

# COVID-19 and Pretrial Practices: A Judicial Roundtable

**Advancing Pretrial Policy and Research (APPR), in partnership with the National Center for State Courts (NCSC), invited a group of state court judges to participate in virtual Judicial Roundtable conversations about the impact of COVID-19 on their respective pretrial practices.**

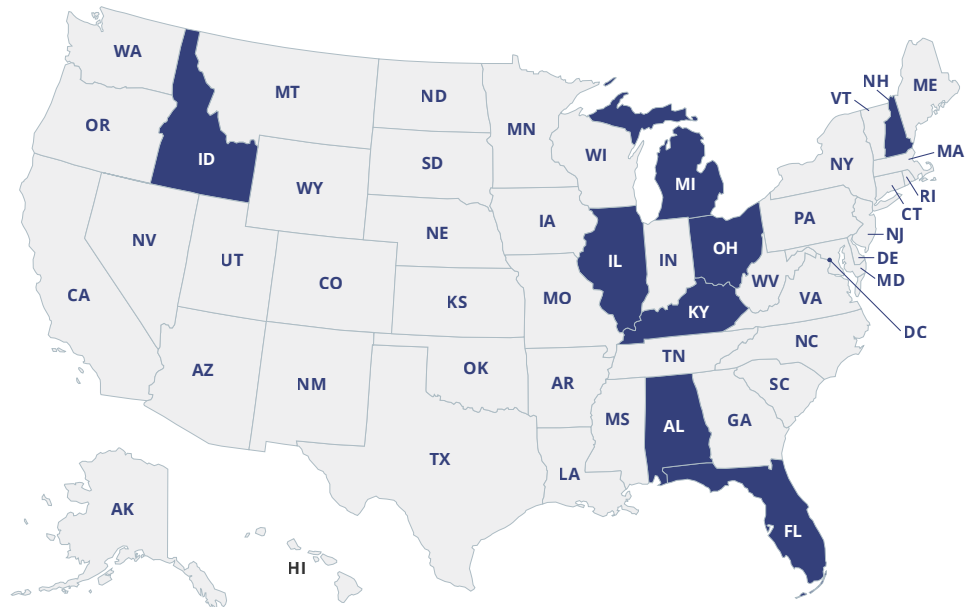
The Judicial Roundtables, convened on June 16 and July 9, 2020, explored how court operations have changed in the participating jurisdictions as a result of COVID-19, the impact of those changes thus far, and the potential long-term impacts of these short-term changes.

The Judicial Roundtables were sponsored by APPR, facilitated by Kristina Bryant, Principal Court Management Consultant with the NCSC, and moderated by retired judge Roger K. Warren, President Emeritus of the NCSC. Participants included:

- Judge Johnny Hardwick, 15<sup>th</sup> Judicial Circuit Court, Montgomery County, AL
- Judge Nushin Sayfie, 11<sup>th</sup> Judicial Circuit Court, Miami, FL
- Judge James Cawthon, District Judge, Ada County, ID
- Judge Robin Stuckert, 23<sup>rd</sup> Judicial District, Circuit Court, DeKalb County, IL
- Judge Patricia Summe, 4<sup>th</sup> Division, Kenton Circuit Court, Kenton, KY
- Chief Judge Tim Kenney, 3<sup>rd</sup> Judicial Circuit, Wayne County, MI
- Chief Justice Tina Nadeau, Superior Court, NH
- Admin/Presiding Judge Carla Baldwin, Municipal Court, Youngstown, OH

## Contents

Jurisdictions have limited the use of custodial arrest and made greater use of citations to appear.	2
Jurisdictions have expedited pretrial release from custody.	2
Other practices have been implemented to decrease the likelihood of COVID-19 transmissions.	3
Significant impacts have resulted from the foregoing policy changes.	3
The use of remote technologies has increased significantly.	4
The pandemic has raised a host of new challenges.	5
COVID-19 has increased judicial awareness of explicit and implicit biases and disparities in the criminal justice system.	5
The experience of the pandemic has implications for future preparedness.	6
The experience of the pandemic has implications for the routine court operations of the future.	7
Participants offered overall reflections on the impacts of the pandemic.	7



The participants' descriptions and comments about changes to court practices in their respective jurisdictions as a result of COVID-19 are summarized without specific attribution below.

Advancing Pretrial Policy and Research is committed to achieving fair, just, effective pretrial practices, every day, throughout the nation.

The **Center for Effective Public Policy** (cepp.com) leads all implementation and technical assistance activities for APPR.



This report was developed in partnership with the **National Center for State Courts**.



