

oneCourtMN Hearings Initiative Justice Partner Meeting Agenda

Criminal Case Type

October 17, 2022

11:00 am to 12:00 pm

Attendees

Justice Partner Attendees: Staci Bennett (Minnesota Bureau of Criminal Apprehension), Mary Ellen Heng (Minneapolis City Attorney's Office), Suzanne Elwell (Office of Justice Programs), Christopher Jison (Minnesota Asian Pacific Bar Association), Connie Jones (Minnesota Department of Corrections), Tamara Larsen (Saint Paul City Attorney's Office), Julie LeTourneau Lacker (Minnesota Bureau of Criminal Apprehension), D Love (League of Minnesota Cities), Artika Roller (Minnesota Coalition Against Sexual Assault), Robert Small (Minnesota County Attorneys Association), William Ward (Minnesota Board of Public Defense), Tammy Wherley (Minnesota Department of Corrections)

MJB Attendees: Heather Kendall, Aaron Lauer, Kirsten Maiko, Kate Malmon, Suzanne Mateffy, Judge Kathryn Messerich, Paul Regan, Kelle Schleis, Jeff Shorba, Dawn Torgerson, Wally Wallestad-Dax

Welcome and Introductions

Jeff Shorba, State Court Administrator, welcomed the justice partners and thanked them for attending the meeting focused on the oneCourtMN Hearings Initiative. The initiative provides strategic direction and helps implement the Minnesota Judicial Branch's strategy related to remote and in-person hearings. It also assists district courts to resolve issues that might arise during implementation. This effort continues the Branch's commitment to innovation and increasing access to justice for all Minnesotans.

OHI's Response to Spring Justice Partner Feedback

Judge Kathryn Messerich, OHI co-chair, said that the OHI Steering Committee is committed to making the initiative an open and transparent process. OHI has worked to engage those affected by its work to understand their experiences, needs, and ideas. Since receiving feedback from justice partners last May and June, OHI has worked to address many of the issues that were shared.

Justice partners shared that they desired to continue to be engaged with OHI as it progresses with its work. In addition to continuing our OHI justice partner meetings, OHI has presented across the state at several partner conferences this summer about OHI and the future of remote hearings. Part of our evaluation framework will also include opportunities for justice partners and court customers to share their experiences and ideas about remote and in-person hearings with us.

Additionally, partners encouraged OHI to continue using remote hearings for some types of hearings because of the accessibility it provides to partners and court customers. The Branch's new hearings framework has resulted in 60% of hearings being held remotely, including over 80% of non-criminal

hearings. We have tried to provide clarity around how hearings are being held and flexibility in hearing settings to accommodate the needs of the parties.

OHI has also addressed remote hearing decorum in response to partner feedback. It created a video and written remote hearing decorum guides found on the Branch's website. These resources help litigants understand how to prepare themselves for court and the decorum expectations during their hearing.

Policy 525 Implementation

Judge Messerich mentioned that last June Judicial Council Policy 525 established a uniform statewide non-criminal hearing framework and a series of district criminal hearing plans tailored to meet the needs of districts as they tackle the criminal case backlog. It is important to note that the initial criminal and non-criminal hearing frameworks are not permanent and will continue to evolve. A critical part of our evaluation process will look at how the non-criminal hearing framework and district criminal hearing plans are being implemented across the state. We will assess what effects they are having and whether any adjustments are necessary to improve hearings in the long term.

OHI: Data Collection Framework

Heather Kendall, OHI co-chair, said that throughout the summer, OHI has worked to establish a data collection framework to understand the impact of its work and gather stakeholder feedback. Evaluation data will be used to inform OHI's efforts and recommendations to Judicial Council.

The oneCourtMN Hearings Initiative is working to build public trust and accountability in our judicial system. To accomplish this important goal requires a statewide high functioning hearing process that is effective, timely, and accessible. During our evaluation phase, we will investigate if these things are happening and why. We will use a range of methods to answer each of these questions, including analysis of existing data. The currently planned methods include surveys of court users and a Resources and Practices study investigating the connection between our hearing practices and resources and outcomes.

