



Thomson Reuters Institute

2023 State of the Courts Report

Executive summary

The events of the last three years have had a monumental impact on how many organizations operate, including the court system. As shutdowns and closures forced industries across the world to dramatically change how they do business, their participants continue to use new ways to interact and communicate among themselves.

Our nation's court system — that sees many courts overburdened and under-resourced — is a prime example. Even *before* the pandemic, courts were in need of modernization; and then when the pandemic hit, courts were pushed forward in relative light-speed into a world of virtual hearings, video conferencing between litigants and their lawyers, and other innovations.

Now, as the worst of the pandemic-imposed restrictions fade in many regions, those hard-won innovations are here to stay — or at least they should be. Because in just a few short years, these innovations in how the nations' courts — both on the state level and the county/municipal level — have benefited citizens' access to justice and led to an overall easing in the process of participation in the court system.

In a new report by the Thomson Reuters Institute, the *2023 State of the Courts Survey Report*, we analyze what judges and court professionals are saying about the challenges they face, such as hearing delays, which continue to be a major source of frustration. And, as many courts continue to leverage the new,

advanced technology that was brought on by the pandemic such as video conferencing and e-filing, we examine the impact of that as well. Overall, the report presents perspectives from respondents that illustrate why courts are moving toward modernization; and further, how they are encouraged to continue making more technology investment into improving the courts' technological capabilities.

The report also describes how steep challenges to our nation's courts remain, specifically around the issue of hearing delays, which can have a cascading effect on the remaining cases on the court docket as more delays beget even more. And even as the report lays out how improvements and updates in the use of virtual hearings have made these features more of a fixture and improved access to justice for many litigants, hurdles still remain, especially

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around outside internet and network access for many litigants with lower levels of digital literacy. (For example, roughly 85% of U.S. adults have smartphones, and about 15% of U.S. adults rely exclusively on smartphones, with no home internet or computers.)

Further, the report observes that more widespread use of technologies such as evidence management systems and document automation, and increased digital sharing of information could go a long way to bringing the court system out of its previous reliance on paper files, overstuffed dockets, and missed in-person appearances that all still contribute to case-delays and calendar backlogs.

What comes across in the pages of this report is a court system in which tremendous progress has been made in areas of improving access to justice and technological modernization, but much more still could be done. Indeed, as courts at all levels settle into a growing comfort with the technology they've employed since the pandemic, many are seeing new challenges that need to be addressed now in order to better move all legal system participants into a new age of digital efficiency.

TOP FINDINGS

There were several significant findings that we gleaned from the results of our comprehensive survey, including:

- A majority — as much as 79% in some instances — of judges and court professionals say they are experiencing delays in their hearings. Often, these delays impact other cases slated for that week, creating a burden on the entire court docket.
- A majority of survey respondents say they are either conducting or participating in virtual hearings and expect to continue to do so in future. Currently, about 40% of respondents say the *majority* of court hearings in which they are involved are being conducted virtually.
- More than three-quarters of respondents (76%) say that virtual court opportunities increase access to justice for litigants — a significantly higher result compared to 2021.
- Almost three-quarters of respondents say they do not use digital evidence management systems; however, two-thirds of those report that they would benefit from using such systems.
- Almost two-fifths of respondents say they have introduced new or improved work methods, processes, or service innovations within the past 12 months.

METHODOLOGY

This report represents the findings of a recent survey that was conducted at the end of 2022 to better understand challenges in the judicial system, specifically around hearings, evidence, caseloads, and technology in the post-pandemic world. An online survey was conducted with 201 judges and court professionals from November 1 to 17, 2022.

The results of this survey are trended against a separate survey, whenever possible, that was conducted in 2021 by Thomson Reuters among judges and court professionals as to how virtual hearings had affected their court system.

The purpose of both survey reports is to allow court professionals and legal experts to better anticipate the needs of courts in the future and help determine the effects of the Covid-19 pandemic on caseloads and parties involved in cases.

Part I: Delayed hearings taking their toll

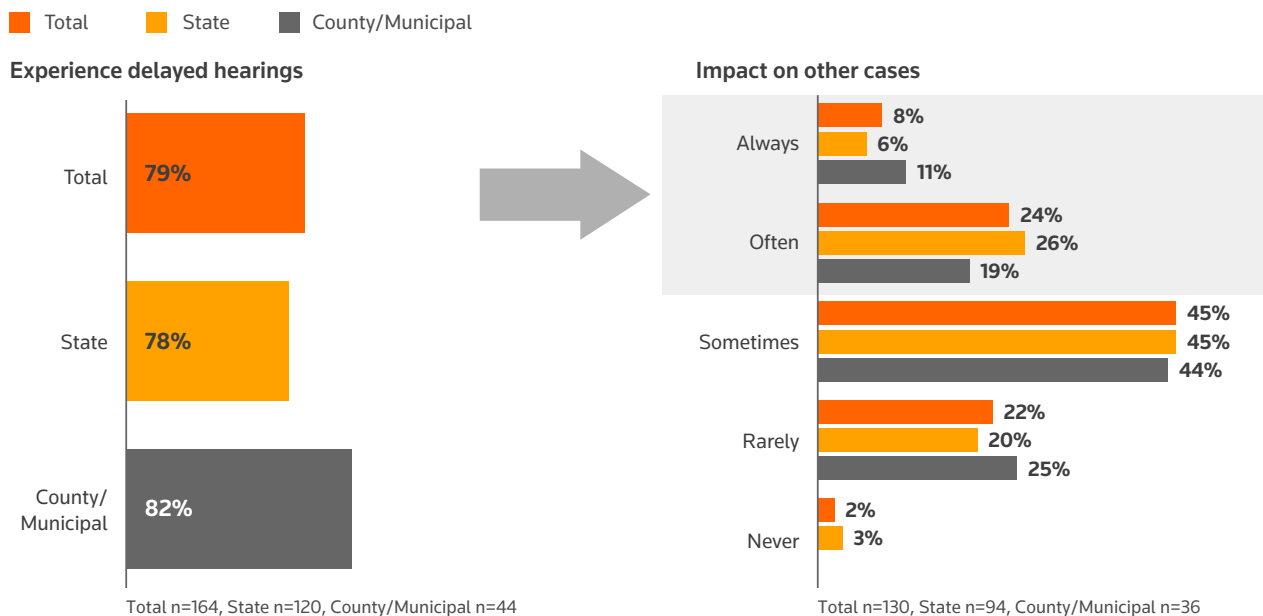
Delays in court hearings have become a significant problem for courts both on the state, county, and municipal levels. Indeed, more than three-quarters (79%) of survey respondents say that delays have affected their hearing process, with about one-third of those reporting that hearing delays always or often impact other cases slated for the week.

In fact, of those court professionals who participate in hearings on a weekly basis, approximately 79% say they had experienced hearing delays (defined as a delay of more than 15 minutes). Broken down among court levels, similar results are reflected by those respondents from state courts (78%) and county/municipal courts (82%) who experienced delayed hearings. That means that among the average number of cases heard per week in state courts (56 cases) and county/municipal courts (44), delays impacted cases about 17% and 18% of the time, respectively.

