

Measuring Perceptions of Fairness: An Evaluation Toolkit

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About the Center for Court Innovation

The Center for Court Innovation is a non-profit organization that seeks to help create a more effective and humane justice system by designing and implementing operating programs, performing original research, and providing reformers around the world with the tools they need to improve public safety, reduce incarceration, and enhance public trust in justice.

About This Report

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Introduction

This toolkit is the product of a multi-year collaboration between the Center for Court Innovation, National Judicial College, and the U.S. Department of Justice’s Bureau of Justice Assistance. The goal of the project is to help jurisdictions increase their understanding of procedural justice and its supporting research, develop concrete strategies that can enhance court users’ perceptions of fairness, and improve their ability to measure procedural justice. This toolkit is designed to support the third component of that goal.

Procedural justice research has shown that when defendants and litigants perceive the court process to be fair – exhibiting respect, voice, understanding, neutral decision-making, and helpfulness – they are more likely to comply with court orders and to follow the law in the future, regardless of whether they “win” or “lose” their case.¹ Leading researchers on procedural justice, including Tom Tyler of Yale Law School, have identified several critical dimensions of procedural fairness: (1) *voice* (litigants’ perception that their side of the story has been heard); (2) *respect* (litigants’ perception that the judge, attorneys, and court staff treat them with dignity and respect), (3) *neutrality* (litigants’ perception that the decision-making process is unbiased and trustworthy); and (4) *understanding* (whether litigants comprehend the language used in court and the decisions that are made).² This publication also considers a fifth element, *helpfulness* (whether litigants perceive court actors as interested in their personal situation to the extent that the law allows).

The elements of procedural justice have been tested in a range of court settings – *e.g.* small claims, family court – as well as other criminal justice contexts, such as police stops and prisoner reentry. When the dimensions of procedural fairness are present, litigants consistently report higher perceptions of fairness and public trust in government and are subsequently more likely to be compliant. For example, litigants in community courts and other problem-solving courts typically rate their perceptions of fairness higher than litigants in traditional courts and recidivate at significantly lower rates.³

¹ Tyler, Tom R. *Why People Obey the Law*. Princeton University Press. 2006.

² Ibid. See also Frazer, M.S. 2006. “The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center.” Center for Court Innovation.

³ Frazer, M.S. 2006. “The Impact of the Community Court Model on Defendant Perceptions of Fairness.” Center for Court Innovation; Rempel, M. 2012. “Review of NIJ’s Multi-Site Adult Drug Court Evaluation.” Center for Court Innovation. Available at <http://www.courtinnovation.org/sites/default/files/documents/MADCE.pdf>.

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How to use the toolkit

This toolkit was developed to help judges and other criminal court practitioners assess their individual practices, as well as the factors that may contribute to court users' perceptions of fairness.

The toolkit contains three evaluation instruments:

- A. Self-Assessment of Court Practices
- B. Courtroom Observation Instrument
- C. Defendant Exit Interview

Each instrument is paired with a user guide to assist with implementation and analysis. The instruments are designed to be used separately, but can also be used in combination to form a more complete assessment of your jurisdiction.

All three instruments are designed to be administered by court personnel or trained volunteers. No special research or assessment knowledge is required beyond the instructions provided here.

All of the instruments can be modified to reflect local conditions and priorities. If you do make changes, we recommend using the same version if re-administered at a later date to ensure consistency and comparability of data.

To analyze the data you collect, we recommend entering all data collected into a spreadsheet or database application that can produce descriptive statistics such as median, average, and mode etc. This toolkit includes two sample spreadsheet templates.

These instruments are designed to provide a low-cost, self-administered option for court leadership interested in documenting procedural justice in their jurisdiction. If you have questions, need help, or are interested in conducting an independent assessment, please contact us at info@courtinnovation.org.

INSTRUCTIONS: Self-Assessment of Court Practices

Purpose: The self-assessment of court practices measures practices throughout the courthouse and other environmental aspects that are connected to the domains of understanding, voice, respect, neutrality, and helpfulness.

