaii leveraged its online dispute resolution (ODR) project to re-examine and revise its small claims process. ODR was originally developed as a dispute resolution mechanism in the e-commerce sector, and courts around the country began adopting it in 2014 to allow litigants to negotiate and resolve disputes among themselves outside of court business hours. Hawaii took the opportunity presented by the new system to add an early review step in which judges ensure that the collector-plaintiffs own the debts they are attempting to recoup before the case moves forward.<sup>65</sup> The state also developed and embedded in its ODR platform a user-friendly fee waiver application and review function so that litigants without lawyers must navigate only a single online platform.<sup>66</sup>

### **2. Test new tools with intended users and incorporate their feedback.**

Without rigorous testing of technology platforms, courts may find themselves locked into expensive systems that do little to simplify the legal process for their users. Testing not only helps courts refine and improve upon these tools, but it also gives them an opportunity to proactively engage with end users to make sure that the technology products are functional and meet their needs.

Court ODR pilot projects undertaken before the pandemic demonstrate that it is indeed possible to incorporate user feedback in the deployment of technology. For example, in 2019, the Utah courts engaged an external researcher to conduct a usability study of its ODR platform for small claims cases, which included testing by end users. The research uncovered various issues with the platform's accessibility and functionality, and the court was able to make targeted improvements.<sup>67</sup>

To help more courts undertake similar efforts, CCJ recommends models of participatory design, including convening stakeholders to establish shared goals, seeking design and implementation guidance from community organizations and key user groups, and incorporating user feedback mechanisms and usability testing in planning.<sup>68</sup>

### **3. Collect and analyze data to help guide technology decisions.**

Most states do not share information with the public in an easy-to-understand format. For example, Texas is the only state that collects and makes publicly available information on debt claims lawsuits, including outcomes, across all courts.<sup>69</sup>

Some courts have begun to share their data with users and the media, for public information purposes, and with external evaluators to enable monitoring of their technology innovations. For example, courts in Florida, Michigan, and Texas have engaged third-party researchers to study their dispute resolution platforms. To support such analyses, NCSC developed a framework for evaluating ODR and made it available to courts across the country. And analysts at Indiana University are partnering with their state's courts to examine the impact of online hearings on litigants without lawyers.<sup>70</sup> These state efforts will help courts better understand the effects of their online processes, leverage the benefits, and mitigate any harms.

CCJ and COSCA have promulgated a set of data elements that courts should collect and report on—as well as explanations of what those data elements can reveal about court processes pre- and post-pandemic—that states can use to create guidelines for the collection and reporting of court data.<sup>71</sup> Having operated under pandemic protocols for more than a year, civil courts should engage researchers and other experts to help in developing metrics to measure modernization efforts, collecting data, identifying pandemic-era successes and areas for improvement, and fine-tuning technologies and systems. Such a thorough examination will allow courts to implement data-informed process improvements that enable them to better help people without attorneys navigate and resolve legal issues.

As courts collect and analyze the data on technological solutions, they should consider the following questions:

- What data must be tracked to answer key questions?
- How can litigants, attorneys, court staff, and other stakeholders be engaged in the process of improving the court experience?
- What can the civil court system learn from the experiences of other courts that are implementing and testing similar changes?

An analysis of efforts thus far not only will help courts operate more efficiently but also will help them improve the civil legal system on a broad scale.<sup>72</sup>

## Conclusion

Technology has the potential to substantially improve the civil legal system. Digital tools helped courts remain operational during the public health emergency and are poised to become permanent fixtures of the legal system. By studying how technology worked well—or did not—during the COVID-19 pandemic, courts can better understand their effects on litigants, especially those without lawyers, and undertake improvements to help Americans settle disputes and avoid life-altering consequences.

As courts work to assess and improve these tools, they will need to incorporate feedback from court users, test multiple technology products, collect and analyze use and performance data, combine technology with other process improvements, and implement the principles and safeguards that court officials already have identified as critical to ensuring effective use of technology. With these steps and proven tools, states can modernize the civil courts and make them more open, equitable, and efficient than ever before.

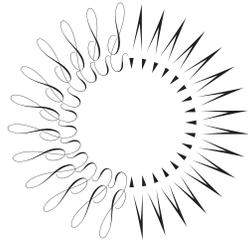
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