And the delays weren't just limited to the case at hand. Once a court hearing experiences a delay it has a cascading effect throughout the rest of the week's court docket, impacting numerous other cases and often causing even more delays.

Our survey showed that among those court professionals who participate in hearings weekly, almost one-third (32%) say that hearing delays always or often impact other cases slated on the docket for that week.

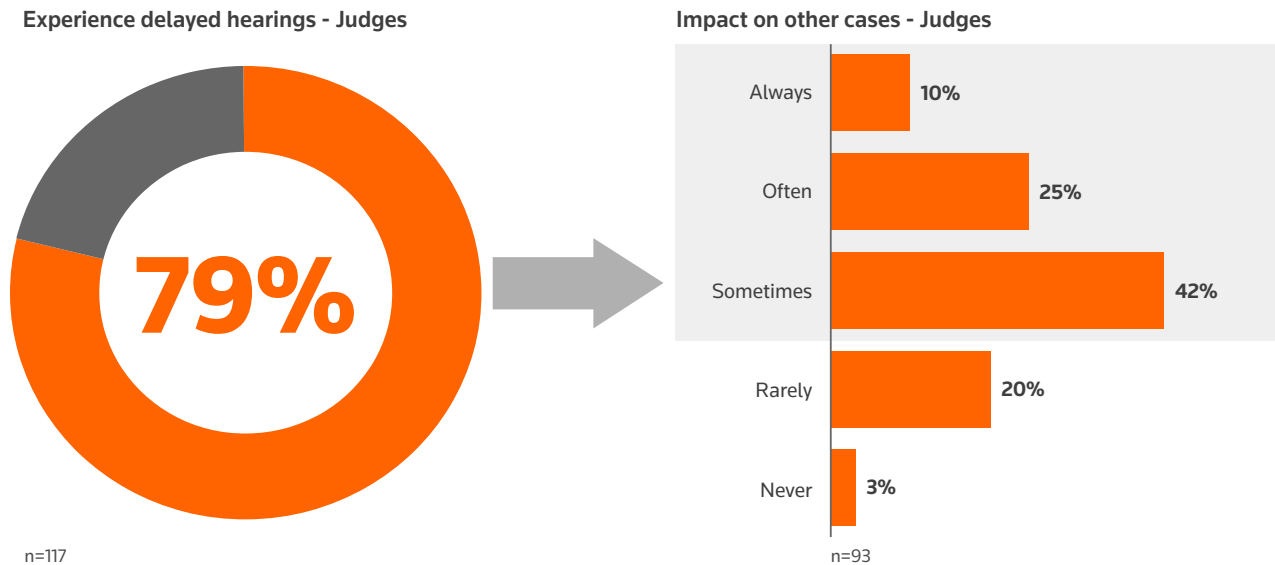
Figure 1: **Court professionals experiencing delayed hearings**



Source: Thomson Reuters 2023

For court judges, the impact of these delayed hearings is similar. In a typical week, 79% of judges surveyed say they experience at least one delay per week, which translates into 18% of hearings experience a delay for judges, or roughly 10 hearings per week facing delays.

Figure 2: **Judges experiencing delayed hearings**



Source: Thomson Reuters 2023

Interestingly, these incidents of delayed hearings are increasing, with 47% of judges reporting that they've experienced an *increase* in delays over the last two years with such delays having a significant impact on other cases on the docket about 77% of the time.

Respondents also shed light on *why* delayed hearings have become a growing problem for our court system.

Top reasons for delayed hearings

Not surprisingly, *failure to appear*, either in-person or virtually, is the top cause of hearing delays, according to both the judges and court professionals who responded to our survey.

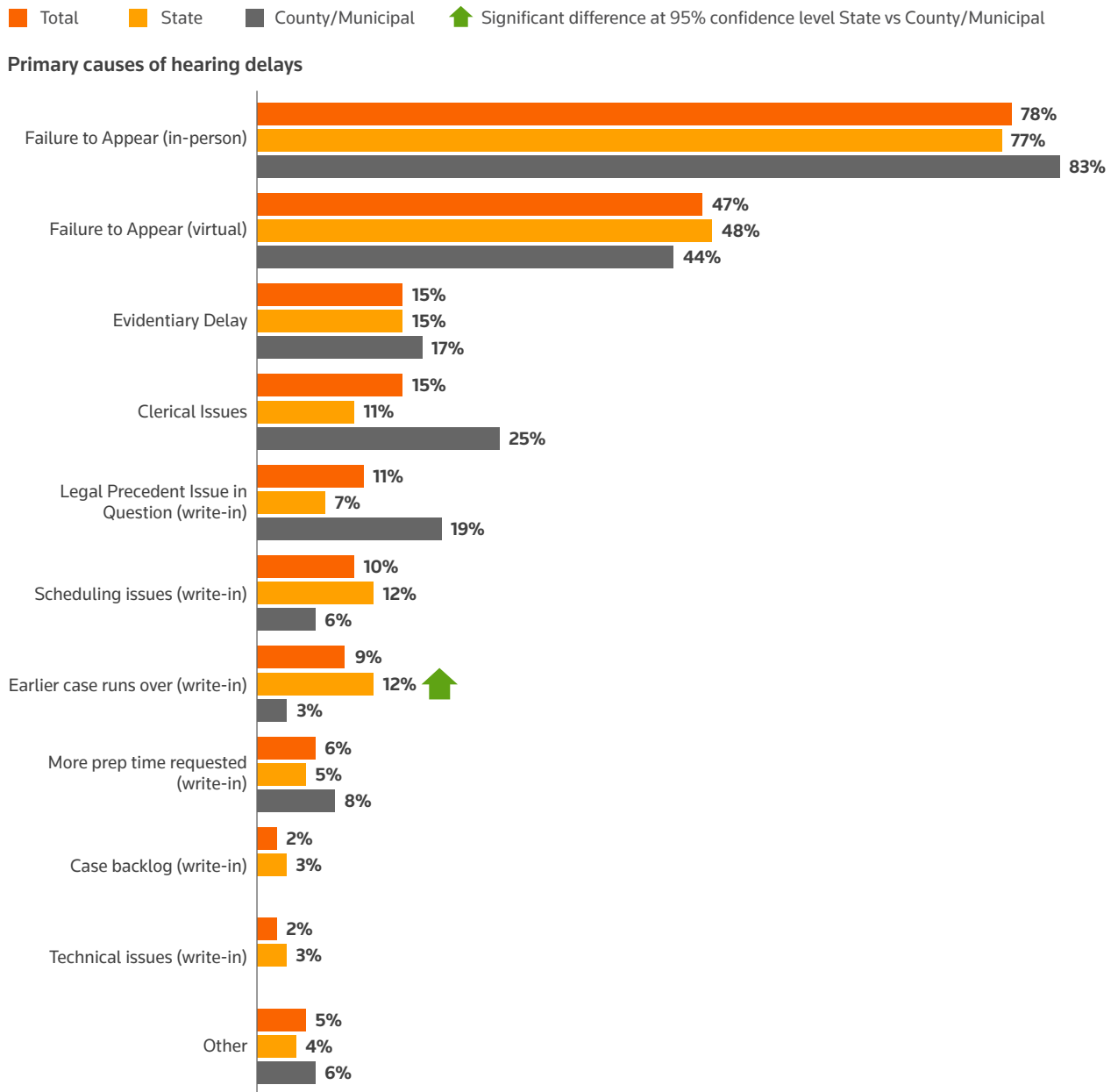
More than three-fourths of respondents (78%) cited failure to appear for *in-person hearings* as the main cause of delays. Again, this broke down slightly differently for different court levels, with 83% of county/municipal court respondents saying this compared to 77% of state court respondents.