Who should administer: This instrument should be administered by a judicial officer, court administrator, or other senior court personnel who is familiar with the operation of the courthouse.

Time and resources required: Administering this tool requires minimal staffing time, although the administrator may choose to spend additional time observing courthouse procedures or talking with colleagues to have a more informed perspective. This instrument does not require direct observation of courtroom practice.

Training required: Minimal training is required for the personnel who will administer the assessment. The administrator should have (or be given) the authority to answer the questions as candidly as possible. Administrators should use consistent standards when using the provided four-point scale.

Possible adjustments: The questions are designed to be relevant to most (if not all) court settings, but you should adapt the language to apply to your court's specific needs and challenges. For example, if your court has a help center or information desk, you may choose to adapt one or more of the questions below to explore the assistance that court users receive there. For questions that do not seem applicable, we encourage you to consider how the underlying goals of procedural justice are being met through other methods. For example, if your court doesn't have a website, you might ask questions about hard-copy handouts of court information made available in the courthouse lobby.

How to interpret the results: Administrators should calculate the average response within each of the five sections. Comparing these averages will highlight which dimensions of procedural justice are particularly strong or weak in your courthouse. Higher averages reflect higher levels of practice within that dimension, while lower averages reflect lower levels. The results can be used to stimulate conversations among court leadership about possible areas of improvement.

Pros/cons: The self-assessment is relatively quick and easy to administer. The instrument highlights five key dimensions of procedural justice and associated practices. The tool will not measure court users' perceptions, and because of the subjective nature of some questions, does not provide rigorous quantitative data by which to show changes over time.

Self-Assessment of Court Practices

To be used with “INSTRUCTIONS: Self-Assessment of Court Practices”

The following statements measure the procedural justice concepts of understanding, voice, respect, neutrality, and helpfulness. Please rate the degree to which most court staff and court practices exhibit these characteristics.

1. Ensuring Understanding

Understanding Average: (add all scores)/4 =

	1-Not at all	2-Infrequently	3-Sometimes	4-Almost always
a. At the beginning of court sessions, the court’s bench officers provide a summary of what will happen during the appearance.	1	2	3	4
b. At the end of court appearances, the court’s bench officers verify that court users understand the court’s decision and what is expected of them going forward.	1	2	3	4
c. The court provides written and oral reminders about future court dates and other court requirements.	1	2	3	4
d. The court considers the needs of limited English proficiency and illiteracy when creating court forms, signs, and other verbal resources.	1	2	3	4

2. Providing Voice

Voice Average: (add all scores)/3 =

	1-Not at all	2-Infrequently	3-Sometimes	4-Almost always
a. The court provides a user-friendly mechanism for court users to give feedback about their experience in court (e.g. comment cards, surveys).	1	2	3	4
b. The court ensures that litigants with limited English proficiency have access to a court interpreter.	1	2	3	4
c. The court’s bench officers ask open-ended questions (versus yes/no questions) to solicit questions from court users.	1	2	3	4

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3. Demonstrating Respect

Respect Average: (add all scores)/4 =

	1-Not at all	2-Infrequently	3-Sometimes	4-Almost always
a. Security officers receive training or guidance regarding how to ensure that court users are treated with respect in verbal and non-verbal interactions.	1	2	3	4
b. The court's bench officers or other court staff explain the order in which cases will be called.	1	2	3	4
c. The court's bench officers introduce themselves by name.	1	2	3	4
d. The court's bench officers make eye contact with litigants before them.	1	2	3	4

4. Ensuring Neutrality

Neutrality Average: (add all scores)/4 =

	1-Not at all	2-Infrequently	3-Sometimes	4-Almost always
a. The court's bench officers explain the process by which decisions will be made.	1	2	3	4
b. Bench officers and other court staff avoid showing preferences towards prosecutors over defense attorneys or vice versa.	1	2	3	4
c. Courtroom staff attend trainings to enhance their cultural sensitivity and awareness of implicit bias.	1	2	3	4
d. Court staff avoid making jokes or other commentary that could be perceived as derogatory or insensitive to certain classes of court users (e.g. gender, race).	1	2	3	4

