

# **BJA COURT RECOVERY TASK FORCE**



**WASHINGTON  
COURTS**

## **MEETING PACKET**

**OCTOBER 9, 2020  
1:00 P.M.**

**VIDEOCONFERENCE**



# BJA Court Recovery Task Force

Friday, October 9, 2020 1:00-3:00 pm

ZOOM Meeting

## AGENDA

<p><b>1. Welcome and Introductions</b> <b>Approve July 23 Meeting Minutes Pg 53</b></p>	<p>Chief Justice Debra Stephens Judge Judith Ramseyer Judge Scott Ahlf</p>
<p><b>2. Court Recovery Summit Follow up</b> Court Recovery Summit Discussion Responses Pg 4 What did you identify from Jeff Robinson's presentation and the group discussions that may help inform your committee's work?  In reviewing the discussion responses, is there anything that was missing or hasn't been discussed in committee work?</p>	<p>Chief Justice Debra Stephens Judge Scott Ahlf Judge Judith Ramseyer</p>
<p><b>3. Committee Expectations and Work Plans</b></p> <ul style="list-style-type: none"> <li>• Goal setting</li> <li>• Short and long term goals and expectations</li> <li>• Work plans</li> <li>• What actions/motions need to come to the Task Force for vote before proceeding?</li> </ul>	<p>Chief Justice Debra Stephens Judge Scott Ahlf Judge Judith Ramseyer</p>
<p><b>4. Committee Updates</b></p> <p><i>Members will have reports. Please use this time to briefly report committee work especially around data collection efforts, resource development, and identified challenges. This is a good opportunity to ask questions and solicit feedback on committee activities.</i></p> <ul style="list-style-type: none"> <li>• Technology Considerations Pg 14</li> <li>• General Civil Litigation</li> <li>• Lessons Learned Pg 16</li> <li>• Criminal Matters/Juvenile Criminal Civil/Therapeutic/Adult Pgs 17-19</li> <li>• Appellate Courts Motion to approve legislative proposals for changes to APA and LUPA appeals in packet Pgs 20-31</li> <li>• Family Law Pg 32</li> <li>• Child Welfare</li> </ul>	<p>Dawn Marie Rubio/Judge David Estudillo Chief Justice Debra Stephens Judge Judith Ramseyer Judge Scott Ahlf/Judge Ruth Reukauf/ Judge Jeff Smith/Amy Muth  Judge Lisa Sutton  Terry Price Linnea Anderson</p>

<ul style="list-style-type: none"> <li>• Facilities and Logistics Pgs 33-50</li> <li>• Public Outreach and Communication Pg 51</li> </ul>	Justice Steve González Wendy Ferrell
<b>5. Next Steps</b>	Chief Justice Debra Stephens Judge Judith Ramseyer Judge Scott Ahlf
<b>5. Future Meetings</b> <ul style="list-style-type: none"> <li>• November 19, 2:00-4:00</li> <li>• December 17, 2:00-4:00</li> <li>• February 17, 2:00-4:00</li> <li>• April 15, 2:00-4:00</li> <li>• June 9, 2:30-4:30</li> </ul>	
<b>6. Adjourn</b>	
Persons with a disability, who require accommodation, should notify Jeanne Englert at 360-705-5207 or Jeanne.englert@courts.wa.gov. While notice five days prior to the event is preferred, every effort will be made to provide accommodations, when requested.	

# Board for Judicial Administration

## Court Recovery Summit Discussion Groups Responses

### August 25, 2020

As we assess changes to court operations necessitated by the pandemic and plan for the future, access to justice and racial equity must be at the center of our work. Jeff Robinson opened the Summit with a presentation, *Excerpts from "Who We Are: A Chronicle of Racism in America."* Participants then had an opportunity to collaborate in small group discussions to consider how courts can recover from the present crisis to achieve an even better, more inclusive, and accessible justice system. Following is a summary of responses from the group discussions.

#### Discussion Topic #1: Racial Justice and Reimagining the Justice System

Participants were broken into seven groups and answered two questions. Below is a summary of all of the groups' responses.

*What about the current justice system that you work in or participate in reflects systematic racism? Can you identify court practices or policies that you believe are specific instances of systematic racism?*

#### Systematic racism

- Implicit bias is evident in decisions around "appropriate" family placement.
- The assumption that everyone is similarly situated.
- The courts lack connection to the community or the ability to fully understand perspectives, especially when community members have a negative experience within the court community.
- Law firms have power over the community and decide who they want to represent and who they do not. Often times this excludes people of color.
- There is a lack of understanding. Individuals view the justice system as a lack of equity; this is a flawed statement because each of us are not coming from the same place. The lens needs to be via fairness and then try to address the unfairness. Equity doesn't address the barriers. For instance, look at juries – they receive \$10 a day, these are individuals who may have four jobs in order to survive. The parking alone is \$15. We need to look at the fairness.
- Data shows that individuals of color are five times over represented in post-conviction. Participant has observed a pattern that starts in foster care and then is compounded by race, disability, sexual violence, and the history of how African American men are viewed.
- Disproportionately impacts communities with higher instances of single parenting and poverty.
- There are very short-sighted policies that keep families in poverty. Financial triggers are often a trigger for neglect.
- White defendants get to keep their jobs while they are in the court process, while poor individuals can't afford to pay fines or pay bail while in the court process, so they lose their jobs.
- Many judges want to participate, but not in every county, and not every judge in every county. We need transparency in the process. Who does have the power? Judges can't legislate from the bench. Need to educate the public and move to un-silo the silos.
- Unified Family Court system – some counties may not be as eager to do systemic evaluation to make differences. How can we work with rural and urban together to make a difference? We need accountability. Who makes the decisions and how does that impact the family?

#### Access considerations

- In the attempts to offer equal access to justice (under COVID-19) system there are many

factors that are not even considered when the courts are setting up ways to administer justice under the new system. For example, given technological issues, guarantees of a speedy and public trial make it difficult when courts do not have room to let additional people into the court rooms and technical difficulties arise if providing effective language access.

- Staff have been struggling with identifying how people first get involved in the court/justice system and how we can fix the areas outside of the court's purview and how to be impartial. Some courts are looking internally at community courts and how to look at alternative sentencing options before people end up in the "system" and how we can be not participating in racism.
- This is the culture of the legal system. People don't access the legal system – they fear it – but they also have a poverty of time. There might be resources out there available to them but they don't have the time to figure it all out; it is overwhelming.
- Having the lack of resources does not help someone win their case. Communities that have more resources are more successful.
- Use of Zoom as the only way to enter a courthouse is problematic. Many individuals and communities in more rural areas do not have Wi-Fi.