The second-most cited reason for hearing delays was failure to appear for *virtual or remote hearings* with almost half of respondents (47%) citing this as a major cause of delays.

Interestingly, this was cited more at the state court level with 48% of state court respondents noting this problem, compared to 44% of county/municipal court respondents saying this.

Perhaps this could be because levels of adoption of virtual or remote hearings are more prevalent on the state level compared to the county or local levels, as we shall see.

Figure 3: **What are the main reasons for delayed hearings?**



Base: Weekly hearing delays >0 (n=130). Total n=130, State n=94, County/Municipal n=36

Source: Thomson Reuters 2023

A bit further down the list, we saw that clerical issues continue to be a significant delay trigger for county/municipal courts, with 25% of respondents saying this has caused delays in hearings for them.

Another significant delay factor — in fact, among the top three cited reasons for delays — was evidentiary issues, in which trouble locating, processing, or managing evidence has contributed

to delays. With about 15% of respondents citing evidentiary delays as a significant problem, it becomes clear that solutions for better handling of evidence are sorely needed.

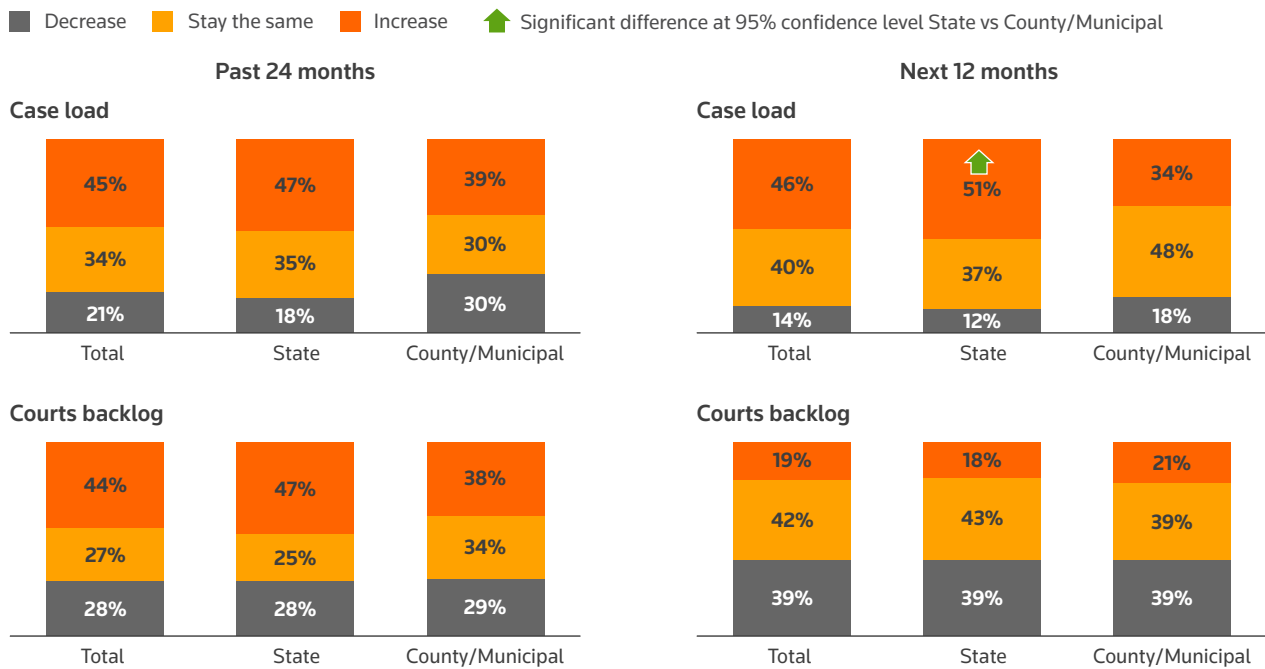
Clearly, the need for new, innovative solutions for many of these delay problems are in great need throughout the court system, as courts, judges, and court professionals seek a better way to move cases faster and with more clarity and certainty.

Backlogs & case loads

Two other significant factors adding to delayed hearings are court backlogs (the number of unfinished cases before the court) and the case load (the number of cases handled by the court).

Survey respondents saw both court backlogs and case loads as a continuing problem, with 44% of respondents saying backlogs had increased over the past 24 months, and 45% saying the same about court case loads. Indeed, the portion of respondents thinking court backlogs were going to decrease in the coming 12 months also fell, with 39% saying they expect to see a decrease in backlogs over the next year, compared to 42% who said that last year.

Figure 4: **Case backlogs and caseloads**



Total n=201, State n=145, County/Municipal n=56.

Source: Thomson Reuters 2023

Case delays and continuances and the amount of resources needed to address these delays also increased over the past 24 months; however, both factors are expected to become more stable in the next 12 months, according to respondents. For example, just 25% say they expect case delays and continuances to increase over the coming year — a steep drop-off considering 45% say they saw case delays and continuances increase over the past 24 months.

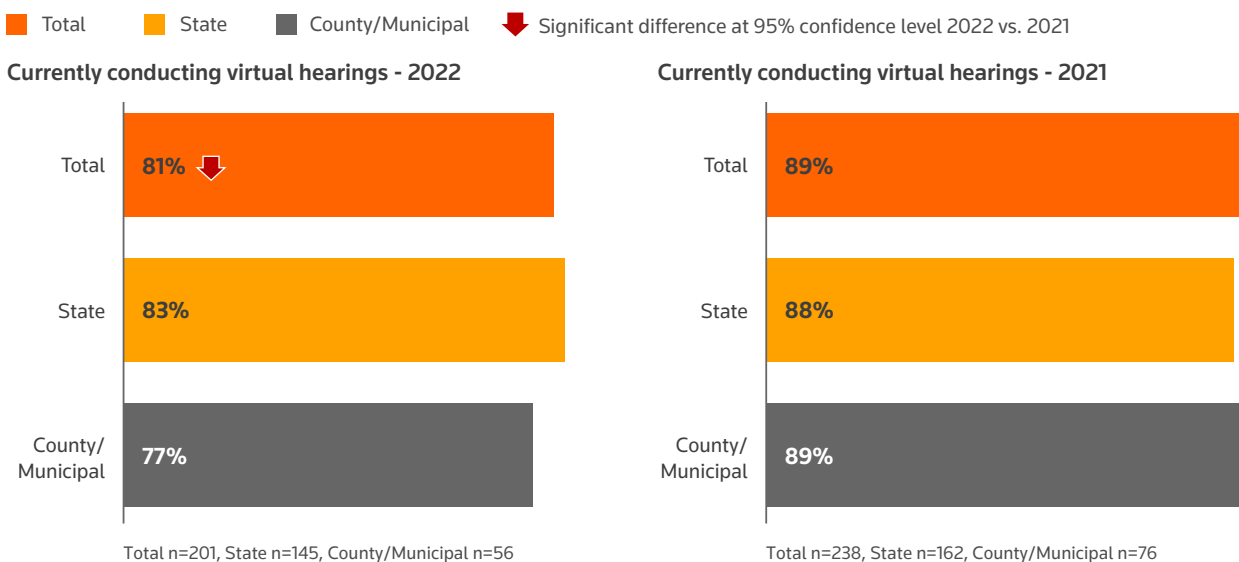
Part II: How virtual hearings have matured since the pandemic