5. Helpfulness

Helpfulness Average: (add all scores)/4 =

	1-Not at all	2-Infrequently	3-Sometimes	4-Almost always
a. The court's website is maintained to provide accurate and user-friendly information to court users.	1	2	3	4
b. Court staff provide information to court users about how to navigate the building and where to find necessary forms.	1	2	3	4
c. Bench officers are familiar with resources available at local social service providers.	1	2	3	4
d. The court's bench officers make voluntary referrals when appropriate.	1	2	3	4

INSTRUCTIONS: Courtroom Observation Instrument

Purpose: The courtroom observation instrument is designed to assess the interaction between the judge, defendant, and other critical players in a criminal court context. You may select one or more courtrooms to be assessed. This tool is not recommended for scheduling proceedings, jury selection, jury trials, or civil court proceedings.

Who should administer: This instrument should be administered by court staff or trained volunteers. Volunteers may be recruited from a nearby university or a community-based organization; no specialized education is required. The instrument is not intended for use by judges or other court staff to evaluate the courtroom in which they work or by individuals whose very presence in the courtroom may alter courtroom practice (*e.g.* the chief judge).

Time and resources required: For this tool to be most useful, it should be administered several times in each courtroom in order to collect a representative sample of courtroom practices. Each observation should aim to start at the beginning of the court session, with each observation lasting for a minimum of one hour. Consider whether special dockets or staffing on certain days may impact your observations.

Training required: Some training will be required. Training should include efforts to address one of the challenges of courtroom observation: subjectivity. Practice observations should be scheduled with multiple observers sitting in the same courtroom. After the end of the observation period, observers should compare their assessments and resolve any differences in what they observed and how they recorded those observations. Once these differences have been reconciled, the observers will be better prepared to observe court on their own.

The training should also include instructions that observers should not answer questions that are not applicable. For example, Questions 1-9 pertain to observations at the beginning of the court session only and therefore should be skipped if the observation starts after the court session begins. Similarly, Questions 15-19 should be skipped if the observed session does not include a plea and/or sentencing.

How to interpret the results: Use the provided data tracking spreadsheet to record the results (See “Courtroom Observation Instrument – data tracking”). Courtroom observations can be used to show change within courtrooms over time, as well as to document standard practice throughout the courthouse. You may decide to share individual results with each participating judge or use the results as part of a judicial performance review process.

Pros/cons: The courtroom observation form provides a detailed assessment of procedural justice practices in specific courtrooms. It is relatively easy to administer, but will require an investment of staff and/or volunteer time. The tool can be particularly valuable in tracking behaviors that are taught in a training or spread in other ways. The tool does not measure court users’ perceptions.

Courtroom Observation Instrument

Court #: _____ Judge: _____ Observer Initials: _____

Date: _____ Observation Start Time: _____ End Time: _____

Questions 1-9 pertain to observations at the beginning of the court session. The remainder of questions applies to the entire court session, considering all of the cases that appeared.

1. The court started on time.	Yes	No
2. The judge or other court staff apologized for any delay in the starting of court. (N/A if there was no delay)	Yes	No
3. The judge or other court staff clearly explained court etiquette and rules at the beginning of the court session.	Yes	No
4. The judge provided an explanation for the order in which cases would be called.	Yes	No
5. The judge introduced him/herself by name.	Yes	No
6. The judge thanked audience members for their on-time appearance.	Yes	No
7. The judge acknowledged the experience of defendants while waiting for their cases to be called (e.g. having to sit quietly, waiting for a potentially long period, etc.).	Yes	No
8. The judge provided some overview of what might happen during court and/or how decisions would be made.	Yes	No
9. The judge assured defendants that all of the admissible evidence would be considered before making any decision.	Yes	No
10. The judge was audible.		
	Never	Sometimes
	Most of the Time	Always
11. The judge made eye contact with defendants during their court appearances.	Never	Sometimes
	Most of the Time	Always
12. The judge used plain language to explain the case procedure and outcome.	Never	Sometimes
	Most of the Time	Always
13. The judge used plain language to explain legal terms or acronyms.	Never	Sometimes
	Most of the Time	Always
14. Overall, how helpful were court staff in addressing court users' questions between appearances?		
	Not helpful at all	Not too helpful
	Somewhat helpful	Very helpful