Statewide Hearing Data

Heather Kendall stated that critical to our decision-making is the collection and use of data from remote and in-person hearings, as well as feedback from internal and external stakeholders. Data helps us understand the impacts of the hearing framework and changes to court operations brought about by OHI's work.

One example of this outreach is our upcoming survey of court customers, particularly focused on litigants in remote hearings. It will gather court customer perspective on access, timeliness, and effectiveness related to their recent hearing. This survey will also investigate barriers to hearing attendance and court customer preference for appearing remotely or in-person for a hearing.

Kirsten Maiko, OHI Evaluation and Organization Learning Team Lead, walked justice partners through a series of data on criminal hearings are being conducted since the implementation of Policy 525. Since

the policy went into effect 62% of criminal hearings and 85% of non-criminal hearings have been held remotely (On the record hearings held from June 6 to September 16, 2022).

For criminal hearings, as you know, districts have flexibility in how to hold particular case types based on their local needs to address the criminal case backlog. District plans have varied significantly in how they are managing their criminal hearings. For example, a couple weeks ago, districts ranged from about 15% to over 80% of criminal hearings being held remotely. As the district criminal hearing plans have gone into effect you can see a steady decline in the number of remote criminal hearings statewide. Kirsten also showed the variation across criminal hearing types in how they are being held.

Remote Hearing Decorum Video and Written Guide

Suzanne Mateffy, OHI Training and Support Team Lead, shared information on OHI's efforts to address remote hearing decorum. OHI explored challenges with online courtroom decorum and sought to identify strategies for ensuring virtual hearings have the same level of decorum as hearings in a courthouse. Its initial set of decorum strategies focuses on education and training materials. To help set decorum expectations, OHI created a new video and companion written guide. These resources are posted on the public website's [Going to Court](#) and [Remote Hearings](#) webpages. Both resources provide information on how hearing participants can prepare for their hearing by familiarizing themselves with their case and testing their technology before their hearing. They also include helpful tips to minimize background distractions, take advantage of community legal kiosks for a private setting, choose appropriate clothing as well as learn how to communicate during their hearing. First published in English, the video and written guide will be available soon in Hmong, Spanish, Somali, and Karen.

Remote Hearing Challenges for People in Custody

Wally Wallestad, OHI Hearing Reengineering Team Lead, stated that one of the issues that OHI has been exploring is remote hearing challenges for people in custody. OHI is investigating how jails are working with courts across the state to provide access to remote and in-person hearings.

Earlier this summer a county jail announced it would be returning to pre-pandemic processes. In that jurisdiction, it will now require a writ to transport the person to either the courthouse, or another facility, to attend their hearing. Additionally, it will no longer provide incarcerated persons the ability to appear remotely for their hearing from the jail due to resource constraints. Since that announcement, OHI learned there are several other county jails either prioritizing remote appearances from within their own jurisdiction or requiring a writ. However, there are others who have fully embraced remote appearances and accommodate as best they can.

Input from Justice Partners

Data Collection and Evaluation

A justice partner asked if the Branch will be surveying crime victims as part of OHI's evaluation process. Kirsten Maiko said that OHI plans to survey anyone that is using the courts. Although the focus will be litigants, victims will be included as well.

A justice partner raised the issue that remote hearings, at least early in the pandemic, caused problems with collecting fingerprints. Another partner responded that the fingerprinting issue was driven by the people during the pandemic not being processed by jails prior to their hearings, including for fingerprinting. Unfortunately jail populations are returning to their pre-pandemic levels after decreasing dramatically during the pandemic. Likely this resolved a large portion of the fingerprinting challenge.

A justice partner questioned why a hearing might not be recorded. Kirsten replied that our data relies on court staff adding a case event record. When they fail to enter that information, the Branch does not know how a particular hearing was held.