### **Decision Making**

- In family law you often see value judgments that are set by the dominant (white) culture.
- Public Safety Assessments and the systematic racism that is inherent in these pre-trial release tools. For instance, the use of housing as a score factor. Minorities are less likely to have stable housing. But is that really a measure of community ties and a predictor of public safety?
- Bail is a difficult issue. Using criminal history is problematic because we know that minorities are more likely to have more history. We need to look at the individual, look at the circumstances of the offense. A "violent" crime may not be what it appears in the charging document. If a defendant has a job/housing, don't remove them from stability if the whole picture tells you they are not at high risk offending. Exceptions are DVOs and DUIs.
- A court is conducting video hearings and the judge has been challenging attorneys on bail amounts. Are they asking more on persons of color? Is this something that is grounded in bias?
- Often see more minorities paying legal financial obligations to individuals. Is there a bias we don't see or acknowledge?
- Crimes of 2<sup>nd</sup> degree punishment, like driving without a license, seem to punish people of color and lower income more extremely.
- Perhaps the Supreme Court's sunset of LLLTs is a form of systemic racism.
- You can get daycare assistance from the state to go to work, but not to go to school.
- Bail decisions and use of risk assessment tools can be problematic.
- The idea that points accumulated in the juvenile system may affect adult sentences is inconsistent with the thoughts on juvenile decision making. This especially impacts people of color who are in the system at a higher rate.
- In the sexually violent predator commitment process and in the foster system, Blacks are overrepresented.
- Stacking offenses.
- Court rules: they are different in each jurisdiction and hard for non-trained people to understand.
- In the '90's with our juvenile super-predator mindset, they did away with automatically expunging juvenile records.
- How much authority do judges have?

### **Diversity in justice system personnel**

- Every level of the courts needs more diversity, particularly in the leadership positions.

- Organizations are not hiring individuals of color for leadership roles to help make decisions.
- The legal community is somewhat overwhelmed. For instance, the WSBA conducts a pro tem training and there isn't much diversity in the audience. We haven't addressed how the system only works if you become the "chosen one." If you become the chosen one you receive the calls. Law firms state they want to hire persons of color but during the interview or when hired you are told to think like the law firm, not as a minority or a woman.
- People of color can sign up to be pro tem judges, but will they be chosen?

### **Data and evaluation**

- When there is no data, it is difficult to develop better systems. There is a lack of data about how cases proceed. We need to better track data so evaluations can be data driven.
- One example of disparity is the sentencing and outcomes are not shared equally among the defendant population, if defined by race and ethnicity in the absence of actions that examine the population and characteristics of the court, and by not trying to address these disparities, then we are perpetuating the racism and inequities.
- No one is aware of data on race being collected in relation to bail decisions. One judge feels like they are chipping away at the edges of disparities in bail decisions, but no data is being collected. However, Spokane County jail has a dashboard that is going live publicly that will offer some transparency.
- Data shows a high level of disproportionality of minority children and families who are involved in the child welfare system. When children are removed due to abuse or neglect you rarely see families who are involved in just one aspect of the system. Factors are interconnected with each other, as well as the results of racism, like a domino effect.
- Incarceration for youth in WA—minority numbers have stayed the same, while Caucasian numbers have gone down due to deferrals. Where can we call attention to it?
- Pipeline – look at the preceding structures before coming in front of judge. For example, juveniles earn points when convicted and that compounds standard sentences in the adult world, which doesn't make sense as brain science tells us the brain is still forming in their youth. Youth of color are predominant in the juvenile system, which is then compounded later in pipeline.
- Young people of color are more likely to be stopped, arrested, and placed in juvenile detention. Then additional points from that adds to sentence as an adult. And because of poverty they are more likely to be involved in crime.
- In King County Juvenile Court the numbers in juvenile detention are going down, but disparities are going up. Sixty percent of youth in juvenile detention are black and Latino.

*The Court Recovery Taskforce provides an opportunity to reimagine the justice system. As a founder of this new justice system, what do you most want to accomplish? What is something in the present system that you most want to change?*

### **Systematic Approaches**

- What we are talking about is life and death; the delay to actually discuss the issues cost lives. The community most impacted is usually not present at the table when key discussions are taking place. We need to seek what they see as the solutions. Step out of the silos and be accountable to the community that is being most impacted.
- The key for equality in the system is fairness and eliminating barriers to accessing the system.
- What we ask of people to even come to court can be problematic. We should ask ourselves, "Why do we even ask people come to court in the first place?"

- (Juvenile issues) Is there a risk assessment of the “village” where the children are most impacted? Focus on the broader community. Acknowledgement that it isn’t isolated and broader community needs to be examined.
- Are there too many steps in the process to get people through the system?
- When are we going to actually challenge the traditional way of doing things?
- We need to closely examine the pipeline of how individuals come to court and then examine the role of the court once those individuals are in front of us. We need to address early decisions in the life of people and structural racism.
- Judges do have authority and can be instrumental in breaking down silos, and developing rules and practices that affect the pipeline.
- Every court has their own rules and they are written in more complex, legal language. It would help immensely to have easier language.
- Court rules and processes are cumbersome.
- Viewing prevention in a different way would be a great step forward.

### **Personal Accountability/Exploration**

- Recognition of privilege and the people who are summoned to the judicial system.
- Look to understand why people do what they do or don’t do. Really understanding assumptions and understanding the world.
- Listen more to understand.
- What is my role? Need to take a very hard look and move away from the white fragility response.
- Things judges can do—need to understand our authority and voices and how we can maximize that.

### **Decision Making**

- Courts spend more energy on how to stop disproportionality in the justice system.
- Are we really assessing the right factors when using risk assessment tools? Is there a rigorous enough process in place to vetting the information (especially in juvenile cases)?
- Look at how we are processing cases and alternatives to incarceration.
- We have an opportunity to hear from all stakeholders who are impacted. Judges are often put in a role as being neutral deciders when the impacts of those decisions are anything but neutral. Courts could be more proactive in looking at early resolution/diversions.
- Studies show because of implicit bias, people of color receive harsher sentences and are less likely to PR.

### **Diversity in justice system personnel**

- Expanding and improving diversity across the court levels requires working in the schools and mentoring so that people know their options. Focus on younger people.
- Challenge is where do you go to find the people to fill the positions? What do law schools look like? The pool you pull from isn’t diverse. Attorneys of color are very difficult to find. How do you connect the systems? Legal system needs to be involved in the early days of education.
- Valuing people’s experiences and recognizing the barriers persons of color go through to be deemed “qualified.” We need to change the perception that people of color may not be as qualified.

### **Specific programs and practices**

- We have no alternative to incarceration or solutions to incarceration and would suggest that having more therapeutic courts could help with changes.
- The funding or financial support for specialty courts in our juvenile system.
- Accountability is a big part of things, but doesn’t mean jail. It involves growth and creating

opportunities for intrinsic moments. We have created tools to help with probation counselors that help reduce their response to teenage annoyance levels.

- We have incorporated a lot of foundational pieces of therapeutic courts into our juvenile court processes.
- Use of Arnolds Foundation Safety Assessment. Come out with a policy statement that until it can be objective then it should be banned in Washington State. This perpetuates racial disparity.
- Moving away from routine calendar hearings, reducing failures to appear, and making it easier to respond to judicial proceedings.
- There is a need for more inter-agency communication. Things do not work cohesively for the people who are trying to use the services. Also, it is easier to hide racist tendencies/ for things to fall through the cracks when things are not cohesive across the board. There could be CLEs for judges and attorneys to understand the role of these agencies.
- Judges and prosecuting attorneys should not take youth out of school/community. In Clark County they were able to close down three pods in their juvenile detention facility with this approach.
- Clark County decided 30 years ago not to lock up status offenders. Judges met as a group and decided that, even though they had the ability, they wanted to go down a different path. Judges can address and make choices.

### **Remote hearings**

- Remote hearings have decreased the number of failures to appear. Although in some jurisdictions, in-person contact with the judge and defense is preferred.
- Has changed the way courts handle routine calendar management for the better for attorneys and defendants.
- Voir Dire – some attorneys and defendants feel seeing jurors in the Zoom squares allow them to read their reactions better. Others said they have the space for onsite proceedings and have not changed their practice.
- Jail security prefers remote hearings to prevent transporting inmates for health safety.
- Access to the internet is a problem for some jails and defendants.

