

Utah Justice Court Reform Task Force Focus Group Summary Report

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Overview

The National Center for State Courts (NCSC) conducted six focus groups at the request of the Utah Justice Court Reform Task Force during the months of August and September 2022. Participants were identified by the Task Force, and the focus groups were facilitated by NCSC staff. Participants were provided with the summary included here as Appendix A and a link to the full Task Force report and recommendations prior to the focus groups. During the focus groups participants were asked to share reasons they supported the proposal, concerns about the proposal, and any other suggestions to improve Justice Courts.

This report includes summaries of the discussion from each focus group, presented in chronological order.

Justice Court Judges

This focus group was held on August 12, 2022 from 12:00 p.m. to 2:00 p.m. via Zoom. Six (6) Justice Court judges participated.

Areas of Support

Four judges indicated that they believed the proposed reforms would lead to better access to justice for individuals across the state of Utah.

Areas of Concerns

Participants expressed concerns and had questions about aspects of the proposal, summarized below:

Employment/Staffing Concerns

- All participants indicated that justice court staff and judges felt high levels of uncertainty and anxiety about the proposed reforms and what it would mean for their careers and positions going forward. Participants indicated that this made it difficult to retain staff and to hire new staff.
- Although the proposal indicates that full-time justice court staff will become employees of the division court, the proposal does not indicate what will happen with part-time staff. Many rural justice courts are part time.
- The proposal does not address how benefits will be handled. There was concern that the state and municipality retirement benefits and vesting schedules do not match causing employees to potentially lose retirement benefits. There was also concern about health care benefits, particularly for part-time employees.
- Although the proposal indicates that all sitting justice court judges, including non-attorney judges, will be permitted to continue as division court judges, there is no guarantee that this will happen if the executive wants to appoint different judges.
- There was also a concern about where justice and division court staff and judges will be physically located. Right now, the proposal suggests they will share space, but it's not clear how this can or will work practically.
- If rural justice courts are shut down and all the justice court workload is transferred to the division court, this will create a lot of work for division courts.

Community Concerns

- In some communities, justice courts are seen as more localized and in touch with the needs of the communities. Participants did not want to lose this sense of community connection with the move to division court.

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- There was a concern about ensuring that parties would be able to appear remotely to avoid traveling long distances in rural communities if division courts were not located in those communities or in the same location as the justice courts.
- There was discussion of the fact that all communities are different and the more localized a court is, the more the court can reflect the sensibilities of community. This leads to better buy-in and more empathy on the part of judges who are tied to community.

Practicality Concerns

- All participants felt there needs to be clarity about how fines and fees will be allocated with the new structure. There was also a concern about some district courts that might not be following the standard fine schedule and this would need to be taken into account when doing reallocation as well.
- If the proposal is adopted piecemeal by the legislature (e.g. only some reforms are put in place), it will create worse access for individuals. Participants stressed that it was crucial all reforms be enacted for the restructuring to work.
- Participants supported the proposed phased-in approach where division court would be implemented in larger, urban communities and then rural communities. **However**, participants cautioned that the practicalities of this phase-in would have to be carefully considered, including how to draft a statute that would create this phase-in correctly, how to consider training for both division and justice court judges while the phase-in was taking place.
- Participants wanted more information and the opportunity to give feedback of offenses that would be converted to infractions. Some participants felt that there were a number of offenses that should be infractions, including driving on suspended licenses and failure to pay child support.

Other Areas of Discussion

- Some participants felt this proposed division court structure reflected the old circuit court structure that was abandoned by the Utah Judiciary, and the reforms felt like a step backward, not forward. Another participant provided some history on the circuit court structure and suggested that the structure itself was not bad.
- There was discussion about whether de novo appeals were actually a problem that needed to be addressed. Some participants felt they happened so infrequently that creating reforms to address them was not necessary. Another participant felt that the potential for de novo appeals affected plea bargaining in misdemeanor cases, requiring prosecutors to offer pleas that they might not otherwise offer due to concerns about appeals and having to re-do a trial.