As we've noted, the global pandemic brought unprecedented change to the court system. And after a period of court closures, hearings and related proceedings began to make their way back, albeit in a quite altered form.

Virtual or remote hearings, in which all parties — the litigants, their attorneys, court workers, and the judge — were physically separated from each other and joined only in an online video platform came into use during this time. Indeed, even as courts of all levels were historically slow to move forward on new technology solutions, the pandemic forced their collective hands.

In seemingly rapid succession, courts all over the country began using virtual hearings exclusively during the worst of the pandemic; and by 2021, almost 90% of courts were conducting hearings through virtual platforms, according to the 2021 survey report. And although that portion has fallen back slightly to 81% in our most recent survey, about 40% of survey respondents say the *majority* of court hearings now are conducted virtually.

Figure 5: **Virtual hearings take hold**



Source: Thomson Reuters 2023

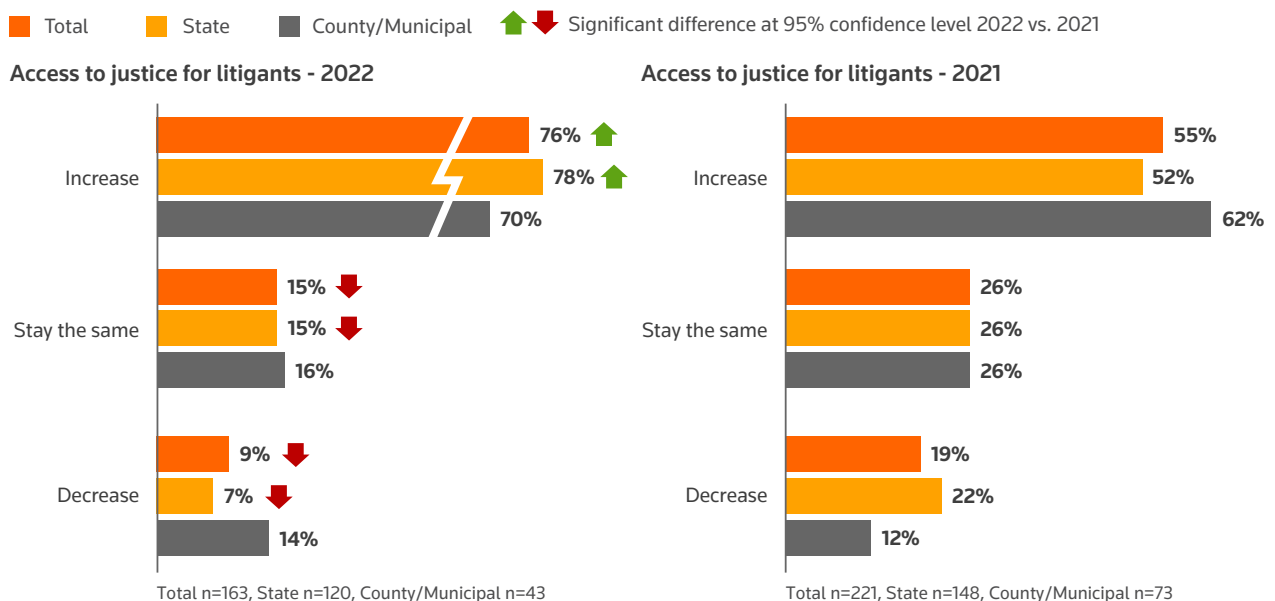
Further, it appears that virtual hearings are not going away anytime soon, despite the urgency of the pandemic lifting somewhat. A majority of respondents say they are either conducting or participating in virtual hearings and expect that practice will continue in future.

About three-fourths of respondents (74%) say virtual hearings will continue either at the same or an increasing level in the future. Of course, that means that 26% — one out of every four respondents — thought the use of virtual hearings would decrease in the future.

Virtual hearings and access to justice

The overall enthusiasm for virtual hearings, especially going forward, is good news for access to justice advocates who worried that the move to virtual hearings might wane as the pandemic-caused pressure eased. Rather, courts need to continue their path toward modernization and ensure that their efforts do not stop with the eventual end of the pandemic. Indeed, it may be more important now than ever that courts continue to make strategic investments in the types of technology that can boost longer-term productivity and ultimately support greater access to justice.

Figure 6: **Virtual hearings help access to justice**



Source: Thomson Reuters 2023

In fact, views on the benefits of virtual hearings in regard to access to justice for litigants greatly increased in the year since our previous survey. Now, more than three-quarters of respondents (76%) say virtual hearings increase the ability for litigants to gain access to justice, compared to just more than one-half (55%) that said the same in 2021. Also, the portions of those that say virtual hearings either don't impact or actually decrease access to justice for litigants dropped significantly in this year's survey.