### **Data and evaluation**

- Work with evaluators to help track your progress and show decision makers and judges that the programs or changes made are making a shift to rehabilitative and transformative work. Greatest hope would be that these alternatives are the way to move to outcomes.
- Measure what's going on – define the outcomes and what are we trying to get to in the end.



## Discussion Topic #2: Court Recovery Topics

Participants were broken into seven court recovery topic discussion groups with a facilitator and note taker and asked to answer two questions. The following are the specific highlights from each discussion group and responses to each question. These groups were broken down by content area as described below.

**Juvenile Justice** – both civil and criminal juvenile issues and considerations.

- 1) Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.
  - Continue to allow the same meaningful access.
  - A kiosk in the courthouse.
  - Video access to courts. Use of a format like Zoom is a fantastic tool. The access to justice using these tools should not be reduced for folks. It must be in addition to.
  - Technology has helped courts talk to clients who are in jails across the city, state, and country.
  - Electronic filing has provided public access to the court system. Implementing digital signatures should continue.
  - We need to come together and talk through strategies and work together.
- 2) Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and if so how? Please provide examples.
  - Technology has been helpful in some cases where transportation and child care is not available for some people to get to court, but does not work for everyone to have equal access to courts.
  - As courts reopen, courts have been inconveniencing defendants and have asked them to continue to come back into court multiple times.
  - The budget and staff shortages are barriers.

**Civil Justice** – general civil, unlawful detainers, self-represented litigants, and mental health issues and considerations.

1. Have you made COVID-related you want to keep? If so, how do they improve our work? Please provide examples.
  - There has been beneficial engagement and collaboration between the judicial branch and other agencies. Collaboration is important to keep moving forward.
  - Continue the use of technology, keeping in mind the barriers of urban and rural access, and use of different technology by different courts.
  - Remote technology improves access to the court and decreases the cost of litigation.
  - The crisis has created an opportunity for us to look more systemically and to be more communally involved with one another. Hope those relationships get institutionalized long-term.
  - At the administrative hearing level virtual hearings are much more common with deeper and broader participation.
  - Would like to keep extended hours in the discussion, particularly in smaller counties.
2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- How do we accommodate lack of technology?
- Would non-traditional court hours (evening or weekends) help courts get through the backlog?
- Wish that were universal perspectives of the bench. Still some child welfare cases where attorney presence continues to be demanded.
- Some courts are advanced with their technology; other courts lack the bandwidth/technology/training to do remote hearings (especially the courts in more rural counties).
- Universal electronic filing in the courts would be very helpful.
- Some sort of simplified filing system (even just an email address on each court website) in the rural counties would be helpful.
- Ability to circulate and get signatures electronically would be a huge help.
- Would love to get input on court hours. Moving a lot of procedures out of traditional courtrooms, what about weekend court/night court and complete online processes?
- For our clients, the big issues are access to childcare and access to technology.

**Technology and Logistics** – facility and technology infrastructure issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- There is broad support for the use of videoconferencing. It has decreased the number of failures to appear, changed the way courts handle routine calendar management for the better for attorneys and defendants, assisted with Voir Dire and allowing attorneys and judges to read their reactions better and to prevent transporting inmates for health safety.
- Appeals Court grateful they went to all electronic records pre-COVID, it's been a good change.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Access to internet is a problem for some jails and defendants.
- Internet access is needed for court users. Courts are creating high speed internet hot spots for court users in community spaces all over town and in the parking lots of the court facilities. Hot spots could also be set up in community centers or libraries.
- Technology upgrades are needed for some court facilities. Cares money has provided cables, software, hardware, Owl cameras, etc. so courts can conduct remote proceedings effectively.
- Livestreaming proceedings. Good for fulfilling open courtroom laws, and recording potential misconduct. But there are concerns for sensitive litigants, especially defendants and victims in sexual assault cases. How to stop cameras for sensitive testimony is not resolved. When using live-streaming to accommodate open court rules, how do you balance this with privacy needs? This will be an area of litigation.

**Equity and Inclusion** – racial equity, language access, disability considerations, judicial officers and court personnel diversity issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- Video conferencing has increased the access to justice for many, especially in large counties where people have to travel long distances to come to court.

- Technology has increased access for those with transportation issues or who cannot take time away from work or find daycare and can reduce travel costs for others.
- The jail populations are down due to COVID and prosecutors and judges are doing more to keep accused people out of jail. This is a positive development which might reduce disproportionality within the jails.
- The Chief Justice meets with the presidents of the judicial associations and others every Friday morning. They brainstorm issues, across court levels, across counties. Perhaps this would be the starting point.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Barriers to remote hearings: community members not having internet access, no phones or computers or cell service. One county is looking at creating access points throughout the county where individuals can utilize technology. Perhaps video technology can reduce bench warrants and reduce this disparity of the higher number of Native Americans in their jails.
- Access points are the key. This would be a very concrete action the BJA summit could work on. It would benefit everyone.
- Technology is wonderful but we need to make sure those with disabilities and/or needing language access are not forgotten. Dealing with disabilities within the court setting is one thing but courts have not been able to address it adequately via technology.
- Some organizations' facilities don't have the technological infrastructure needed to address court needs.
- Wearing masks may create a problem for interpreters. ASL Interpreters and other interpreters are having difficulty translating while everyone is in masks.
- It is critical for courts to talk to each other. From an attorney's standpoint it is very difficult and discouraging to have different rules and procedures at the different levels of courts. More uniformity and centralized resources would be helpful. Look at what has already been done, share it, and replicate it.
- It is critical to hear from groups across the spectrum and hearing the good and the bad. This type of forum should continue and continue to add other voices to this forum.
- We need to hear from those within the system, those impacted the most. Are we willing to hear from people in the system? If so, we cannot be defensive.
- We need to recognize and embrace problems and have an honest and blunt assessment.
- Judges need to be willing and able to engage in conversations on needed changes.
- We need to identify and address obstacles to people with no access to Wi-Fi or with disabilities.

**Family Justice** – child welfare, delinquency, elder and protection order issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- The Department of Children, Youth, and Families (DCYF) moved to remote services for parent-child visitation and in-home services. They learned that remote visits were helpful to families, but does not replace in-person visits. Positive change that they would like to keep—for instance, video call to child to say goodnight in addition to visits, and when parents cannot make it to a visit, it will not be canceled, but made remotely.
- Child advocate training—a number of the local programs didn't have the capability to train remotely. Over 140 child advocates trained online statewide during COVID. Now the

training is centralized and there are assurances that volunteers are getting information on disproportionality and bias because it is in the curriculum.

- Scheduling is better than before.
- Those filing protective orders don't have to face perpetrators, and we should use this process going forward.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Agencies are often siloed. They need to work together to address financial and educational inequalities. We need education, health care, and employment opportunities.
- DCYF provided all phones, hot spots, etc. through concrete goods and services. Most families are able to participate remotely, some remote areas difficult, but a small percentage.
- Technology was not the biggest challenge, giving them permission to use it was.
- Some courts don't have Wi-Fi and at the same time have to be like air traffic controllers to move cases through.
- The number of protective orders has increased. SCJA is drafting legislation to provide consistency with various protective orders in statute to introduce next session.
- Self-represented family law matters. AK, OR, ID do not have informal domestic relations trials. A template would be helpful (Thurston County may be doing it).
- Barriers from the child welfare perspective – they are a reactive point in system. Typically layers and layers of things have occurred by the time they see families. Need to get upstream, think more collaboratively, and need to think about education, economics, medical, etc. Is there a group that can take this on and answer the question: What do we want for all families? People expect DCYF to solve this problem, but they can't do it all. Need to turn system on its head and allocate resources.