Justice Court Clerks

This focus group was held on August 26, 2022 at 2:00 p.m. to 4:00 p.m. via Zoom. Nine (9) clerks from justice courts across the state participated.

Areas of Support

Participants expressed very little support for the proposal. One participant expressed that their justice court duties were only a small portion of their overall work, and that they would be relieved to have their justice court duties transferred somewhere else.

Areas of Concern

Lack of Confidence in Justice Courts

- Participants expressed frustration in the lack of confidence that the task force appeared to have in justice court. Participants felt that the Justice Court Education Committee and AOC have worked hard over the past 5-6 years to build resources for justice court staff and judges and ensure competence and standardization. Participants felt that the Task Force overlooked many of these recent accomplishments and felt that justice court staff and judges work hard to maintain the integrity of justice courts. Participants believed that it would be better to increase resources and create reforms in justice court instead of creating a new level of court.
- Participants also felt that long-serving non-attorney judges had a good deal of knowledge and expertise, and these individuals should be allowed to serve as division court judges in some form.

Personnel/Staffing Concerns

- Participants expressed strong support for giving justice court clerks automatic transfer into division courts. There was concern that the proposal from the Task Force only allows “some” transfer. If people do not have job security, they will leave the courts and this uncertainty has already led to a lot of turnover.
- Participants also expressed concern over the lack of specifics in the proposal about salary, benefits, and transfer process. Participants expressed that making justice court staff state employees will lead to changes in benefits and retirement plans that may be detrimental. There is also a perception that state employees’ salaries are less than city employees, which would result in justice court staff earning less.

Access to Justice

Participants all expressed concern that division courts would lead to less access for the public.

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- Transportation Concerns: Housing division court in district court buildings would require the public to travel, which can be particularly difficult in rural areas where there are great distances between municipalities in a particular district and the district court.
- User-Experience/SRL Concerns: Participants believed that the public view justice courts as more accessible and less intimidating than district courts due to being located in the community. Participants expressed that justice courts are set up to help SRLs in ways that district courts are not, since most litigants in district court are represented. Participants also discussed the way in which justice court staff and judges often know litigants and are able to build relationships with them in a way they feared would not happen in division court. They also felt that justice court judges spend more time on cases than district court judges, informing people of their rights and ensuring that they understand the process.

Stakeholder Confusion

Participants expressed concern that the creation of a new level of court would lead to increased public confusion for both litigants and other stakeholders such as law enforcement, who are already often unclear about where to send citations.

Specialty Courts

- Participants felt that many justice court judges they work with are attempting to use the techniques of specialty courts even if they are not officially specialty courts including having people come back regularly for check-ins and pursuing immediate consequences.
- Participants also were unclear about how the proposed reforms would lead to increased services in areas where services were lacking. Moving cases to the district court level would not address a lack of mental health or substance abuse services in communities that do not have these services.

Eliminating De Novo Appeals

Participants felt that eliminating de novo appeals in small claims would lead to less process for SRLs. They believed that SRLs would be better able to navigate the de novo trial rather than navigating the formal appeals process with the Court of Appeals.

Other Discussion

- There was a suggestion to create regional or county justice courts in areas with multiple smaller justice courts, so there would be a regional justice court to hear infractions for multiple municipalities. This would give municipalities an option besides closing justice courts and transferring all infractions to division court.
- Participants also felt that some things should be reclassified as infractions as opposed to misdemeanors.
- Participants largely felt that this proposal was further dispersing resources by creating a new level of court rather than combining resources which are already scarce.

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- Participants felt that clerks had not had a voice up until the focus group and that many municipalities were unaware of the proposal.

District Court Judges

This focus group was held on August 26, 2022 from 2:00 p.m. to 4:00 p.m. with participation from twelve (12) district court judges.

Areas of Support

Appeals

Overall, participants liked eliminating de novo appeals. De novo trials take up a lot of time and it is difficult for the district courts to deal with SRLs in these cases. There are also fairness issues with de novo appeals, given that people who are charged with lesser crimes get two jury trials, but people charged with more serious crimes only get one. Appeals to the Court of Appeals would also allow for the creation of case law.

Standardization

This proposal would ensure that all misdemeanors are handled in a uniform way and that everyone is appointed counsel. It would also eliminate pressure on prosecutors by municipalities who want convictions. However, participants also pointed out that district courts are not particularly uniform either.

Areas of Concern

Complexity and Speed of Proposal

All participants felt that this proposal had a number of moving parts that would need to be carefully considered to implement well, such new rules and a new division of the appellate court. There was concern about the speed at which this proposal was being implemented and a uniform desire to see this move more slowly.

Appointment of Justice Court Judges

Many participants also expressed concern about the legality of allowing non-attorney judges to be automatically transferred to the division court given Utah caselaw. Participants felt that *Salt Lake City v. Ohms*, 881 P.2d 844, 849 (Utah 1994) precluded judges at the district court level who were not selected through a judicial nominating process and appointed by the governor, which meant that the governor would have to appoint all justice court judges. The current proposal does not include any discretion if the governor does not want to appoint a particular justice court judge and does not anticipate the judicial nominating process. It would require a constitutional amendment to remove the nomination process/appointment requirement.

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Moving Class A Misdemeanors to Division Court

Participants had a number of questions about moving class a misdemeanors to division court. Currently, cases are often consolidated for people who have felony and class a charges in district court to resolve these cases with a single plea agreement, and it is unclear if this will still be possible in division court. Also, class a misdemeanors are different procedurally than class b and c misdemeanors given that they have a preliminary hearing and different procedural arcs.

Non-Attorney Judges

Some participants felt that the diverse background of justice court judges was a benefit.

Problem Solving Courts

Some participants felt that including people with class b and c misdemeanor charges in felony-level drugs courts was not appropriate, given that these people might not need the type of intensive oversight and treatment that people charged with felonies and class a misdemeanors might.

Other Discussion and Suggestions

- There was discussion about the way that this proposal seems to mimic the old circuit court structure, which felt like going backward to some participants.
- Some participants advocating creating a structure in district court similar to the federal magistrate structure and have division court deal with warrants and probable cause hearings. There was also pushback given that many current justice court judges may not have the background to do this.

Prosecutors

This focus group was held on September 1, 2022 from 1:00 p.m. to 3:00 p.m. and had participation from nineteen (19) prosecutors both at the city and county level.

Areas of Support

Participants in this focus group expressed little support for this proposal.

Areas of Concern

General Concerns

Most participants felt that this proposal was unnecessary and would lead to confusion, lack of access, and poorer outcomes for court users. Participants felt that their justice courts functioned well and that justice courts are more accessible and user-friendly. A majority of participants expressed that they were opposed to the proposal without having more details fleshed out.

Class A Misdemeanors

There were a number of questions about who would prosecute class a misdemeanors in division court, including whether class a cases would be assigned to city prosecutors who might also prosecute class b and c misdemeanors in division court or if county prosecutors would continue to prosecute class a misdemeanors in division courts. Some participants felt that class a misdemeanors should remain in district court with felonies since the cases are procedurally and substantively similar.

Appearance in Justice and Division Court

In jurisdictions that elect to keep their justice courts, city prosecutors would have to continue to prosecute class b and c misdemeanors, since there is a statute that says cities have an obligation to do this if they have a justice court. This could create an additional burden on city prosecutors who would have to travel between division and justice court. However, if prosecutors do not handle infractions, it's not clear that city prosecutors would appear in justice court.

Revenue

There were several questions about revenue/funding for division courts. Division courts appeared particularly costly to participants, and they were unsure whether the legislature would fund this new level of court as needed. There was also concern about whether reallocation of revenue from justice court would solve this problem.

