



TRANSCRIPTION
OUTSOURCING, LLC

How justice is faring one year into our new normal

The Lasting Impact of COVID-19 on the U.S. Court System

When the Covid-19 pandemic started in the early spring of 2020, courts across the country were faced with an immediate need to transform the way they do business. Many courts responded by expanding digital **access**, including holding hearings on **Zoom**. Lawyers became more familiar with online filing and eDiscovery, and the corrections system even embraced actions like virtual **arraignments**.

For a time, most state courts suspended jury trials as they remained too risky in person and too tricky to conduct virtually. Now, more than a year into this public health emergency, most courts are slowly getting **back to business** as trial suspension orders expire and vaccinations increase. We've pulled federal and private-firm data to find out what challenges the justice system continues to face as a result of the Covid-19 crisis. Below, we'll explore obstacles the system has faced in the last year, as well as suggestions for legal professionals looking for ways to navigate whatever continued changes may be on the horizon.



Sample of court restrictions by state during the COVID-19 pandemic

(as of 4/10/21)



State restrictions on courts have varied widely across the country, as have interventions by the state supreme courts. Below is a sample of lax, medium, and strict changes to state court systems in 2020:



Nebraska

- ⌚ All courts ordered to remain open by the state supreme court throughout the pandemic



Michigan

- ⌚ Courts were closed for a short time in Spring 2020, then went to remote hearings
- ⌚ Counties had to submit a specific plan to reopen in the fall of 2020



Texas

- ⌚ The state supreme court prohibited most jury trials for several months across the state
- ⌚ Restrictions were not lifted until March 2021

SOURCES:

<https://www.ncsc.org/newsroom/public-health-emergency>
<https://www.txcourts.gov/court-coronavirus-information/court-guidance>