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Answer the following questions only if there was a plea and/or sentence:

15. The judge demonstrated interest in the defendant’s understanding of what rights he/she was surrendering by pleading guilty.
 Never Sometimes Most of the Time Always
16. The judge adequately described what the defendant must do to comply with the court order or sentence.
 Never Sometimes Most of the Time Always
17. The judge expressed an interest in the defendant’s success/compliance.
 Never Sometimes Most of the Time Always
18. The judge asked the defendant to repeat back his/her understanding of the sentence and/or next steps.
 Never Sometimes Most of the Time Always
19. The defendant was provided written instructions about his/her sentence.
 Never Sometimes Most of the Time Always

For the next question, circle the number that best represents your impression based only on the court sessions that were observed.

20. Concerning the actions and demeanor of the judge toward the defendants, the judge was:

	<i>strongly disagree</i>	<i>disagree</i>	<i>neutral</i>	<i>agree</i>	<i>strongly agree</i>
a. Respectful	1	2	3	4	5
b. Fair	1	2	3	4	5
c. Attentive	1	2	3	4	5
d. Interested	1	2	3	4	5
e. Consistent/Predictable	1	2	3	4	5
f. Helpful	1	2	3	4	5
g. Knowledgeable	1	2	3	4	5
h. Clear	1	2	3	4	5
i. Intimidating*	5	4	3	2	1

* Note: The scale for “Intimidating” is coded differently than the others. If you strongly disagree that the judge’s actions and demeanor were intimidating, circle 5. If you strongly agree that his/her actions and demeanors were intimidating, circle 1.

21. Please note any additional comments or observations here or on the back of the page.

INSTRUCTIONS: Defendant Exit Survey

Purpose: The defendant exit survey is intended to measure defendants' perceptions of their experience in the courtroom and their interactions with key courtroom actors, including the presiding judge. Key procedural justice dimensions covered by this questionnaire include respect, neutrality, understanding, helpfulness, and voice.

Who should administer: The survey is designed to be self-administered anonymously by defendants after the disposition of their case. The instrument is not intended to be administered by judges or any other court personnel. Nevertheless, you will need to designate someone to oversee the data collection process who can help ensure that defendants' responses remain anonymous and do not adversely affect their current court case in any way. The planning process should address logistical issues, such as where the completed surveys will be returned and whether and how detained defendants will be surveyed.

The blank surveys and the drop-off location(s) should be in a convenient location. It is important that the drop-off box be secured, so the completed surveys cannot be removed or altered. You might consider requesting the help of the defense bar to distribute and/or collect the surveys.

Time and resources required: You should make defense counsel and other court partners aware that the survey is being conducted. You will also need to plan for printing costs; alternatively, you could make the survey available via the court's website or the court's help center.

The survey results will be most valuable if you are able to collect a large sample (minimum of 100). The sample should also be representative: avoid surveying small subsets of defendants, such as those who utilize the court's self-help center, whose perceptions and experiences may not be reflective of the larger pool of defendants.

Training required: No training is required. You may choose to designate an on-site contact person in case survey-takers have questions.

Possible adjustments: The sample survey should take approximately 20 minutes to complete. If time constraints require, this survey can be shortened by removing questions that are less relevant to the unique needs of your court. We discourage any heavy editing of the language used in the questions themselves.

The survey can also be adapted to be administered as an interview instrument by a trained volunteer or staff member, particularly if your court user population has limited reading abilities. In this case, we highly recommend partnering with a research institution or other community-based organization to assist you. You may also consider translating the survey into other languages commonly spoken in your jurisdiction so you can include feedback from non-English speakers.