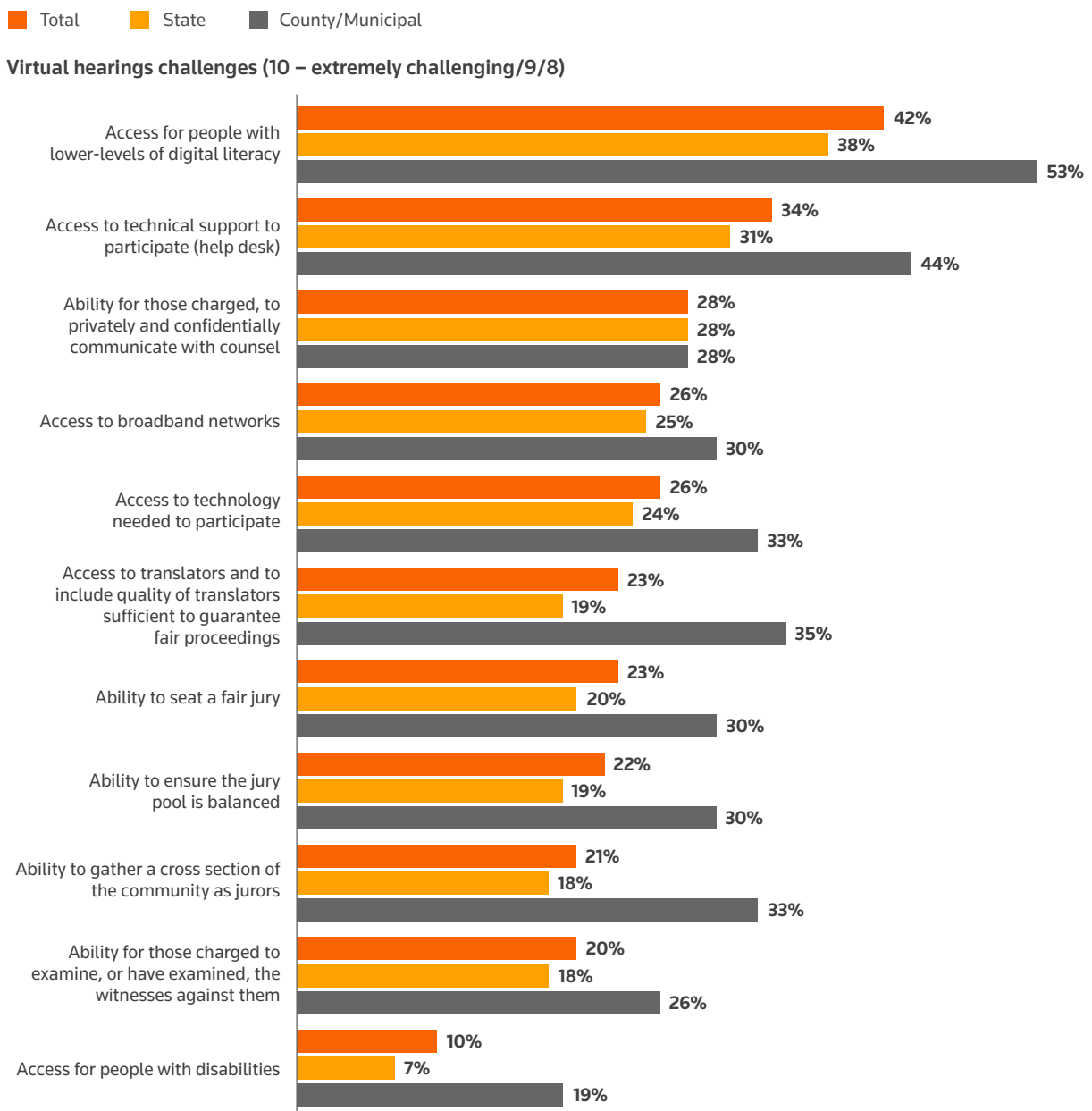
Among the benefits to virtual hearings discussed in the survey were convenience and better attendance/participation by parties, which were the top ways that virtual hearings were said to increase access to justice, according to respondents. Further, more respondents this year cite as benefits such factors as greater access, broader geographic access, and more affordable access compared to 2021.

Not surprisingly, litigants’ first or initial appearances and motion hearings are the top hearing types being conducted virtually for criminal cases. And for civil cases, motion hearings are the top hearing type conducted virtually.

Challenges to virtual hearings remain

Still, even with virtual hearings’ general acceptance in the courtrooms, there are still significant challenges that need to be addressed.

Figure 7: **Top challenges to virtual hearings**



Base: Those who conduct/participate in virtual hearings . Total n=163, State n=120, County/Municipal n=43

Source: Thomson Reuters 2023

Notably, the lack of access to the internet or other technology resources that are needed to participate in their hearings remains among the top challenges to increasing access to justice through virtual hearings.

Survey respondents say the top challenges of virtual hearings are a lack of access for people with lower levels of digital literacy and a lack of access to technical support. Not surprisingly, court professionals on the county/municipal level were more likely to experience these challenges.

Four of the top five challenges cited by respondents had to do directly with access to the internet or technology solutions, including lack of access to broadband networks and technical support. Clearly, as virtual hearings become more of a fixture in the courtrooms, challenges have evolved to how those participants outside of the court are dealing with the technology. This also strongly underscores the crucial nature of ongoing investment in technology in the courts in order to ensure that all citizens can access the justice system equally and effectively.

Given that, it may be worthwhile to look at some of the other areas that could most benefit from an infusion of technology investment.

Part III: The need for digital evidence management systems

The emergence of digital evidence management systems — technology solutions that can streamline hearings and trials, expedite case resolution, and improve case preparation for litigants and their advocates — could well revolutionize how courts, lawyers, and judges identify, catalog, and store evidentiary material, if these solutions eventually come into widespread use.

Thus far, such common usage remains elusive. Among our survey respondents, almost three-quarters say they **do not** use any digital evidence management system; but in a contrarian admission, two-thirds of those respondents say they feel they would *benefit* from using a digital evidence management systems.

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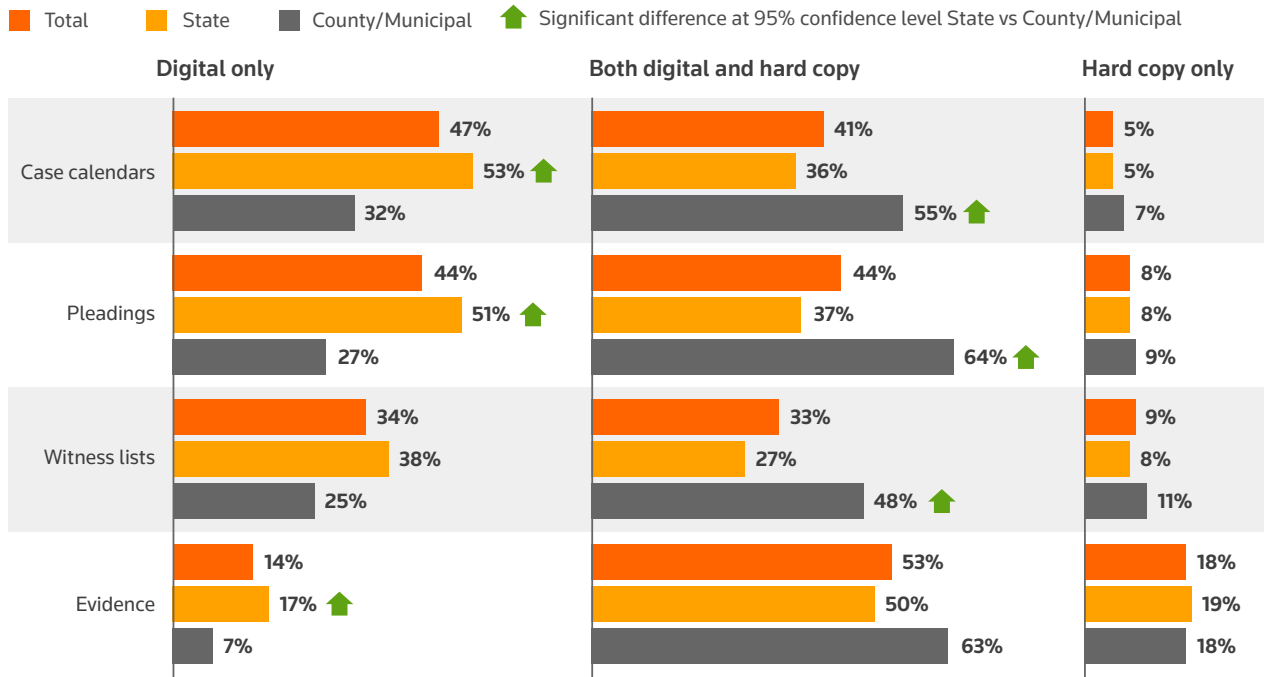
In light of this, there is a great focus on exactly what evidence is being stored digitally, *where* it's being stored, and how much *digital sharing* is going on among court participants.