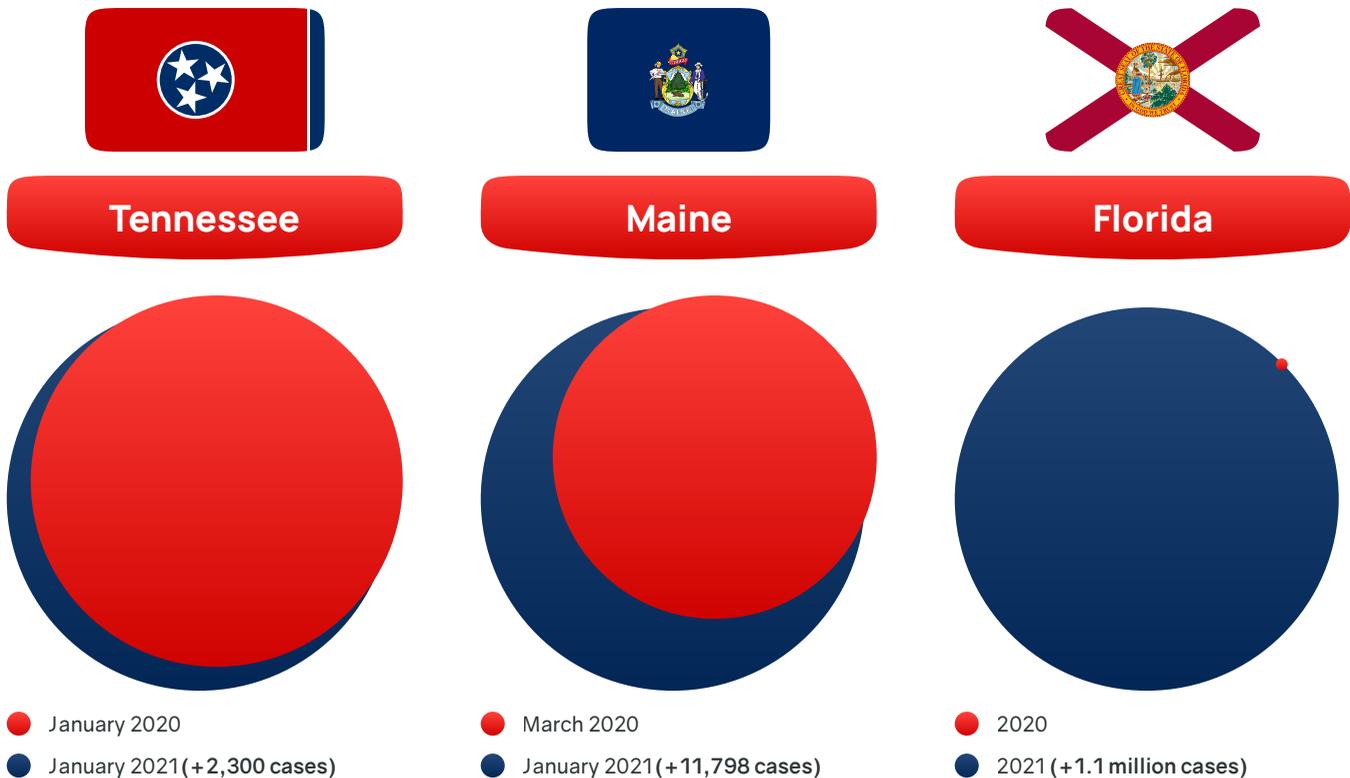
Court closures vary widely by state

While most states suspended at least some in-person court proceedings throughout the pandemic, the specific restrictions varied widely across the country and even within single states. Some larger cities, like [Phoenix and Seattle](#), had specific policies even without statewide restrictions, whereas some states left all closure decisions up to individual counties.

On the lax end of the spectrum, Nebraska's supreme court ordered all courts to remain open, while Texas's state supreme court restricted most jury trials until March 2021. Other states, like Michigan, met somewhere in the middle, closing courts briefly in Spring 2020 in favor of remote hearings.

As of Spring 2021, however, most closure orders have expired and courts are beginning to navigate public proceedings. As a result of past restrictions, courts across the country are dealing with significant backlogs. With one judge calling the backlog "[staggering](#)," states like Tennessee and Maine are looking at [backlogs](#) of 2,300 to nearly 12,000 additional open cases than they'd typically average in a given year. Florida alone is anticipating [over one million additional backlogged cases](#) in an already heavily burdened justice system.

 **Sample of open case backlogs by state as a result of the COVID-19 pandemic** 
(as of 4/10/21)



SOURCE:
<https://law360.com/articles/1351450/trial-alternatives-getting-fresh-look-with-covid-19-backlog>

Working through such an extensive backlog will require knowledge of the applicable system as well as flexibility as approaches change over time. The absence of a single federal policy means that each jurisdiction must make and enforce their own rules. This has the benefit of taking into consideration local needs and concerns, while also creating the challenge of adjusting to frequent changes.



Primary courtroom concerns regarding virtual hearings

(as of 4/10/21)



Efficacy and accessibility of remote hearings vs in-person hearings

Remote hearings and rules of evidence



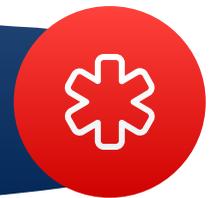
The ability to separate witnesses

Managing witnesses through virtual testimony



Problems specific to alternative dispute resolution

In-person hearings and public health risk



SOURCES:

https://law.cornell.edu/rules/frcp/rule_43
<https://americanbar.org/groups/litigation/committees/business-torts-unfair-competition/practice/2020/tips-for-remote-video-hearings-and-trials/>
<https://wbur.org/hereandnow/2020/07/01/face-masks-courts-trials-justice>
<https://sidley.com/en/insights/publications/2020/09/virtual-hearings-practical-tips-and-potential-pitfalls>
<https://jamsadr.com/online>

Emerging post-pandemic courtroom issues

Even as courts reopen, most are retaining and even encouraging proceedings to continue remotely. Despite vaccine rollouts and decreasing covid numbers in some areas, virtual hearings remain popular for both convenience and accessibility, in addition to safety.

This new way of litigating has shined a spotlight on unique concerns, one being how to virtually comply with the rules of evidence. In Federal court, **Rule 43** only allows virtual testimony “**for good cause in compelling circumstances**” and many state courts follow a similar evidentiary rule. Who determines good cause? Certainly, Covid-19 spikes were “compelling circumstances” in 2020, but in late 2021, what if a diabetic witness fears exposure? Is that enough to testify from home?

Today, these decisions are made by individual judges and can vary widely. There are similar concerns around admitting [documents](#). In person, a sensitive medical record can easily be shown to a jury and not published to an entire courtroom. Practitioners need to stay aware of any [state guidance](#) and proactively deal with evidentiary issues that will continue to arise and evolve.

Remote hearings also bring unique problems, including difficulty in separating witnesses. In March 2021, a court in [Michigan](#) was conducting a virtual hearing in a domestic violence case when the prosecutor noticed the victim glancing off camera. After a brief investigation, it was discovered that the defendant was in the next room influencing her testimony. In that case, the defendant was deemed in violation of a restraining order and police were dispatched. Prudence will require awareness of [state guidelines](#), other [best practices](#), and proactivity about these new issues.

Meanwhile, in-person hearings have their own new set of potential problems. As decisions to require infectious disease precautions like masks are left up to courts, there's often fallout for such policies. While the [Sixth Amendment](#) protects the right to confront witnesses, how that confrontation happens is often up to an individual judge. Face masks haven't been widely used in court proceedings but are becoming expected. What will a mask do to the [credibility of your witness](#)? Many people assume that judges and jurors will have a harder time determining truthfulness if a person is wearing a mask, but [experts](#) posit that the use of masks may reduce false assumptions based on gender, race, and class. Also, potential jurors and witnesses may be uncomfortable about the health risks even with masks, or alternatively could refuse to wear one. Staying ahead of these potential issues will help lawyers prepare and advocate for what best serves their clients.