© 2020 Center for Effective Public Policy

## Jurisdictions have limited the use of custodial arrest and made greater use of citations to appear.

- Custodial arrests have been limited to people charged with serious crimes; arrests of those charged with lower-level crimes (e.g., misdemeanors) have been all but eliminated.
- Outstanding FTA warrants for most misdemeanors and low-level felonies have been converted to summonses to appear.
- A greater effort has been made to connect people who violate probation with services, or to use summonses rather than arrest warrants.

## Jurisdictions have expedited pretrial release from custody.

- The pandemic has provided a “life or death” perspective to the pretrial release decision.
- The use of detention has been eliminated for most misdemeanors.
- Money bond amounts have been reduced.

*“The pandemic has provided a ‘life or death’ perspective to the pretrial release decision.”*

- In one jurisdiction, arraignment calendars are heard three times per day, preliminary hearing calendars are heard daily, and pretrial services reports are expedited for prompt review.
- In another jurisdiction, “duty judges” (or “assigned judges”) have been designated to review cases quickly.
- Prosecutors have been partners in reducing the use of jail during the pandemic, with detention reserved for people presenting a significant risk to public safety or FTA.
- Judges have been encouraged to conduct continuous reviews of people detained as a result of their orders to determine if release is possible.
- Some jurisdictions have authorized administrative or ROR releases by custodial officials, the chief judge, specially designated judges, or a team consisting of a judge, prosecutor, defense counsel, and custodial official.
- One jurisdiction developed individual discharge plans including, for example, transitional housing for people experiencing homelessness and those with a substance use disorder or an untreated mental illness.

---

### **Other practices have been implemented to decrease the likelihood of COVID-19 transmissions.**

- At least one jurisdiction tests every newly detained person for COVID-19 and quarantines them pending test results.
- The pandemic poses a unique challenge regarding the release of people who would return to friends or family, elevating the risk of COVID-19 transmission.

---

### **Significant impacts have resulted from the foregoing policy changes.**

- A 60% statewide reduction in arrests is reported in one jurisdiction.
- A reduction in the jail population from 700 to 378 is reported in another.
- A 40% reduction in the jail population is reported in a third jurisdiction.
- A 50% reduction in the jail population is reported in a fourth jurisdiction.
- However, an increase in domestic violence arrests and in drug overdoses is also reported. And, as jurisdictions begin to open back up, some are beginning to see an increase in crime and a resulting spike in the jail population.

## The use of remote technologies has increased significantly.

- In an effort to balance public health risks with the advantages of in-person hearings, a significant shift has been made toward the use of video conferencing (closed circuit or, more frequently, web-based) and other technologies to conduct pretrial and other hearings. Current remote access technologies are vastly improved over earlier versions, including better audio and video transmission.
- Many court systems enhanced their use of remote hearing technologies—where they were not utilized or were not utilized extensively—specifically in response to COVID-19.
- Jurisdictions are using video conferencing (e.g., Zoom, Webex) to conduct arraignment, pretrial, and settlement conference hearings.
- Oftentimes, either some or all of the attorneys, parties (including people in custody), or both appear remotely.
- Concerns about the Sixth Amendment Confrontation Clause are typically addressed by obtaining parties' consent to use remote access technologies, and virtual hearings can be stopped at any time upon request for an in-person hearing when it can be made available.
- Electronic filing systems, where available, have allowed the court and other parties easy access to and transmission of court records.
- One jurisdiction found that a robust, pre-existing early case resolution program proved to be very valuable and, in response to the pandemic, expanded it, utilizing Webex technology.
- In many jurisdictions, pretrial supervision is often now conducted through virtual supervision contacts.
- When given an option, people often prefer to participate in virtual hearings rather than appear in court.
- One jurisdiction established kiosks at a local fairground to allow people to make their court appearances remotely.
- Electronic monitoring is used for pretrial supervision of people charged with domestic violence in some jurisdictions.
- Some participants have found the increased use of technology to be legally and/or practically challenging, at odds with existing rules of procedure, or inhibitive of effective communication with participants in the court process, including victims.

*“When given an option, people often prefer to participate in virtual hearings rather than appear in court.”*

*“To move from good to great, we have to be willing to be uncomfortable.”*

---

## The pandemic has raised a host of new challenges.

- There are constantly shifting administrative regulations.
- There has been an increase in inquiries about court operations to which staff or judges do not know the answers.
- Procedural decisions must be made to keep litigants, defendants, witnesses, counsel, and staff safe without clear or adequate information.
- In many jurisdictions, it has been challenging to identify and secure alternative community sites that are suitable for use as temporary courthouses (e.g., school gyms or cafeterias) to meet physical distancing requirements.
- New processes and procedures have had to be implemented to safely conduct jury trials and avoid the potential of COVID-19 infection of jurors.
- Issues pertaining to the Sixth Amendment Confrontation Clause are implicated by the use of remote hearings.
- The potential exists for media to focus on a significant crime allegedly committed by a person on pretrial release.
- Impending budget cuts will likely affect future court operations.