### **Adult Criminal Justice** – adult criminal justice issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- Continue the current level of cooperation and collaboration.
- Reconsider releases of non-violent offenders.
- Using remote technology for defendants has increased access.
- For efficiency sake, remote work can be done and there could be some cost savings.
- Strategic plan for use of Zoom/de-personalization issues must be considered.
- Requirement of appearance when cases are going to be continued – not requiring them to be present helps to expedite the process.
- Juvenile cases need to be mindful of constitutional rights.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Think about barriers to access and uniformity of court documents and court processes.
- In the interest of streamlining, consider a central clearing house for information.
- Obtaining documents from the clerk's office and uniformed documents.
- Consider language access needs as we move forward.
- Need for statewide coordination of public defenders – the decentralized nature currently makes communication challenging.

**Court Management** – case flow management, judicial and court personnel and staffing, training, and accountability issues and considerations.

1. Have you made COVID-related changes you want to keep? If so, how do they improve our work? Please provide examples.

- When motions or other hearings can be held by videoconferencing platforms, this works well for rural courts; they improve the justice system for attorneys and defendants, etc. Doing depositions by Zoom or by remote means saves travel time and cost as well.
- Access to services increases with tele-appointments.
- One court is using videoconferencing for mitigations and if the court user wants an in-person hearing, then parties call. Keeps courts open for backlog. They were able to go to e-courts so many people, including probation officers, are working from home.
- Access to services and remediation of behavior or parental issues in small rural communities is something that has increased because they have been able to increase menu offerings due to video/health and teleservices.

2. Are there barriers to moving changes and innovations forward? What are the barriers and how can they be overcome? Would these changes positively affect equity and access and, if so, how? Please provide examples.

- Consider the difficulty of access when all jurisdictions have different accessibility.
- There are challenges still with docu-signing and sharing documents and for courts that do not want everything out on YouTube.
- One court is trialing a work from home day for all personnel to see if it can be done.
- Interpretation: there are difficulties with simultaneous interpretation if interpreters are not given a separate line for communication and if they are there will be a learning curve. Other barriers for language access: may be hard to hear individuals through the platform, interpreters may not have access to the documents ahead of time, and consecutive interpreting may take more time or things may be missed. How do you connect people to online interpreter if the website is not updated or translations done?
- Biggest hurdle is not having electronic filing and that the postal service is slowing down.
- Not having consistent technology platforms or best practice or standardization from the courts can be challenging for individuals to learn and know where to find things.

## Themes from the Summit Discussion Groups

There were several themes that came up in the discussion groups:

- 1) **Universal Access to Technology and Remote Hearings** – Remote hearings and access to technology are important issues to move forward. While remote hearings have often increased access to the courts, there is a need to train on the technology, create access to Wi-Fi and technology tools, and address language and disability considerations for technology usage.
- 2) **Continued Collaboration** – Increased collaboration with justice and community partners has been critical in being successful and must continue past the pandemic.
- 3) **Increased Stakeholder Feedback** – It is critical to engage broad stakeholder feedback including court user (those that come into the courts to utilize services) feedback to ensure identified outcomes are met.
- 4) **Racial Equity and Access Considerations** – Racial Equity, language access, and disability access must be at the forefront as we develop new procedures and ways of doing business.

**Court Recovery Task Force  
TECHNOLOGY Committee Report  
October 9, 2020**

**Progress on Goals and Activities**

The Committee's work is still in its infancy. The Committee has been actively recruiting additional members because of the limited members initially on the Committee. Several new members are set to participate at the next scheduled meeting on October 7, 2020.

The Committee is in the process of drafting the "Principle Objectives Regarding Use and Implementation of Court Technology." The Committee hopes to identify the core objectives for using and implementing court technology. An extremely rough template is in the works. The Committee expects to begin molding the "Principle Objectives" over the course of the next scheduled meetings. Once those objectives are drafted, the next step toward preparing formal guidelines can begin. (See below regarding short and long term goals and activities.)

The Committee does not plan on providing any in-depth analysis of specific technology or procedure that a court should use or implement (i.e. use Webex rather than Zoom or use of a specific electronic filing system over another). Rather, the guidelines ultimately produced will be aimed at assisting courts in identifying considerations that should be taken into account when using technology in courts to ensure access to justice to court end-users. It would be up to individual courts to implement specific technology and procedures in accordance with the guidelines.

The Committee recognizes some reference material already exists, such as the *Guiding Principles for Post-Pandemic Court Technology* (July 16, 2020) from the National Center for State Courts and the *ATJ Technology Principles*. The Committee will review and incorporate those materials as necessary so as not to reinvent the wheel, but the Committee does hope to prepare formal guidelines focused on Washington Courts.

**Short Term Goals and Activities**

Identify and agree on the "core" principal objectives for using and implementing the use of technology in courts.

Prepare an outline of the specific subjects/issues that will be addressed within each particular principal objective. Once completed, the Committee will begin drafting the "nuts and bolts" of the guidelines for courts to use in adopting and implementing the use of technology in court proceedings.

**Long Term Goals and Activities**

Draft, prepare, and publish a detailed list of objectives and guidelines for courts to use in adopting and implementing the use of technology in court proceedings.

**Challenges**

Because of the lack of uniformity of court technology used in our courts and the individual procedures use in different courts, the Committee determined it was too large of a challenge to attempt to recommend specific technology for statewide or individual use. Developing "guidelines" for using and implementing technology in court proceedings, in the Committee's

opinion, would be the best work product to come from the Committee.

Ultimately, however, guidelines are just guidelines. They will not be able to address funding challenges that most courts will continue to face in acquiring adequate technology or address the individual challenges end-users may face such as access to the internet or access to the physical technology needed to interact with the court's technology.

### **Data Collection Efforts**

The Committee submitted questions to the Lessons Learned Committee for incorporation in the survey that will be submitted to the court administrators. The questions are aimed at obtaining basic information about current use of technology in our courts and what is being done to ensure availability of technology to those who face challenges accessing technology.

The Committee also has sought out information regarding broadband Internet access throughout the State and hopes to remain informed about efforts in the legislature aimed at providing additional broadband access around the State.

**Court Recovery Task Force  
General Civil Litigation Committee Report  
October 9, 2020**

**Progress on Goals and Activities**

This Committee's scope is general civil litigation, i.e. other than in family law, dependency and termination, civil commitment and special proceedings. The committee has met several times since July 2020, identifying challenges in litigating civil cases from service of process, discovery, pre-trial motions and trial. Our interest is in getting civil litigation moving, improving equal access to justice, and helping provide guidance/best practices, as well as recommending provisions to consider for emergency court orders.

**Short Term Goals**

The committee has identified some immediate areas of agreement to suggest for emergency orders and guidance. This process is ongoing. We have also looked at how WSBA can offer technology training now to help litigators, mediators and arbitrators become more comfortable conducting remote proceedings.