Managing expert witnesses in a virtual landscape poses challenges as well. For instance in [California](#), a busy plastic surgeon attended traffic court from the operating room. Clad in PPE, he attempted to testify mid-procedure while another doctor attended. The court in that case halted the proceedings (and the medical board investigated as well), but a court in another jurisdiction may have no issue with a doctor testifying from her hospital lounge. Witnesses often must identify documents and people while testifying. Such identification can be more difficult to manage virtually, and practitioners need to plan ahead for these new possibilities.

Finally, many civil cases make use of alternative dispute resolution mechanisms like mediation and arbitration to settle cases. These widely used options have been affected by virtual implementation. In a traditional mediation, the parties are often in a conference room or courthouse, but in a [virtual one](#) they are typically at home. [Experts say](#) this might reduce stress and lend itself to easier settlements. When negotiations get heated or privacy is needed, clients can simply turn off the camera. Being that there is no need to travel, virtual mediation can involve higher-level decision makers, obviating the need to go back to communicate offers in person. And now that providers like [JAMS](#) have been facilitating online for some time, the process is more streamlined for everyone.



Managing a post-pandemic legal practice

(as of 4/10/21)



National Resources for Legal Professionals

The National
Center for
State Courts

Justia
Resources on
COVID-19

Federal Court
Resources

Juvenile Court
Resources
from NCJFCJ

Criminal Court
Resources
from the NDAA

Plus state-specific sites and toolkits, such as:

Florida Supreme
Court Guidelines

Texas
Guidelines

Maryland's Remote
Hearing Toolkit

DC Courts
Videos

Managing a post-pandemic legal practice

In order to best prepare for an uncertain future, legal professionals have to be proactive about all of these issues and plan ahead. Lawyers may have difficulty meeting with witnesses, they may have [judges](#) who refuse precautions, and their firms may have to plan for outbreaks or illness. Some planning might be financial, as many firms that work on [contingency](#) have seen reduced revenue as cases linger without a trial and they can't collect payment from clients who've lost jobs. Planning should also address staffing, to be sure that cases are covered in the event a lawyer is ill. Pandemic-related [delays](#) and closings due to illness may necessitate a stricter system to track deadlines. Staying aware of changes and having plans in place to deal with a variety of different outcomes is crucial.

Legal professionals must also continually be aware of changes made by state courts and the local bench. Courts typically deal with these issues in a piecemeal fashion, and lawyers need to keep apprised of all of them. There are lots of online resources for changing state laws, like [Justia](#), which is updated regularly, and the [National Center for State Courts](#), which has been tracking state changes over the entire pandemic.

Most states also have not only their own webpages relative to Covid-19 regulations and virtual hearing options, but some have also created guides to help lawyers stay up to date on these changes. [Florida](#) and [Texas](#), for example, have created guides for virtual practice and Zoom usage, and Maryland has written a [Remote Hearing Toolkit](#)—these guidelines can help both legal professionals and pro se litigants alike. The District of Columbia courts have even made their own [YouTube videos](#) on their Covid-19 response.

COVID-19 will continue to impact the justice system and legal profession and will require prompt response by many different players in the industry. If legal professionals can stay agile in their approach and apprised of changing regulations, they'll be better prepared for their clients, the court, and their communities.

Resources for Legal Professionals on COVID-19 Court Regulations & Guidelines

- [The National Center for State Courts](#)
- [Justia Resources on COVID-19](#)
- [Federal Court Resources](#)
- [Juvenile Court Resources from NCJFCJ](#)
- [Criminal Court Resources from the NDAA](#)
- **State Specific Sites and Toolkits, such as:**
 - [Florida Supreme Court Guidelines](#)
 - [Texas Guidelines](#)
 - [Maryland's Remote Hearing Toolkit](#)
 - [DC Courts Videos](#)

Fair Use Statement

We're pleased to share knowledge and insights about the impact of COVID-19 across U.S. court systems and the legal profession. If you'd like to share any of the information here, you're free to use this project's graphics and content for noncommercial purposes. Please link back to this page to give the creators proper credit.

About Transcription Outsourcing, LLC

Transcription Outsourcing, LLC is a Denver, Colorado-based online transcription services company. We provide fast, accurate and reliable transcription services for individuals, offices, departments and agencies of all sizes. Find more info about [medical transcription services](#) and [legal transcription services](#).



TRANSCRIPTION
OUTSOURCING, LLC