A justice partner asked why there was a decrease in remote criminal hearings and an increase in in-person hearings since Policy 525 went into effect. Kirsten said that under Policy 525 each district has defined how to hold criminal hearings to provide them flexibility in address the criminal case backlog. The statewide trends in how hearings are held are being driven by the district's criminal hearing plans.

Jeff asked if justice partners prefer in-person criminal hearings. Some of the feedback that OHI has received from judges states that cases are only being settled when in person. A justice partner disagreed that cases settle more often when held in person. Part of the challenges is that a lot more cases are being charged into the system. He found that you can move through more cases remotely if decorum is being followed. Another partner stated that in Hennepin County all criminal calendars are back in person, except for payable misdemeanors. They had not seen a lot of difference in settlements based on the hearing setting. Their office is resolving additional cases at arraignment during in-person hearings, these have mostly been self-represented litigants. One partner believed that it depends on the case type. Arraignments have been better in person. They resolve more frequently, and it provides a meaningful opportunity to talk with self-represented litigants about diversion opportunities. Some court customers do not feel that remote hearings are "real court."

People in Custody Participating in Remote Hearings

One partner has seen jails facilitating remote hearing within their jurisdiction but not for hearings outside of it. This practice sets people up with charges in other counties up for failure. It creates a lot more work and cost for the system when jails do not support people attending remote hearings because of their internal staffing issues. It does not make sense for the county to save a couple of dollars in staffing costs and charge thousands of dollars to the state to transport someone to another county. Another justice partner agreed stating that when people cannot appear when they have charge in another county it creates problems for rest of the system. Jeff Shorba suggested maybe OHI could convene a special meeting on remote hearings for people in custody to resolve the issue.

Allowing Victims to Observe Remote Hearings

A justice partner mentioned that there is a challenge for victims in observing some remote hearings. The courts are controlling who gets in and who does not. Some judges are forcing people to identify themselves publicly before they are let into a remote hearing. Another partner agreed that the system is intimidating enough already for victims even without creating technology barriers in allowing victims to observe a remote hearing. Jeff Shorba responded that courts are in a balancing act between privacy and openness. Potentially the remote hearing process is too cumbersome in allowing people to observe

hearings. Judge Messerich and Heather Kendall said the Branch needs to work on how people observe hearings so that they can be viewed the same way as an open in-person courtroom.

Hearing Types for Remote and In-person Hearings

One justice partner found that first and second appearance hearings (Rule 5 and 8) are working well remotely, but everything else should be in person. When court is in person it seems to move quicker and more efficiently.

Miscellaneous

A partner said that there are so many new prosecutors, public defenders, and judges since the start of the pandemic who have only experienced court remotely. They believed that this prevented the normal relationships between these groups that are created between hearings while in person. This lack of trust has created less cooperation to work together during hearings. Another partner agreed that the same lack of relationships exist in Hennepin coming out of the pandemic. They also cautioned that attorneys have become too used to handling matters over email that should be done in court to establish a record. The public defender's office has seen a lot of turnover recently as well. In the 9th District alone, they have lost 40% of their attorney staff.

One justice partner questioned why jail populations have increased so dramatically over the last six months. It puts a burden on the public defenders, prosecutors, and jails. They suggested that we need to convene justice partners to understand why this occurred and what we can do about it. Jeff Shorba suggested that the coalition of criminal justice partners should meet so that we can present a positive unified story about the pandemic to educate new legislators about the important and hard work that the system is doing.

Next Steps

Jeff Shorba thanked the justice partners for sharing their time and expertise during the meeting. Following the meeting OHI will be sharing a meeting summary which can help spark discussions with your organization and constituents. Justice Partners will also receive a short survey to provide additional feedback. The Branch hopes that justice partners will join us for future OHI justice partner meetings to discuss OHI work efforts and lessons learned from the remote and in-person hearing plans.