**Activities**

The committee outlined at least three areas of agreement for processes to implement during the pandemic:

- Increasing the use of electronic filing and remote means for service in most situations (but not mandated for initial service of process to establish personal jurisdiction; also concern about nonparty witness subpoenas).

- Presuming that all pre-trial hearings will be done remotely absent an agreement of the parties or a finding of good cause by the court. (Snohomish County superior court has a local order to this effect.)

- Presuming that most discovery, including depositions of parties and experts, as well as alternative dispute resolution proceedings, will be conducted remotely absent an agreement of the parties or a finding of good cause by the court.

Committee member PJ Grabicki followed up with WSBA, which is developing technology trainings for members of the bar. Committee member Judge Ashcraft shared a resource/checklist for assuring open courts/public access in remote court hearings. Committee members Judge Ashcraft, Alice Brown and Colleen Durkin are working on guidance to encourage "best practices" for remote depositions.

**Long Term Goals**

The committee will continue to address ongoing and newly emerging issues for civil litigation during the pandemic. In addition to issues above, the committee may look at procedures for fully remote trials and for incentivizing 6-person juries.



### Activities

Committee member Briana Ortega took the lead in draft an outline for an expedited jury trial model. Other activities above are ongoing. The committee will examine all proposals for modifying processes with a view toward addressing access to justice and race equity.

### Challenges

General civil litigation is backlogged, largely due to difficulties in preparing for trial rather than court capacity. Technology is an issue, as is discovery (eg, often relevant records are simply inaccessible due to COVID-19). Inconsistent practices across the state are also an issue, including differing interpretations of emergency orders, different remote platforms, etc.

### Data Collection Efforts

The committee continues to gather examples of court orders, stakeholder recommendations, etc. To date, the committee has invited stakeholder input through representatives on the committee. We have not yet considered surveys.

**Court Recovery Task Force  
Lessons Learned Committee (LL) Report  
October 9, 2020**

**Progress on Goals and Activities**

(Attach work products and recommendations for the Task Force to consider)

**Short term Goals:**

**Coordinating and implementing surveys:** The Lessons Learned Committee will conduct surveys as identified by the group. The LL Committee will be a clearinghouse and assist in coordinating surveys where possible so that committees don't duplicate efforts and overload our respondents.

**Activities**

- LL sent out requests for data collection activities to trial court associations, SCJA, and DMCJA. We have received one response.
- LL sent out a request to committee chairs and support staff requesting data collection efforts and specific feedback on a survey that LL developed. LL incorporated questions from the Technology Committee.
- LL sent out a survey to court administrators to collect baseline data on changes in court operations and ongoing needs.
- The next LL project will be developing court users' surveys. It is critical that various court users such as unrepresented individuals, in-custody and out-of-custody individuals, etc. are surveyed to identify what is working well, what can be improved, and how people are accessing court services. Data collection efforts will be strategic, easy to implement, and address the main information that we want to know from each court user group.

**Long term Goals**

**Identifying lessons learned:** LL will work with other committees to identify lessons learned and/or identify our own priorities.

**Identify and recommend innovations and best practices:** LL will help identify/recommend innovations and best practices.

**Challenges**

Courts are very busy addressing operations, hearings, implementing modifications, etc. While it is critical to collect data, we want to help ensure non-duplication of efforts and reduce data completion efforts as much as possible.

**Data Collection Efforts**

LL sent out a data collection request to trial court associations to collect information on local efforts.

LL sent out a baseline survey to court administrators on Sept. 25. The survey questions can be found in the Task Force and Committee folder in Box.

**Court Recovery Task Force  
Juvenile Criminal Civil Subcommittee Report  
October 9, 2020**

The Juvenile Criminal Civil Subcommittee met several times since it was reconfigured by the Task Force (including both civil and criminal issues as they pertain to juveniles). It is in the process of refining goals. Members are identifying immediate needs and changes that are being implemented (to survive), what is working well, and what challenges are being encountered (what are we learning), and what we should continue doing beyond COVID (preserve).

**Progress on Goals and Activities**

(Attach work products and recommendations for the Task Force to consider)

**Short Term Goals** (still working on refining these goals)

Address immediate impacts of COVID on courts and court users and identify what changes should move forward.

**Activities**

- Identify remote contact/hearing challenges. For the most part, remote hearings have been working – youth are more engaged.
- Explore the lower number of kids in detention and different approaches to truancy and diversion and what this means for future options.
- Explore how to increase services for youth in communities, especially lower resourced ones. What services have we not previously considered because of the old format for delivering hearings/detention/other services pre-COVID?
- Continue to identify goals that address around issues of probation, truancy, diversions, detention, and community services.

**Long Term Goals** (still working on these goals)

Identify statutes and court rules that may need to be changed to achieve goals.

**Activities**

TBD

**Challenges**

How to address access to justice issues and how we can meaningfully engage and ensure individuals have the right information.

Ensuring that youth have the support of judicial oversight when they need it.

How do we address disparate funding resources and needs?

**Data Collection Efforts**

N/A

**Court Recovery Task Force  
Therapeutic Courts Subcommittee Report  
October 9, 2020**

**Progress on Goals and Activities**

(Attach work products and recommendations for the Task Force to consider)

**Short Term Goals**

Address immediate impacts of COVID on courts and court users and identify what changes should move forward.

**Activities**

- Survey existing specialty courts.
- Identify remote contact/hearing challenges. For the most part, remote hearings have increased access to these court hearings and case management.
- The Committee needs to identify broader community support and relationships to address already existing issues (food, shelter, etc.) and how to address new trends (isolation, rental assistance, changes in community resources as a result of COVID).

**Long Term Goals** (still working on these goals)

Identify statutes and court rules that may need to be changed to achieve goals.

**Activities**

TBD

**Challenges**

Budget issues are impacting (or may impact) specialty courts.

These courts are very individual and community focused – they are grappling with replicating the community atmosphere on virtual platforms.

**Data Collection Efforts**

- Plan to survey specialty courts in October.

**Court Recovery Task Force  
Adult Criminal Subcommittee Report  
October 9, 2020**

**Progress on Goals and Activities**

(Attach work products and recommendations for the Task Force to consider)

**Short Term Goals**

Address immediate impacts of COVID on courts and court users and identify what changes should move forward.

- Develop and implement defendant and victim/witness surveys to obtain feedback on COVID impacts and criminal matters.
- Explore additional data collection from jurors and attorneys.
- Consider backlog issues.
- Identify remote contact/hearing challenges/successes.
- Committee members provided feedback around issuing warrants.

**Long Term Goals** (still working on these goals)

Longer term goals are still be finalized. This committee expects to continue to address ongoing backlog issues, monitor issues related to the issuance of warrants, and to address jury implementation needs related to adult criminal matters.

**Activities**

TBD

**Challenges**

Differing interpretation and implementation of emergency court orders in jurisdictions.

**Data Collection Efforts**

Plan to survey court users. Will coordinate with other committees as needed.

**Court Recovery Task Force  
Appellate Courts Committee (ACC) Report  
October 9, 2020**

**Progress on Goals and Activities**

(Attach work products and recommendations for the Task Force to consider)

**Goals**

Facilitate the transfer of certain appeals under the Administrative Procedures Act (APA) and the Land Use Petition Act (LUPA) from the superior court to the court of appeals.

**Activities**

- ACC invited various professionals and stakeholders to join the committee who litigate the different types of administrative appeals and who represent interested parties.
- ACC was tasked with considering a method to help the superior courts reduce a backlog created by the COVID-19 emergency. The Committee specifically considered ways to facilitate the transfer of judicial review of adjudicative appeals under the Administrative Procedures Act (APA) and the Land Use Petition Act (LUPA).
- ACC solicited broader information from members' colleagues and the Superior Court Judicial Administration (SCJA) who is also considering this issue.
- ACC ultimately decided to draft and propose two bills that address APA adjudicative appeals and LUPA appeals. The accompanying documents include: 1) a memorandum that provides an overview, followed by a section-by-section explanation for each proposed bill; and 2) the proposed bill for each type of case.
- The ACC is recommending that the Court Recovery Task Force approve the proposals set forth by the committee. The Court of Appeals has been briefed on the proposal bills and their impact on its workload.

**Challenges**

ACC decided to draft two proposals in the hopes that at the minimum the APA proposal would move forward. ACC still needs to determine the process for finalizing the proposals and advocating for this legislation. There is also a special filing fee (the surcharge portion) in current legislation that needs to be coordinated.

**Data Collection Efforts**

- ACC collected court data on APA appeals from AOC. The data is not broken out by type of APA appeals.

# MEMORANDUM

October 9, 2020

To:

From:

Re: Proposed legislation to facilitate the transfer of certain administrative cases from the superior court to the court of appeals

The Appellate Committee of the Board for Judicial Administration's Court Recovery Task force was charged with considering a method to help the superior courts reduce a backlog created by the COVID-19 emergency. The Committee specifically considered ways to facilitate the transfer of some judicial review of cases under the Administrative Procedures Act (APA) and the Land Use Petition Act (LUPA). This memorandum provides an overview, followed by a section-by-section explanation for each proposed bill.

## APA Bill

*Overview:* This bill is designed to facilitate the transfer of judicial review of APA adjudicative appeals from superior court to the court of appeals. Under current law, such transfers are allowed but are rare because the criteria provided in RCW 34.05.518 are often not satisfied. The objective of this bill is to facilitate transfers of APA adjudicative appeals by substituting new standards for those currently in the law. This change is, however, made temporary in order to provide an opportunity for experience under this approach. These changes would sunset after five years unless extended by later legislation.

*Section 1:* This section amends RCW 34.05.518 to replace the current criteria governing the transfers of judicial review adjudicative APA appeals from the superior court to the court of appeals. It allows the superior court to transfer cases to the court of appeals under either of two circumstances:

- First, if all parties consent to the transfer and agree that judicial review can occur based on the agency record; or
- Second, not all parties consent but the superior court finds that the transfer would serve the interests of justice without causing substantial prejudice to any party, and either:
  - The judicial review can occur based on the agency record; or
  - The superior court has completed any necessary supplementation of the record.

*Section 2:* This section suspends the application of RCW 34.05.522 during the period that this bill is in effect. RCW 34.05.522 addresses circumstances that do not apply while this bill is in effect

*Section 3:* This section amends the statute that governs filing fees in the court of appeals, to make clear that the transfer of an APA appeal does not require the payment of a second filing fee, in addition to the one that arises when a petition for judicial review under the APA is first filed in superior court. *But note* with regard to this section, there is a current filing surcharge that is set to sunset on July 1, 2021. It is anticipated that a separate bill may propose amendments to that

surcharge language. This makes it important to stay aware of both bills to avoid inconsistent amendments to the same RCW section.

*Section 4:* This section returns RCW 34.05.518 to its current form. This is because the amendments proposed in the bill are designed to sunset. The proposal is for RCW 34.05.518 to read as provided in section 1 for five years, and then revert to its current text.

*Section 5:* Similarly, section 5 returns to its current form the statute amended in section 2 of the act.

*Section 6:* This section governs the effective dates of the act and its various sections. It begins by declaring an emergency so that the bill can take effect quickly in order to begin helping with the backlog of cases experienced by the superior courts. It provides that the bill takes effect 30 days after enactment. Without that language, the bill would take effect 90 days after the adjournment of the session at which it is enacted. If the bill is enacted at the 2021 regular session, the difference might be between the bill taking effect as early as February (with the emergency clause) or as late as July (without the emergency clause). It goes on to provide that sections 1 and 2 expire after five years, at which time sections 4 and 5 take effect.

## **LUPA Bill**

*Overview:* Similar to the APA bill, the objective of the LUPA bill is to facilitate the transfers of LUPA appeals from superior court to the court of appeals for a five year period. Like the APA bill, this bill sunsets after five years. Unlike the APA bill, there is currently no procedure for transferring LUPA appeals from superior court to the court of appeals, and so the bill proposes a new section to introduce this concept. *Note* that this bill does not contain a parallel to the waiver of the court of appeals filing fee that is included in the APA bill, but the APA bill cross-references this bill in that regard. This is to avoid potentially inconsistent amendments to the same section between the two bills.

*Section 1:* Section 1 of this bill roughly equates to section 1 of the APA bill. It adds a procedure to LUPA for transfers of LUPA appeals from superior court to the court of appeals. But unlike the APA bill, the superior court may transfer a LUPA appeal only upon the agreement of all parties. This is because LUPA includes an expedited timeline for resolving cases in superior court, and that timeline is not feasible in the court of appeals. The parties' agreement to transfer a LUPA appeal waives both that expedited timeline and certain awards of attorneys' fees. Transfer requires the consent of all parties because parties may not always desire those tradeoffs.

*Section 2:* This is the emergency clause, included to cause the bill to take effect sooner in order to facilitate relief of the superior court backlog. It provides that the bill takes effect 30 days after enactment. Without that language, the bill would take effect 90 days after the adjournment of the session at which it is enacted. If the bill is enacted at the 2021 regular session, the difference might be between the bill taking effect as early as February (with the emergency clause) or as late as July (without the emergency clause).

*Section 3:* This is the sunset clause, which provides for the bill to expire after five years.



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AN ACT Relating to review by the court of appeals of final decisions of administrative agencies in adjudicative proceedings; amending; declaring an emergency; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec. 1.** RCW 34.05.518 and 2010 c 211 s 15 are each amended to read as follows:

~~((1))~~ The final decision of an administrative agency in an adjudicative proceeding under this chapter may ~~(, except as otherwise provided in chapter 43.21L RCW,)~~ be directly reviewed by the court of appeals ~~(either (a))~~ upon certification by the superior court pursuant to this section ~~or (b) if the final decision is from an environmental board as defined in subsection (3) of this section, upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision)~~. The superior court may certify cases for transfer to the court of appeals upon finding that:

(1) all parties have consented to the transfer to the court of appeals and agreed that the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record pursuant to RCW 34.05.562; or

(2) one or more of the parties have not consented to the transfer but the superior court finds that transfer would serve the interest of justice, would not cause substantial prejudice to any party, including any unrepresented party, and further finds that:

(a) the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record pursuant to RCW 34.05.562; or

1 (b) the superior court has completed any necessary supplementation of the record  
2 pursuant to RCW 34.05.562, such that only issues of law remain for determination.

3 (3) If the superior court certifies a final decision of an administrative agency in an  
4 adjudicative proceeding, the superior court shall transfer the matter to the court of appeals as a  
5 direct appeal.

6 (4) A party contesting a superior court decision granting or denying certification for  
7 direct review may file a motion for discretionary review with the court of appeals.

8 ~~((2) For direct review upon certification by the superior court, an application for direct~~  
9 ~~review must be filed with the superior court within thirty days of the filing of the petition for~~  
10 ~~review in superior court. The superior court may certify a case for direct review only if the~~  
11 ~~judicial review is limited to the record of the agency proceeding and the court finds that:~~

12 ~~(a) Fundamental and urgent issues affecting the future administrative process or the~~  
13 ~~public interest are involved which require a prompt determination;~~

14 ~~(b) Delay in obtaining a final and prompt determination of such issues would be~~  
15 ~~detrimental to any party or the public interest;~~

16 ~~(c) An appeal to the court of appeals would be likely regardless of the determination in~~  
17 ~~superior court; and~~

18 ~~(d) The appellate court's determination in the proceeding would have significant~~  
19 ~~precedential value.~~

20 ~~Procedures for certification shall be established by court rule.~~

21 ~~(3)(a) For the purposes of direct review of final decisions of environmental boards,~~  
22 ~~environmental boards include those boards identified in RCW 43.21B.005 and the growth~~  
23 ~~management hearings board as identified in RCW 36.70A.250.~~

1           ~~(b) An environmental board may issue a certificate of appealability if it finds that delay in~~  
2 ~~obtaining a final and prompt determination of the issues would be detrimental to any party or the~~  
3 ~~public interest and either:~~

4           ~~(i) Fundamental and urgent statewide or regional issues are raised; or~~

5           ~~(ii) The proceeding is likely to have significant precedential value.~~

6           ~~(4) The environmental board shall state in the certificate of appealability which criteria it~~  
7 ~~applied, explain how that criteria was met, and file with the certificate a copy of the final~~  
8 ~~decision.~~

9           ~~(5) For an appellate court to accept direct review of a final decision of an environmental~~  
10 ~~board, it shall consider the same criteria outlined in subsection (3) of this section ((, except as~~  
11 ~~otherwise provided in \*chapter 43.21L RCW)).~~

12           ~~(6) The procedures for direct review of final decisions of environmental boards include:~~

13           ~~(a) Within thirty days after filing the petition for review with the superior court, a party~~  
14 ~~may file an application for direct review with the superior court and serve the appropriate~~  
15 ~~environmental board and all parties of record. The application shall request the environmental~~  
16 ~~board to file a certificate of appealability.~~

17           ~~(b) If an issue on review is the jurisdiction of the environmental board, the board may file~~  
18 ~~an application for direct review on that issue.~~

19           ~~(c) The environmental board shall have thirty days to grant or deny the request for a~~  
20 ~~certificate of appealability and its decision shall be filed with the superior court and served on all~~  
21 ~~parties of record.~~

1           ~~(d) If a certificate of appealability is issued, the parties shall have fifteen days from the~~  
2 ~~date of service to file a notice of discretionary review in the superior court, and the notice shall~~  
3 ~~include a copy of the certificate of appealability and a copy of the final decision.~~

4           ~~(e) If the appellate court accepts review, the certificate of appealability shall be~~  
5 ~~transmitted to the court of appeals as part of the certified record.~~

6           ~~(f) If a certificate of appealability is denied, review shall be by the superior court. The~~  
7 ~~superior court's decision may be appealed to the court of appeals.))~~

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9           **Sec. 2.** RCW 34.05.522 and 1995, c. 382, s. 6 are each amended to read as follows:

10           ~~((The))~~After June 30, 2026, the court of appeals may refuse to accept direct review of a  
11 case pursuant to RCW 34.05.518 if it finds that the case does not meet the applicable standard in  
12 RCW 34.05.518(2) or (5). ~~((Rules of Appellate Procedure 2.3 do not apply in this instance.))~~The  
13 refusal to accept such review is not subject to further appellate review, notwithstanding anything  
14 in Rule 13.3 of the Rules of Appellate Procedure to the contrary.

15  
16           **Sec. 3.** RCW 36.18.018 and 2017 3<sup>rd</sup> spec. sess., c. 2, s. 2 are each amended to read as  
17 follows:

18           (1) State revenue collected by county clerks under subsection (2) of this section must be  
19 transmitted to the appropriate state court. The administrative office of the courts shall retain fees  
20 collected under subsection (3) of this section.

21           (2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged,  
22 except that no fee may be charged under this section for a case transferred from the superior

1 court to the court of appeals pursuant to RCW 34.05.518 or [section 1 of \_\_\_\_\_ insert bill number  
2 of LUPA bill].

3 (3) For all copies and reports produced by the administrative office of the courts as  
4 permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged.

5 (4) Until July 1, 2021, in addition to the fee established under subsection (2) of this  
6 section, a surcharge of forty dollars is established for appellate review. The county clerk shall  
7 transmit seventy-five percent of this surcharge to the state treasurer for deposit in the judicial  
8 stabilization trust account and twenty-five percent must be retained by the county.

9

10 **Sec. 4.** RCW 34.05.518 and 2010 c 211 s 15 are each amended to read as follows:

11 (1) The final decision of an administrative agency in an adjudicative proceeding under  
12 this chapter may(~~(, except as otherwise provided in chapter 43.21L RCW,)~~) be directly reviewed  
13 by the court of appeals either (a) upon certification by the superior court pursuant to this section  
14 or (b) if the final decision is from an environmental board as defined in subsection (3) of this  
15 section, upon acceptance by the court of appeals after a certificate of appealability has been filed  
16 by the environmental board that rendered the final decision.

17 (2) For direct review upon certification by the superior court, an application for direct  
18 review must be filed with the superior court within thirty days of the filing of the petition for  
19 review in superior court. The superior court may certify a case for direct review only if the  
20 judicial review is limited to the record of the agency proceeding and the court finds that:

21 (a) Fundamental and urgent issues affecting the future administrative process or the  
22 public interest are involved which require a prompt determination;

1 (b) Delay in obtaining a final and prompt determination of such issues would be  
2 detrimental to any party or the public interest;

3 (c) An appeal to the court of appeals would be likely regardless of the determination in  
4 superior court; and

5 (d) The appellate court's determination in the proceeding would have significant  
6 precedential value.

7 Procedures for certification shall be established by court rule.

8 (3)(a) For the purposes of direct review of final decisions of environmental boards,  
9 environmental boards include those boards identified in RCW 43.21B.005 and the growth  
10 management hearings board as identified in RCW 36.70A.250.

11 (b) An environmental board may issue a certificate of appealability if it finds that delay in  
12 obtaining a final and prompt determination of the issues would be detrimental to any party or the  
13 public interest and either:

14 (i) Fundamental and urgent statewide or regional issues are raised; or

15 (ii) The proceeding is likely to have significant precedential value.

16 (4) The environmental board shall state in the certificate of appealability which criteria it  
17 applied, explain how that criteria was met, and file with the certificate a copy of the final  
18 decision.

19 (5) For an appellate court to accept direct review of a final decision of an environmental  
20 board, it shall consider the same criteria outlined in subsection (3) of this section (~~(, except as~~  
21 ~~otherwise provided in \*chapter 43.21L RCW)).~~

22 (6) The procedures for direct review of final decisions of environmental boards include:

1 (a) Within thirty days after filing the petition for review with the superior court, a party  
2 may file an application for direct review with the superior court and serve the appropriate  
3 environmental board and all parties of record. The application shall request the environmental  
4 board to file a certificate of appealability.