Note that the concluding statement on the survey should be tailored to describe the survey's precise drop-off location and contact information.

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How to interpret the results: Use the provided data tracking spreadsheet to record the results.

Survey results can be analyzed in aggregate to create a snapshot of how defendants are experiencing the court overall. Survey data can also be used to highlight the unique strengths and weaknesses of particular judges and thus could be incorporated into judicial performance reviews or part of a self-reflection process.

Pros/cons: The defendant survey is a direct method to assess perceptions of procedural justice. The survey also has the benefit of giving voice to court users (*i.e.* giving them an opportunity to provide feedback about their experience). The downsides are that administering the surveys can be challenging logistically and may be difficult to generate buy-in from judges or other court staff who are concerned about the implications of any negative findings.

Defendant Exit Survey

We would like to hear about your experience in court. Thank you for your time.

Your feedback will help us to improve the service we provide to court users.

Your answers will not affect your case in any way.

Today's Date: MONTH _____ / DAY _____ / YEAR _____

The first 6 questions are about your experience today only.

Please write in the blank or fill in the bubble next to your selected response.

1. What is the name of the judge you saw today? _____
(Leave blank if you don't know)
2. Approximately how long did you wait in the courtroom before your case was called today?
_____ minutes
3. Were you represented by an attorney today? (Choose one)
 No, I did not have an attorney with me
 Yes, I was represented by a private defense attorney
 Yes, I was represented by a public defender
4. When did your lawyer speak with you about what might happen during your court appearance today? (Please choose all that apply)
 Before today
 Today, prior to the court appearance
 Today, during the court appearance
 None of the above, I did not speak to my lawyer about what might happen today
5. While waiting in the courtroom today, did the judge provide an estimate of how long you would wait until your case was called? (Choose one)
 No
 Yes
6. How pleasant was your experience waiting in the courtroom today? (Choose one)
 Very unpleasant
 Unpleasant
 Neither pleasant nor unpleasant
 Pleasant
 Very pleasant

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The rest of the questions are about your experience throughout your entire case.

For each question, do you strongly disagree, disagree, neither agree nor disagree, agree, or strongly agree with the following statements? Please circle your response.

7. When unsure of where to go, signs around the courthouse clearly identify the locations of courtrooms.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly agree]

8. The judge was polite to you.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

9. The judge gave you or your lawyer a chance to tell your side of the story.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

10. The judge tried to understand your particular needs for services or any other needs you had.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

11. The judge explained what was going on in words you could understand.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

12. The judge seemed very interested in helping you.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

13. The judge showed bias in favor of the prosecutor.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

14. The judge's instructions were confusing.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

15. The judge treated you worse than others because of your race, sex, age, or some other reason.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

16. Your attorney treated you with respect.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

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17. Your attorney listened to you.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

18. When speaking with you, your attorney used words you understood.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

19. Your attorney took the time to explain the judge's decisions to you.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

20. Your attorney seemed very interested in helping you.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

21. Overall, your case was handled fairly by the court.

[Strongly Disagree] [Disagree] [Neither] [Agree] [Strongly Agree]

Throughout your current case, how fairly did the following court staff treat you?

22. The judge: [Very Unfair] [Unfair] [Somewhat Fair] [Very Fair]

23. The prosecutor: [Very Unfair] [Unfair] [Somewhat Fair] [Very Fair]

24. Your attorney: [Very Unfair] [Unfair] [Somewhat Fair] [Very Fair]

25. Security staff: [Very Unfair] [Unfair] [Somewhat Fair] [Very Fair]

26. Overall, how do you rate the fairness of the sentence or order you received?

[Very Unfair] [Unfair] [Somewhat Fair] [Very Fair]

27. Is there anything else you would like to share about your experience?

Thank you again for your time.

Please return your completed survey to _____.

If you would like to provide additional feedback to the court, please contact: