

CRIMINAL COURT SYSTEM FAILURES DURING COVID-19: AN EMPIRICAL STUDY

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Abstract

How did the criminal legal system respond to the early months of pandemic in 2020? This article reports the results of a unique national survey of judges, defense lawyers, and prosecutors that gives a snapshot of how the criminal legal system responded to the COVID-19 in the first five chaotic months. Criminal courts in the United States rely on in-person proceedings and formal and informal in-person communications to manage caseloads. The survey results detail, in ways not previously fully understood, how crucial these in-person communications are and how ill-prepared the criminal courts and legal professionals were to deal with the quick change to online and remote platforms.

Criminal Courts also tend to have top-down, non-consensual decisionmaking, and have not traditionally been heavy users of dispute system design approaches to change and reform. This means that there were not processes already in place to consult with all the professionals as changes were being made. This may be one reason for the critical system failures reported in the survey on issues such as confidential attorney-client communications, as well as serious concerns surrounding physical safety inside courthouses and jails. The responses to the survey paint a picture of state courts that are chaotic, unpredictable, and facing serious case backlogs, as they have not been doing normal case processing since mid-March of 2020. As with many other parts of our society, the criminal courts were unprepared to deal with the pandemic and are still struggling with how to adapt. One truism of the pandemic has been that we may all be on the same rough seas, but we are not all in the same boat. This survey highlights that reality.