

Washington Courts

Court Recovery Task Force

Technology Committee:

Guiding Principles for Identifying, Developing, Implementing, and Utilizing Court Technology.¹

April, 2021

¹ Key elements and concepts contained in this document were incorporated from National Center for State Courts' "Guiding Principles for Post-Pandemic Court Technology" (July 16, 2020) and the Washington State Access to Justice Technology Principles.

The Washington State Court Recovery Task Force Technology Committee prepared these Guiding Principles to assist in making Washington courts more accessible, transparent, efficient, and people friendly. Throughout this document there are basic, reoccurring themes regarding use of technology:

- Increase and maintain access to justice by eliminating or reducing social and economic barriers to people using court technology;
- Prioritize and focus on people’s experiences when implementing court technology;
- Ensure due process and procedural fairness in all court proceedings, processes, and procedures regardless of technology used; and
- Maintain transparency and public confidence when implementing and utilizing court technologies.

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1.0 Introduction

Because of the COVID-19 pandemic, courts in Washington increasingly relied on technology to continue court operations and meet demands of people with matters before the courts. The goal in relying on technology was to mitigate the risk of coronavirus transmission while seeking to increase access to justice. Courts rushed to identify, learn, and adopt online platforms for people to engage with the courts without appearing in person. Courts also drafted and adopted emergency rules and orders to facilitate remote access to the courts through newly identified technology platforms.

However, because of the uniqueness of Washington State's judiciary and individual court resources, court technology deployment and use varied dramatically amongst court jurisdictions and court levels. The lack of uniformity in technology, rules, procedures, and resources amongst the different courts in Washington made it difficult to identify and assess the use of those technologies across the State.

As a general principle, it would be optimal for all courts in Washington to identify, develop, and employ similar, if not identical, technology. Uniformity in technology across Washington would allow people to easily engage with courts in different jurisdictions without the need to learn different technologies, policies, and procedures for engaging and interacting with courts. It could also lead to the identification of barriers that prevent or reduce access to justice and lead to developing solutions that address those barriers. Such solutions could be more easily implemented across uniform technology.

Acknowledging there are structural and systemic barriers preventing uniformity of technology across the different courts and jurisdictions in Washington, and also acknowledging that eliminating such barriers should be addressed through legislative enactment and possibly constitutional amendments, this document offers only guiding principles for Washington courts to consider when identifying, developing, implementing, and utilizing court technology.

2.0 Ensure Principles of Due Process, Procedural Fairness, Transparency, and Equal Access are Satisfied When Adopting New Technologies.

Although adopting new technologies may allow courts to be more efficient, it is imperative that the principles fundamental to the courts are preserved when processes rely on technology.

2.1 Due Process and Procedural Fairness

2.1.1 Proper Notice

Ensure parties receive proper notice and case related documents throughout the duration of a case. This includes adapting court rules to allow for electronic service and other technology options.

2.1.2 Plain Language

Provide plain language procedural and substantive information for all parties at various stages of their cases, so people can access easy-to-understand and relevant information in real time. Information should be provided for both traditional in-person court processes and in online court processes.

Within online systems specifically, people accessing courts need plain language information directly from the court website or court annexed online dispute resolution (ODR) platforms without having to toggle between multiple websites or additional sources of information.

People should be provided information in multiple formats (such as hard copies of information for in-person court processes), as access to technology varies greatly in any population. Information should be provided in multiple languages and interpreters should provide information in a person's preferred language where needed.

2.1.3 Interactive Communications

Provide options for obtaining information from the courts. Examples include: live chat for the public, chatbots, telephone hotlines, and other interactive features allow people to submit questions to court staff, and to locate referrals on court websites, within ODR platforms, and within remote hearing platforms.

These features also allow further access to the courts by providing support through systems that connect litigants to available help and, if applicable, develop solutions where attorneys can participate fully with their clients during remote hearings or ODR.

Utilize systems that allow for multiple people to simultaneously access case files and information.

Systems used should also accommodate or allow for clients and attorneys to confer privately during proceedings.

2.1.4 Technology Access and Testing

Assess and test all new technologies to be adopted and develop policies and procedures to manage these resources. The Washington [Access to Justice Technology Principles](#) can further guide procurement, testing, and equitable use of technology.

2.2 Transparency

Discuss and share policy and rule changes as they relate to court proceedings with all participants.

2.2.1 Accessibility

Have updated information available and easily accessible on the court website, or other means, for parties, litigants, and the public.

2.2.2 Online Dispute Resolution (ODR)

In ODR, facilitate court or staff review of proposed agreements and orders before hearings or enforcement.

Once reviewed and confirmed by a judicial officer, orders should be enforceable.

Parties should maintain the same rights to appeal whether a judge resolves the case via ODR or in a traditional court process. For ODR specifically, cases that do not resolve through online systems should promptly proceed through an in-person court process.

3.0 Focus on the People's Experience

Courts should implement technology designed to enhance the experience of all people and reduce barriers to access, while increasing participation. People in court include not only judges, clerks, and court staff, but also attorneys, self-represented litigants, community partners, researchers, and the public.

Courts should implement technology accessible to people with the traditionally and systemically highest barriers to accessing the courts (including people of color, low-income people, people living in rural communities, people with disabilities, and limited English proficient people). Dispute resolution forums should remain neutral, accessible, and transparent, and best practices should be utilized when developing, implementing, or evaluating technology.

3.1 Overall User Experience

Engage feedback and/or participation of litigants, especially pro-se litigants, in design and testing of technology systems. Survey people using the court system regarding their experience with technology to inform improvements.

Ensure the public has access to available, understandable information about the justice system and how to access technology tools in use by the court.

Ensure that online services are mobile friendly, compatible with the most-used browsers, and easy for people to advance their cases.

Prioritize the use and development of online-fillable forms to collect data from court users and facilitate transfer of data to the court system. Ensure documents may be signed electronically.

Determine the impact that proposed technology or innovation would have on people of color, low-income people, people living in rural communities, people with disabilities, and people who are limited English proficient. Ensure their perspectives and needs are effectively addressed in design and functionality.

Implement technologies only after carefully considering the benefits, costs and burdens on people in court and ways to bridge the digital divide and ensure the technology does not reduce the likelihood of a just process or result.

3.1.1 Accessibility

Comply with the Americans with Disabilities Act, the Washington Law Against Discrimination, and regulations and commonly accepted accessibility guidelines related to accommodations for persons with disabilities.

Ensure compatibility of online platforms with screen-reading software. Confirm that web pages can be easily magnified. Use video technology that integrates closed captioning.

Comply with Title VI of the Civil Rights Act, the Washington Law Against Discrimination, and regulations and guidelines related to equitable access for limited English Proficient people.

Design systems that allow for online translation and remote live interpretation. Offer online tools in the languages represented in the jurisdiction, consistent with the court's language access plan.

Create videos and spoken language assistance to address the needs of people with low literacy, American Sign Language, and limited English proficiency.

Ensure that low-income litigants have access to a consistent process for mandatory waiver of fees associated with technology use.

3.1.2 Public Availability and Confidentiality

Make non-protected court case records and documents publicly available online and, where appropriate, enforce confidentiality requirements for information, pleadings, proceedings, negotiations, and communications

in online settings. Create a simple process for low-income litigants to secure fee waivers for obtaining documents through electronic systems.

3.1.3 Adequate Alternatives

Provide alternatives, such as telephone or SMS texting services, to ensure information is available to the broadest range of communities, including those without internet access.

3.1.4 Fee and Costs

Avoid requiring people to pay additional costs to use technology or remote services and streamline the process for obtaining civil fee waivers. This may require amendments to General Rule 34.

Accommodate the payment of fees and fines via electronic, telephone, or community pay point (such as gas stations, grocery, or convenience stores) eliminating the requirement for individuals to come to courthouses to make payments. Be mindful of unbanked people; and consider payment options from credit card and/or electronic wallet options (like Venmo, Apple Pay, PayPal) and cash through community pay points.

Ensure that any additional costs for using electronic or other options to pay fines and fees are not passed on to the person who owes the debt.

4.0 Prioritize People-Centered Technology

Courts should eliminate redundancies and unnecessary procedures through developing people-centered technology.

Courts should evaluate their own needs on a local or regional level and drive the technology development process through requests for competitive proposals that will meet the needs of all people using the courts (court users, staff, administration, judicial officers, etc.). Courts should not limit themselves by the constraints and capabilities of available technology.

The focus should be on optimizing court processes and procedures without regard to past policies, procedures, rules, and habits, and the needs of people appearing in courts should be the driving force for developing technology.

4.1 Standardization

Work with other courts locally or regionally to develop standardization of technology and software to lower the costs of customization. Development of these standards should focus on end results and user needs. Do not let existing policies, procedures, rules, and habits drive the development and incorporation

of technology. A comprehensive assessment of current needs and people's preferences should drive development and incorporation of new technology. Review administrative orders, rules, procedures, and habits throughout this process and update when necessary.

4.2 Competitive Proposals

Request competitive proposals to meet the identified needs and test the proposed technology on diverse end users to optimize the technology for all court uses.