Among the types of case-related material being stored digitally or in both digital and hard-copy format, crucial material like case calendars and pleadings were being stored in digital-only format almost half the time, according to respondents. While only a minority of respondents (14%) say that evidence was stored digitally only, a majority (53%) say that evidence was stored in both digital and hard copy.

Interestingly, it's apparent that digital-only storage of case-related materials is significantly greater at the state court level, with state courts outpacing the average in storing each type of case-related material in digital-only format. On the county/municipal court level, case-related materials were significantly more often saved both online and in hard copy.

As to the question of *where* case-related materials and evidence is being stored, the majority of survey respondents say that they're keeping physical evidence on-site, mostly in the basement or the annex of the courthouse itself or in judges' chambers. Almost two-thirds say they have experienced a shortage of storage space for the courts' evidence and material needs, and just 20% say their courthouse avails itself of an off-site storage facility.

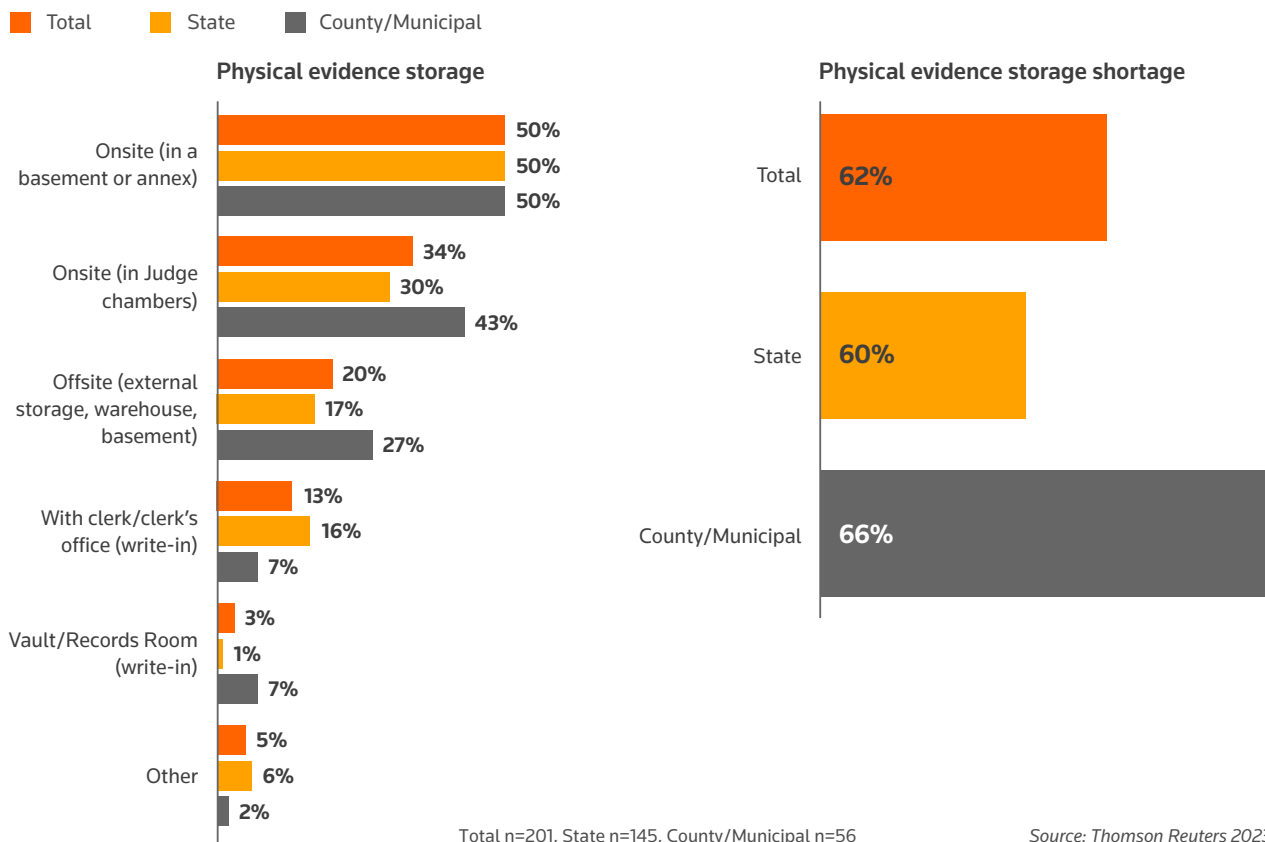
Figure 8: **What types of evidence is being stored digitally?**