---

## COVID-19 has increased judicial awareness of explicit and implicit biases and disparities in the criminal justice system.

- Black, Indigenous, and people of color (BIPOC) often have less access to the virtual technologies that substitute for in-person interactions during a pandemic emergency.
- Good intentions are not enough; courts need to actively engage in discussions, access outside facilitators, and adopt objective measures (e.g., sentencing grids) to address persistent inequities affecting BIPOC in the criminal justice system.
- “To move from good to great, we have to be willing to be uncomfortable,” one participant remarked.

*“Our country has it backwards. We default to detention instead of release and we need to get back to that.”*

## The experience of the pandemic has implications for future preparedness.

- One participant observed that the jurisdictions that are faring the best followed the science and initiated contact tracing and other responses to the pandemic early on.
- Several participants mentioned that there should have been better planning and communications systems up front, and that the new normal, including the use of remote hearing technologies, should have been put in place more quickly to avoid wholesale shutdowns.
- Looking to the future, virtually all of the participants felt that many of the adaptations implemented in response to the pandemic are likely to become permanent features of their criminal case processing systems, long after the threat of COVID-19 has subsided.
- One participant lamented that their state does not have a statewide pretrial program but hoped that “the pandemic encourages us to think about” creating one.
- Some noted the importance of a careful review of the data to understand the impacts COVID-19-related changes have had on community safety, and of permanently putting processes in place to release people faster.
- Some suggested the importance of the use of pretrial risk assessment data—along with current charge, criminal history, and other factors—in determining when a person can be safely released in the community: “Our country has it backwards. We default to detention instead of release and we need to get back to that.”
- “What gets measured gets fixed,” noted another.
- Others noted that we need to see the data and to understand what drives decision making, including who ends up in our jails. It was noted that sometimes people are detained because judges are frustrated, and better alternatives are needed.
- One participant noted that it is important to determine who is responsible for the decisions affecting people detained pretrial and to ensure that this responsibility is properly exercised.
- It was noted that the necessity of parking and driving is a huge access issue, and that e-summonses, e-warrants, and web-based technologies and kiosks have proven very beneficial in communicating with jails, attorneys, and parties: “Everyone has appreciated the opportunity to appear remotely.”
- Others commented on the importance of recognizing the difference between nonwillful and willful FTA, and of eliminating unnecessary court appearances.

*“People had been trying for several years to achieve pretrial reform. The pandemic was the catalyst that finally brought diverse minds together to achieve meaningful change.”*

- Finally, one participant noted that some people in their jurisdiction had been trying for several years to achieve pretrial reform and that the pandemic was the catalyst that finally brought diverse minds together to achieve meaningful change.

---

## **The experience of the pandemic has implications for the routine court operations of the future.**

- One participant noted that their jurisdiction was “behind the times” with its use of paper files and hand-written jail cards, and that such practices would not be tolerated in the future.
- Another noted that pretrial reports are now emailed, rather than hand-carried, to the judicial officer.
- It was reported that in one jurisdiction, custody status reviews have been expedited such that all reviews occur within 24 hours.
- Pretrial assessments are being used effectively, resulting in increased numbers of people charged with felonies being supervised successfully in the community, without the requirement to pay financial conditions of release.
- The “tolerable risk” threshold has increased during the COVID-19 epidemic.
- The automatic return to custody of people on pretrial release for any type of noncompliance has been abandoned in one jurisdiction, and pretrial services has been delegated discretion to address noncompliance administratively.

---

## **Participants offered overall reflections on the impacts of the pandemic.**

- “It brought all justice system stakeholders together to make constructive decisions.”
- “It created cross-county networks to keep people out of jail.”
- One participant noted that decision-making has been collaborative among all justice system stakeholders: “I don’t think justice has been compromised.”
- “This crisis has been a ‘golden opportunity’ when it comes to pretrial issues. [It has] galvanized people’s thoughts about who needs to really be in jail. The focus has been on those people who have been found to be dangerous.”

- One participant from a jurisdiction that is using a pretrial assessment and decision-making matrix commented that the jurisdiction did not have to adjust the pretrial system it has in place: “We have the data to show that we are doing what we should be doing.”
- A participant from another jurisdiction commented that “it was very refreshing that everyone was really working together, and we were only housing people who were at risk for FTA or [of compromising] community safety.”

---

*“This crisis has been a ‘golden opportunity’ when it comes to pretrial issues. [It has] galvanized people’s thoughts about who needs to really be in jail.”*

---