Remain focused on due process, procedural fairness, transparency, and equal access during the development and testing phase.

Consider using low-code applications and platforms to allow flexibility and local adjustments as opposed to off-the-shelf technology. Off-the-shelf technology may be more affordable but is likely harder and more costly to modify and may be more likely to conflict with existing court technology.

Consider repurposing existing technology where possible.

4.3 Leadership Role

Utilize access to local private sector technology leaders to make Washington State a premiere jurisdiction in developing technologies that can be used and customized to courts nationwide. Recognize the risk that large multinational companies may seek to drive the technology choices for courts. Do not let technology leaders overshadow the importance of people-centered technology needs.

5.0 Embrace Flexibility and Willingness to Adapt.

Courts should identify the problem technology is intended to address before implementing a technology-based solution. This may require implementing various forms of technology to address different end user needs.

This approach is an iterative on-going process that shapes technology solutions through multiple platforms until the court's goals are achieved. Identifying those goals at the outset is an important first step to developing any technology-based solution. Adopted technologies should continue to be improved and reassessed to better meet the changing law and user needs. This process also provides opportunities to streamline and simplify court operations through technology choices throughout the implementation process.

5.1 Flexibility

Maximize the return on scarce court technology resources by identifying and avoiding expensive mistakes early in development.

Adopt an agile approach to piloting innovation and technology. Embrace a willingness to test and adapt, anticipating that changes will be required after the initial launch. Be willing to try things and fail.

Be willing to jettison technologies or court processes that do not deliver intended benefits and/or cause unanticipated harms. By identifying problems quickly, expensive mistakes can be avoided, corrections will be easier to make, and overall success is more likely.

5.2 Minimum Viable Platform

Start with a minimum viable platform or platforms, pilot test, survey user experience, and identify needed changes. Learn how the technology works in practice to inform how to improve future versions. This will likely result in more cost-effective innovation.

Examine every technology platform under consideration to avoid adding features and functionality without addressing the effects on access.

Assure the platform remains oriented to the identified solution, including considerations of due process, procedural fairness, transparency, and equal access.

5.3 Public Private Partnerships

Be open to public/private partnerships, including with civil legal aid offices, law school technology innovation labs, charities, community organizations, non-profits, start-up technology ventures, private vendors, public entities, and practitioners to accomplish stated goals.

5.4 Preserve Due Process

Neither the initial technology solution nor the updates or changes that follow should affect fundamental due process.

6.0 Adopt Remote-First (or at Least Remote-Friendly) Planning, Where Practicable, to Move Court Processes Forward.

Courts should implement technology deliberately designed to allow court staff, judicial officers, and people to advance court processes remotely where appropriate, while respecting those fundamental court processes best served by live participation. Courts, however, must ensure that the needs of those who use the courts external people are

paramount in all decisions with an emphasis on increasing equitable access to the court and opportunities for participation.

Courts should consider four basic areas: (1) developing the internal infrastructure, (2) establishing rules and procedures for remote alternatives for most court functions, (3) identifying and facilitating access for persons with limited technological resources, and (4) providing understandable instructions for all persons who interact with the courts remotely.

6.1 Internal Infrastructure to Support Remote Access

Create a supportive infrastructure that includes technology, policies, training, and resources to support remote work for court staff and clerks, judicial officers, probation and pre-trial officers, self-help staff, court-appointed mediators and arbitrators, interpreters and other court employees or third-party contractors who provide services during court proceedings.

Promulgate employee and human resources policies that allow employees to work remotely and set standards such as reliable internet connections and quiet working spaces.

Create training and reference materials that are easily accessible to all internal participants. Internal participants must become knowledgeable and proficient in the use and capabilities of the technologies to perform their duties and appropriately counsel end users who may not be familiar with the remote processes.

6.2 Local Rules and Procedures for Remote Access to Court Services

Attempt to move as many court processes online as possible. This ensures continuous resolution of legal issues to protect vulnerable populations. Remote access to court services reduces the inconvenience and burden of in-person appearances, including taking time off from work, arranging childcare, and/or commuting far distances to courthouses.

Consider formal modifications of existing court rules and procedures allowing for broad remote interactions with the court by end users and the public. This includes rules and procedures for electronic signatures; electronic filing of court documents; remote attendance at hearings (by telephone, video, or through counsel); and public access to observe the court proceedings to maintain open and transparent court operations.

Seek input from the local bar, victim advocates, and other key stakeholders in developing rules and procedures to ensure fair access and participation for all groups. Particular attention should be given to guard against barriers for people with limited English proficiency or disabilities.