Total n=201, State n=145, County/Municipal n=56

Source: Thomson Reuters 2023

Figure 9: **Where is evidence being stored?**

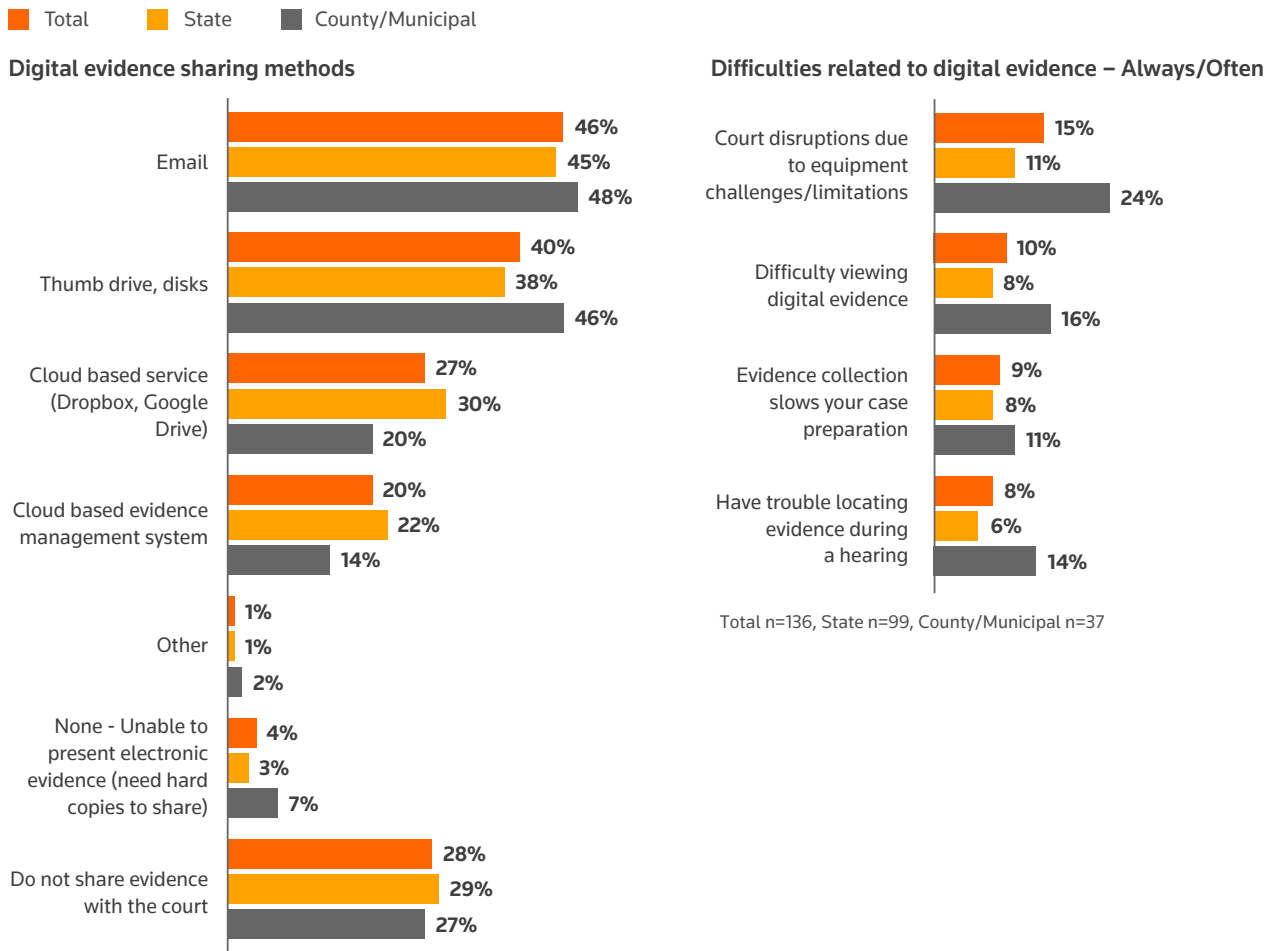


Total n=201, State n=145, County/Municipal n=56

Source: Thomson Reuters 2023

Despite this somewhat arbitrary approach to the storage of case materials and evidence, either digitally or in physical form, both state and county/municipal courts show they are actively using digital evidence sharing methods. Not surprisingly, however, court professionals at the county/municipal level report that they are much more likely to experience technical difficulties related to digital evidence than their counterparts at the state level.

Figure 10: **How much digital sharing is occurring?**



Total n=201, State n=145, County/Municipal n=56

Source: Thomson Reuters 2023

Among the methods used for digital sharing of evidence, both email and simple thumb drives or discs are the most popular, with 46% of respondents saying they use email, and 40% saying they use thumb drives or discs. Interestingly, while more than one-fourth of respondents (27%) say they use an outside cloud-based service like Dropbox or Google Drive, far fewer (20%) say they have made the move to a full cloud-based evidence management system.

That remains curious, given the numerous challenges respondents cited that were brought by using digital-sharing methods — from case delays or disruptions due to the limitations of sharing, to an inability to view or even *find* the shared material.

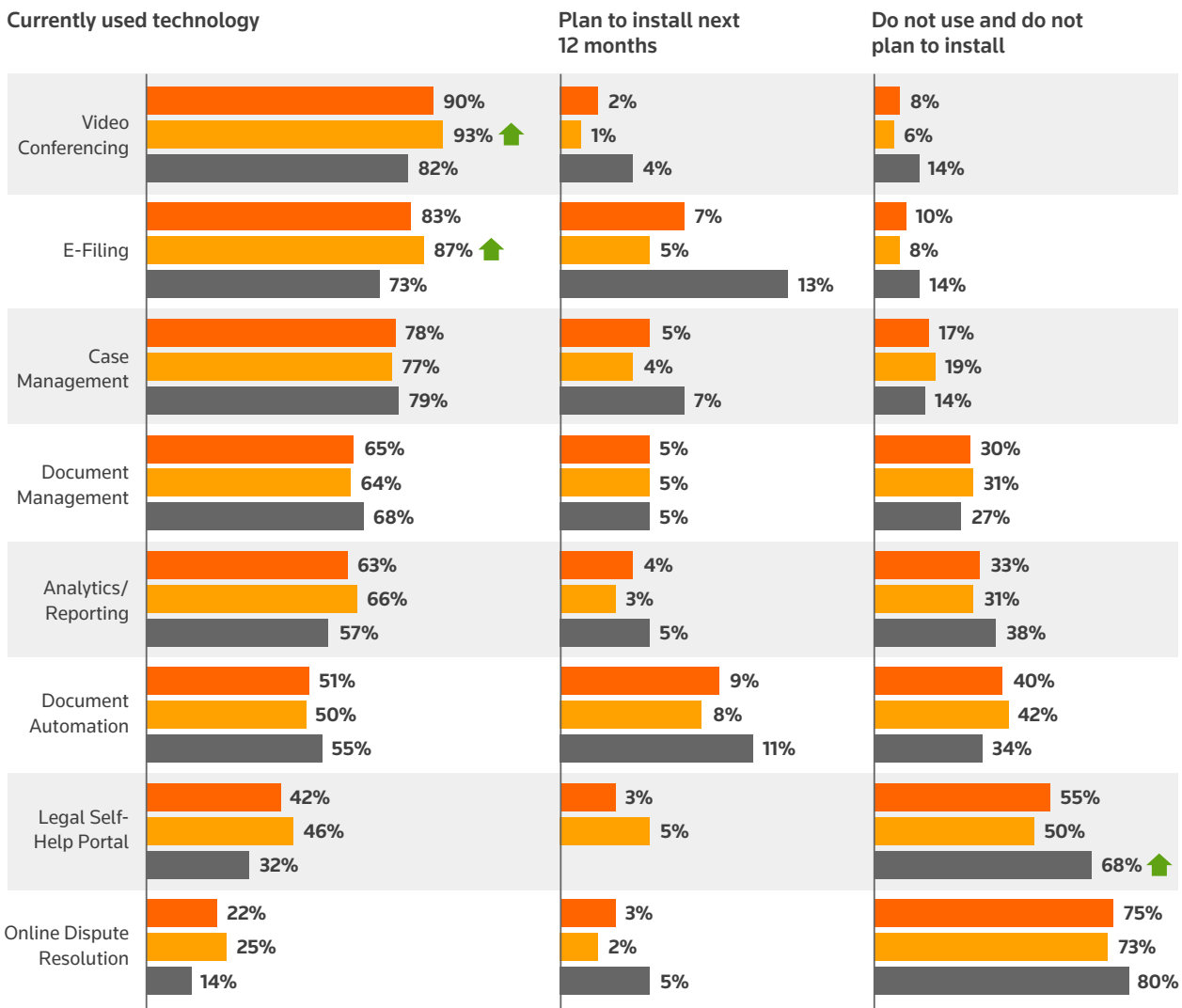
Part IV: Other technologies in use

Beyond the needs for further investment in evidence management systems, courts at all levels exhibit a stronger grasp of other technologies that are helping to improve their efficiency. Much of this technology, of course, was pushed on courts during the pandemic, such as video conferencing, remote hearing platforms, and other innovations.