Access/Location of Justice Courts

Participants had a number of concerns about where division courts would be located and the travel burden on litigants and counsel if division courts were located in district court facilities.

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Public Accountability

Participants felt that shifting small claims and misdemeanors to division court would leave the public with less accountability because decisions would be made by officials over whom they had no electoral control.

Appeals

Participants felt the cost of appeals would be significant, both for the court and prosecutors (particularly in outlying areas who will have to travel to the Court of Appeals) and in terms of the cost of indigent defense services. Participants felt the current cost of de novo appeals is less than an appeal in the Court of Appeals. There was a suggestion about allowing district courts to hear on-the-record appeals from division court.

Personnel/Staffing

Some participants expressed concerns about staffing for division court. Participants felt that state courts are understaffed and lack resources and that justice court staff were currently better trained than district court staff.

There were also concerns about justice court staff who might not be retained under the current proposal and city prosecutors who might also lose their jobs if cities no longer have justice courts and no longer have an obligation to prosecute class b and c misdemeanors.

Courts of Record

Most participants felt that it would be best to keep the justice court structure the same and make justice courts courts of record even though this would require a constitutional amendment.

Substance Abuse and Mental Health Services

There was discussion about the fact that merely moving cases to division court will not create new mental health or substance abuse services in areas of the state where these services do not exist. Many rural communities do not have substance abuse or mental health services and these services do not exist at the county level. Participants felt a better option would be to increase funding for municipalities and justice courts to develop services and specialty courts. At least one city has a drug court that is city funded.

Infractions

Participants were concerned about eliminating prosecutors from infractions. They felt that it was important to have prosecutors look at citations and make sure the officer cited the right charge, because there are collateral consequences to infractions that have significant impact. They also felt that eliminating prosecutors in infraction cases would increase public perception of justice courts as money makers.

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Pending Cases

Participants had question about what happens to open misdemeanors and pending probation cases in justice court, including whether cases get transferred, whether different judges would change terms of probation orders, and whether county attorneys would have to take over these cases if a municipality closes its justice court. There was a concern about potential constitutional problems that might be created by case transfer.

Indigent Defense

Participants did not feel that there was a problem with indigent defense in justice courts and felt that justice court judges appointed counsel regularly and appropriately. There was a concern raised about whether the proposal would require counties or municipalities to use the Indigent Defense Fund as some participants felt that it worked better to contract with local attorneys in rural areas.

Defense Attorneys

This focus group was held on September 2, 2022 from 11:30 a.m. to 1:30 p.m. via Zoom. Five (5) attorneys who presently act or have acted as defense counsel in justice court cases participated and three (3) attorneys sent comments via email.

Areas of Support

Overall participants supported moving class b and c misdemeanors to district court.

On-the-Record Appeals

- All participants supported on the record appeals. They felt this would provide accountability for decisions that are currently being made by justice court judges and would lead to development of caselaw that is now lacking. The de novo appeals do not really address system problems that they see in the justice court with how cases are being decided and decisions that are made about evidence.
- One downside is that there would not be a “do-over” trial, and the first time many defense attorneys are able to view the evidence (e.g. testimony) is at the justice court trial.

Areas of Concern

Appointment of Division Court Judges

Participants felt that there should be some vetting process for justice court judges before they became division court judges to ensure that problem judges were not just moved to division court.

Mental Health and Substance Abuse Treatment

Although there was support for increased treatment service and access, some participants felt that it was not appropriate to open district court specialty court programs to people with lower-level offenses (class b and c misdemeanors that are currently handled in justice court) due to these defendants not needing as high a level of support and oversight as people in the current district court programs. There was a suggestion that separate programs be developed for people with class b or c misdemeanors.

Outstanding Questions

Participants had several questions about the appeals process, including what the rules around expedited appeals would look like and whether there would be a particular division of the Court of Appeals dedicated to handling these appeals, possibly with additional Court of Appeals judges.