6.2.1 Preserving Fundamental Rights

Consider the need to keep certain hearings and proceedings in-person to preserve fundamental rights or to ensure compliance with court obligations. For example, in criminal adult and juvenile matters all critical stages of the proceedings should be in person unless personal appearance is waived by a court based on the circumstances. Similarly, civil matters that involve fundamental rights (such as dependency matters) should be carefully evaluated to identify which hearings should be in person versus those that can be conducted remotely.

6.2.2 Open and Transparent Court Operations

Be mindful of hearings or subject matters that may not be appropriate for public viewing over the internet because of particular safety or privacy concerns involved. Consider the inability to prevent recording and subsequent dissemination of private affairs over the internet once the proceedings have been completed. Balance these considerations with the need for open and transparent court operations to promote public confidence in the judiciary.

Consider safety and privacy concerns that arise in matters such as those involving children or particularly heinous conduct. When safety or privacy concerns are raised, consider meeting open courts requirements by allowing for public viewing in person or via a closed-circuit broadcasting rather than public broadcasting over the internet.

6.3 Identifying and Facilitating Access for Persons with Limited Technological Resources

Place no undue financial burden on those individuals who face obstacles in accessing technology.

Attempt to bridge “the digital divide” by ensuring that end-users have easy access to technologies for remote participation in court activities. Consider installing court and community-based kiosks (publicly accessible computer stations individuals could use to access remote hearings). Kiosks could be installed throughout court campuses, at local libraries or at designated community centers, and could be supported by a collaboration of multiple courts in a nearby geographic area. With appropriate internet connectivity, they could be vital in both urban and rural areas to help facilitate interaction with the courts by those who lack access to technology.

Consider implementing day loan programs where a person appearing in court can borrow tablets or other devices for a limited period, allowing for interaction with the court.

Adequately display on court websites and throughout court campuses basic information about free broadband hotspots in the community that people might utilize for interacting remotely with the court.

6.4 Understandable Instructions and Tutorials for All Remote and Internal Participants

Prepare media, such as video tutorials or short audio clips, and literature that trains and instructs all court participants on court technology so they can meaningfully access and interact with the courts. These materials must be produced in friendly, easy to understand language remembering that many end users may not be sophisticated in using technology or any court processes in general.

Translate training and instruction materials into prevalent local languages of those persons who may not be English proficient.

Prominently display training and instructing literature on court and clerk websites. The public should be able to obtain hard copies of any written instructions directly from the court at no cost, so all members of the public can gain a better understanding of how to access and utilize court technology.

7.0 Take an Open, Data-Driven, and Transparent Approach to Implementing and Maintaining Court Processes and Supporting Technologies.

Court should recognize that “open” has two meanings regarding court processes and supporting technologies: (1) open and transparent court records, and (2) open source. Open and transparent court records are governed by General Rules 22 and 31. Open-source materials are data and software subject to free redistribution without restrictions from the original creator or owner. Courts, however, should acknowledge the tension between privacy and transparency in court processes and that not all court matters can be transparent.

7.1 Licensing

Attempt to use the most effective solution possible. Any custom software developed should be licensed under an open-source license so it can be easily distributed to and used by other courts. Similarly, all documents and reports related to technology should be open source to allow for distribution and use by other courts.

7.2 Data-driven decisions

Decisions should be determined by or dependent on the collection or analysis of data rather than by intuition or personal experience.

Courts should strive for data-driven decisions and review any data gathered and collected by organizations such as the Administrative Office of the Courts, the Washington State Bar Association or other interested organizations.

7.2.1 Making Data-Driven Culture

Court leadership is necessary for implementing data-driven decisions and creating a data-driven culture. Courts must set expectations that all technology decisions be anchored in data that utilizes evidence-based metrics and standards. All data should be available for use by interested parties or organizations.

Courts should be prepared to deal with high uncertainty, particularly at the beginning of the change to data-driven decisions.

7.3 Personally Identifiable Information (PII)

Courts should carefully consider how to make open and transparent decisions regarding technology while respecting the confidentiality and privacy of Personally Identifiable Information found in court records. Courts should also be mindful of how evaluating technology performance may be complicated by the collection and use of Personally Identifiable Information.

8.0 Closing Remarks

The Washington State Court Recovery Task Force Technology Committee hopes these guiding principles offer courts assistance when implementing court technology. Courts should be mindful that increasing and maintaining access to justice for all people using court technology is a primary objective. In addition, the priority and focus when implementing court technology should be on people's experiences, while ensuring due process and procedural fairness in all proceedings, processes and procedures. Any decisions implementing court technology should also be transparent and instill public confidence.