Indeed, video conferencing and E-filing of court-related material or records are the top two technologies that survey respondents say are in most use. For two of these technologies, usage is significantly higher at the state court level.

Figure 11: **Technologies in current use**

■ Total
 ■ State
 ■ County/Municipal
 ▲ Significant difference at 95% confidence level State vs County/Municipal



Total n=201, State n=145, County/Municipal n=56

Source: Thomson Reuters 2023

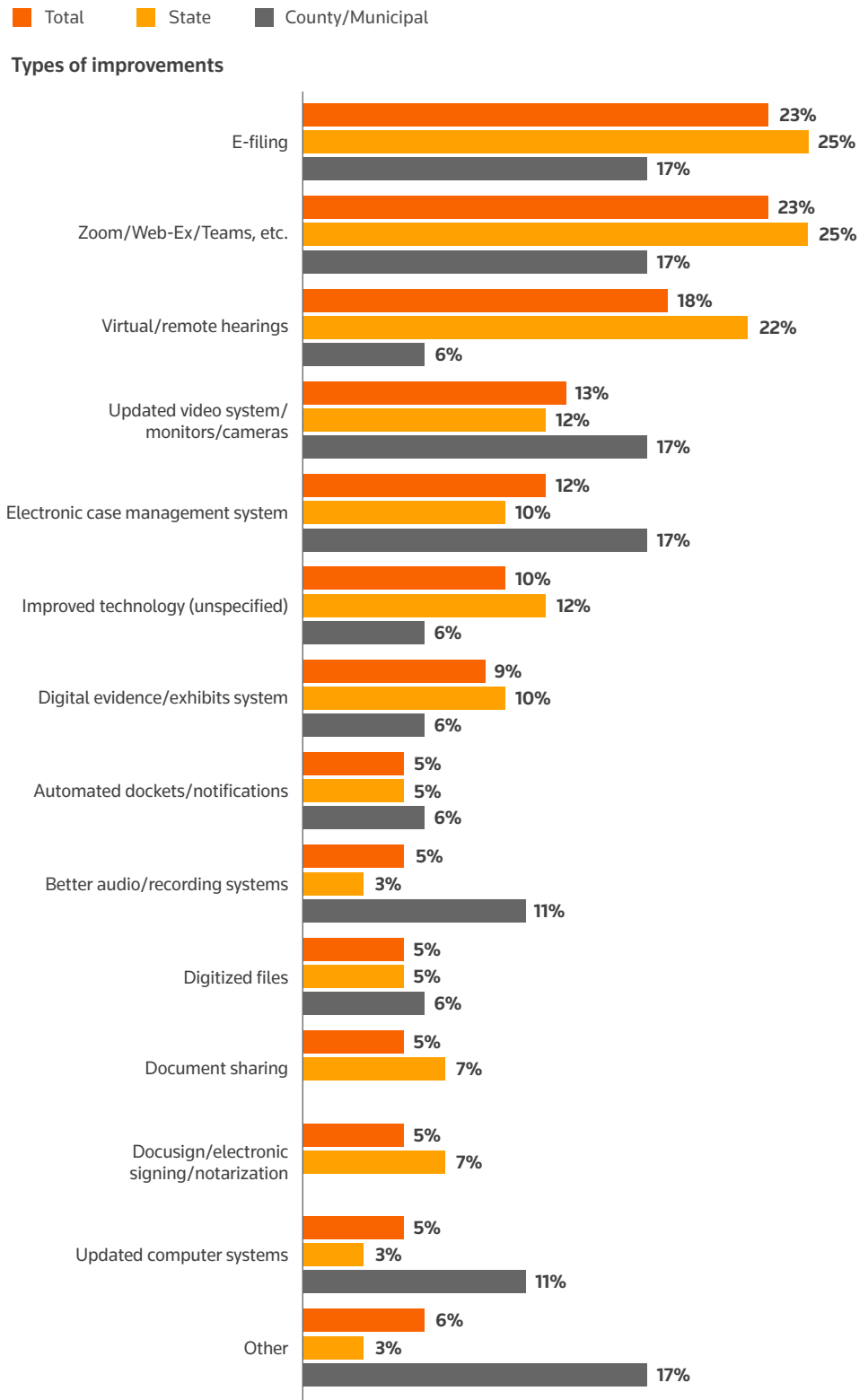
As seen, 90% of respondents say video conferencing is currently in use within their courts, and 83% say the same about E-filing. Moreover, a majority of respondents say they are using an array of other technologies, such as case management and document management systems, document automation, and the use of data analytics. Those majorities are likely to grow in the coming year as portions of those without these technologies say they plan to install them within the next 12 months.

Unfortunately, some technologies may have reached their full acceptance level. Among certain technologies — such as document management systems, document automation, and analytics usage — large portions (30%, 40%, and 33%, respectively) of their potential user base say they *do not* use these technologies currently nor have any plans to install them.

As to how these technologies are advanced or improved over time, almost two-fifths (38%) of respondents say that they've introduced new or improved methods, work processes, or service innovations over the past 12 months. On the state level, this was even higher, with 41% of state court respondents noting these tech improvements over the past year, compared to 32% of county/municipal court respondents.

Not surprisingly, the top improvements are to those technologies most widely in use, such as E-filings and virtual hearings, as well as video conference platforms like Zoom, Web-Ex, or Microsoft Teams.

Figure 12: **Where is technology being updated or improved?**



Total n=77, State n=59, County/Municipal n=18

Source: Thomson Reuters 2023

Workforce issues

When questioned about their workforce capability and the challenges of labor shortages, respondents were forthcoming. More than two-thirds of respondents (68%) say their court experienced workforce shortages over the past 12 months — situations that likely added to problems of hearing delays and case backlogs.

Broken down by court level, we see that 70% of respondents from state courts say they experienced workforce shortage in the past year, compared to 63% of respondents from county/municipal courts.

Given the pressure on government budgets at all levels, this may not be surprising. A majority (58%) of all respondents say their staffing budgets either remained the same or were decreased over the past 12 months.

Looking ahead

As the worst of the pandemic fades into our collective rear-view mirror, the massive impact that it had on moving major institutions, including the court system, forward cannot be underestimated.

Had the pandemic not occurred, or had occurred less viciously than it had, resulting in fewer shutdowns and mass closures, it is uncertain if courts would have moved so rapidly into remote hearings, video conferencing, and automatic document filings as it did.

Now, those innovations are here to stay — but they should not stall there. Indeed, the courts' move into modernization should be encouraged and enhanced with new resources being invested to improve the courts' technology abilities.

Such improvements and updates to the use of virtual hearing systems, more widespread adoption and use of technologies — especially digital evidence management systems, which our survey shows are largely underutilized — as well as a fuller embrace of document automation, and digital sharing of information could go a long way to bring the court systems out of the pre-pandemic age of crates of paper files and reliance on in-person appearances and into a new age of digital efficiency and greatly enhanced access to justice for all citizens.

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