County and Municipality Representatives

This focus group was held on September 15, 2022 from 1:00 p.m. to 3:00 p.m. via Zoom and had thirteen (13) participants from various county and municipality positions.

Areas of Support

- Although participants raised several questions and concerns about the financial ramifications of this proposal, participants expressed support for a proposal where the state would fund and operate all aspects of division court, including funding for court staff, prosecutors, defense attorneys, and other needs
- A few participants expressed support for heightening requirements and accountability for judges in small claims and misdemeanors cases. These participants felt that even though the municipalities employed justice court judges, they had no power to address problem judges.

Areas of Concern

Financial Considerations

- Participants all expressed a desire to have more information about how division court would be financed and how reallocation of fines and fees historically collected by justice courts would work.
- Participants all expressed that counties and municipalities were not able to take on additional fiscal responsibilities without funding (e.g. providing indigent defense, hiring prosecutors to prosecute cases in division court).
- Some participants expressed that despite public perception, justice courts are not revenue generators for municipalities and that this proposal would make justice courts completely unsustainable.
- Participants all felt they needed more information about caseloads, including number of cases that would shift to
- Participants expressed that they would support infraction revenue being allocated across jurisdictions, rather than being tied to the particular jurisdiction as they felt this would reduce the incentive for speed traps.

District Court Backlog

- Some participants expressed concern about district court backlog and whether moving small claims and misdemeanor cases to district court would result in these cases languishing. Participants expressed that this would have a serious impact on quality of life for residents in some municipalities if misdemeanor cases did not progress quickly through division court.

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Access Considerations

- Several participants expressed that the informal structure of justice courts was easier for the public to navigate, and this should be considered when developing division court rules.

Pending Obligations

- A representative from one municipality indicated that they were in the process of awarding a multi-year contract for indigent defense and did not now know what to do given the division court proposal.
- Other participants had questions about filling open justice court judge positions and how cities might repurpose recently designed justice court space.

Other Concerns

- Participants felt that municipalities and counties had not been informed about the proposal and wanted to ensure that municipalities and counties would have the opportunity to weigh in, particularly about funding.

Appendix A- Focus Group Summary

The Task Force on Justice Court Reform was created by the Utah Supreme Court and the Utah Judicial Council in December 2019 and included representation from judges, legislators, prosecutors, defense attorneys, representatives from the governor's office, members of the bar, and others. The Task Force submitted recommendations to the Utah Supreme Court and the Utah Judicial Council in August of 2021.

These recommendations are designed to improve public access to justice, to improve the quality of justice provided, and to improve the public perception of court services at the infraction, misdemeanor, and small claims level. These efforts are critical as this is the court level where most citizens come into contact with the judicial system. The Task Force proposed that reforms be implemented to strengthen the court system in the following areas:

- Transparency and Accountability
- Indigent Defense Services
- Judicial Education and Experience Requirements
- Financial Concerns
- Substance Abuse and Mental Health Treatment

Specifically, some of the recommendations include:

- Create a new division in Utah's District Courts (called Division Court) with attorney judges that would handle misdemeanor and small claims cases.
- Require that all misdemeanor and small claims cases be heard on the record.
- Eliminate de novo appeals (i.e. two trials) in misdemeanor and small claims cases and create an expedited appeal process for these cases in the Utah Court of Appeals.
- Make the provision of indigent defense services more uniform throughout the state.
- Create a structure to make mental health and substance abuse services more readily available in misdemeanor cases.
- Allow all interested, currently serving justice court judges that are members of the Utah Bar to become judges in Division Court and shift some justice court staff to Division Courts as appropriate.
- Continue Justice Court jurisdiction over infractions and create a more streamlined process for resolving infractions.

A more detailed summary of the Task Force's recommendations is available [here](#). The full proposal is available [here](#). The National Center for State Courts has partnered with the Task Force to help collect feedback on these recommendations. The focus group you have been invited to attend is an opportunity to provide feedback to about the recommendations. We look forward to meeting with you.