5 (b) If an issue on review is the jurisdiction of the environmental board, the board may file  
6 an application for direct review on that issue.

7 (c) The environmental board shall have thirty days to grant or deny the request for a  
8 certificate of appealability and its decision shall be filed with the superior court and served on all  
9 parties of record.

10 (d) If a certificate of appealability is issued, the parties shall have fifteen days from the  
11 date of service to file a notice of discretionary review in the superior court, and the notice shall  
12 include a copy of the certificate of appealability and a copy of the final decision.

13 (e) If the appellate court accepts review, the certificate of appealability shall be  
14 transmitted to the court of appeals as part of the certified record.

15 (f) If a certificate of appealability is denied, review shall be by the superior court. The  
16 superior court's decision may be appealed to the court of appeals.

17

18 **Sec. 5.** RCW 34.05.522 and 1995, c. 382, s. 6 are each amended to read as follows:

19 The court of appeals may refuse to accept direct review of a case pursuant to RCW  
20 34.05.518 if it finds that the case does not meet the applicable standard in RCW 34.05.518 (2) or  
21 (5). (~~Rules of Appellate Procedure 2.3 do not apply in this instance.~~) The refusal to accept such  
22 review is not subject to further appellate review, notwithstanding anything in Rule 13.3 of the  
23 Rules of Appellate Procedure to the contrary.

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2            NEW SECTION **Sec. 6.** This act is necessary for the immediate preservation of the  
3 public peace, health, or safety, or support of the state government and its existing public  
4 institutions, and takes effect thirty days after enactment, except that:

5            (a) Sections 1 and 2 of this Act expire on June 30, 2026; and

6            (b) Sections 4 and 5 of this Act take effect on July 1, 2026.

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AN ACT Relating to review of land use decisions by the court of appeals; amending; declaring an emergency; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION **Sec. 1.** A new section is added to chapter 36.70C to read as follows:

(1) The superior court may transfer the judicial review of a land use decision to the court of appeals upon finding that all parties have consented to the transfer to the court of appeals and agreed that the judicial review can occur based upon an existing record. Transfer of cases pursuant to this section does not require the filing of a motion for discretionary review with the court of appeals.

(2) Upon stipulation and consent to transfer, the parties waive the right to seek an award of attorney fees and costs under RCW 4.84.370, except as may be awarded following an appeal to the supreme court.

(3) RCW 36.70C.090 does not apply to a matter transferred to the court of appeals pursuant to this section.

NEW SECTION **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect 30 days after enactment.

NEW SECTION **Sec. 3.** This act expires on June 30, 2026.

**Court Recovery Task Force  
Family Law Subcommittee Report  
October 9, 2020**

**Progress on Goals and Activities**

- Formed committee with diverse populations represented (judicial officers, court administrators and clerks, family law litigators, non-profit legal service providers)
- Met jointly with Technology subcommittee on 9/30/20 to discuss areas of common interest, such as guidelines for courts using technology, inquiries into court security
- Added several questions about family law matters to Learned Lessons questionnaire sent to courts

**Short Term Goals**

Activities

- Focus on customer service issues (text message or email notifications to litigants about their family law hearings)
- Focus on e-signatures and whether longer-term changes can be made for self-represented litigants

**Long Term Goals**

Activities

- Identify courts that are good users of their technologies and provide them as a benchmark or example to other courts.
- Identify education opportunities for AOC to provide to the superior courts to bring them along with the technology.

**Challenges**

- The longer-term challenges come from having a non-unified court system. This plays out in several ways:
  - When superior courts are asked about changes that can be made, they immediately respond with, “Who will pay for this? My county will not pay for this.”
  - Concern among the courts that any change will mean additional workload.
  - In the family law area, a centralized filing system would be beneficial because family law litigants move around, but that is unrealistic.
- The digital divide is exacerbated in a number of ways during the pandemic—litigants without access to technology, courthouses without access to technology, and legal professionals who are afraid of the technological changes and want it to go away.

**Data Collection Efforts**

No additional data collection efforts until we see the family law responses from the Learned Lessons questionnaire

**Court Recovery Task Force  
Child Welfare Committee Report  
October 9, 2020**

**Progress on Goals and Activities**

Progress, Goals and Activities have included develop a mission, set of principles and process for decision making. We have developed a system to categorize and prioritize short and long-term goals.

**Mission Statement:**

The Court Recovery Child Welfare Committee will assess challenges and opportunities to recommend improved court practices in child welfare to better serve children and families including considerations of race equity, trauma, access to justice, technology, and funding, in light of the limitations courts have experienced due to the global pandemic.

**Principles:**

- Find balance between telling courts what to do and creating best practice guidelines with Supreme Court weighing in, guided by data and metrics.
- Prefer guidelines rather than rules. Each community has different needs and should balance due process, public safety and best service for that community.
- Use racial equity and trauma impact tools to assist in our policy decision making process.
- Committed to working on solutions for consistent data.
- Align with State Department of Health in making statewide decisions, and recommend local courts confer with local health department regarding local practices.
- Encourage uniformity, predictability, and some flexibility in order to establish resiliency for families.

Developed a list of possible short- and long-term goals. At our October meeting, we will prioritize and determine which goals this committee will focus on and determine activities to achieve those goals.

**Short Term Goals**

**Activities**

Developed a list of goals to address the day to day operational changes necessary to deal with and recover from the on-going pandemic.

Next steps to finalize the draft list and prioritize for action

**Long Term Goals**

**Activities**

Developed a list of goals to bring about radical system changes to improve access and improve racial equity outcomes.

Next steps to finalize the draft list and prioritize for action

**Challenges:** This is an important and delicate subject area with lots of moving parts. This committee is working diligently to develop a cohesive recommendation for meaningful change.

**Data Collection Efforts:** In progress, nothing yet to report

**Court Recovery Task Force  
Facilities and Logistics Committee Report  
October 9, 2020**

<b>Members</b>		<b>Contact</b>
Justice Steven González Committee Chair	Washington State Supreme Court	<a href="mailto:J.S.Gonzalez@courts.wa.gov">J.S.Gonzalez@courts.wa.gov</a>
Judge Faye Chess	Seattle Municipal Court, Minority & Justice Commission	<a href="mailto:Faye.Chess@seattle.gov">Faye.Chess@seattle.gov</a>
Jessica Humphreys	Director, Yakima Superior Court, Association of Washington Superior Court Administrators	<a href="mailto:Jessica.Humphreys@co.yakima.wa.us">Jessica.Humphreys@co.yakima.wa.us</a>
Cynthia Martinez	Attorney, City of Yakima, Washington State Association of Municipal Attorneys	<a href="mailto:Cynthia.Martinez@yakimawa.gov">Cynthia.Martinez@yakimawa.gov</a>
Brad Thurman	Cowlitz County Sheriff, Washington Association of Sheriffs and Police Chiefs	<a href="mailto:ThurmanB@co.cowlitz.wa.us">ThurmanB@co.cowlitz.wa.us</a>
Ed Casey	Security Manager at Pierce County Superior, Juvenile, District and Municipal Court	<a href="mailto:Ed.casey@piercecountywa.gov">Ed.casey@piercecountywa.gov</a>
Penny Larsen	Senior Court Program Analyst, AOC, BJA	<a href="mailto:Penny.larsen@courts.wa.gov">Penny.larsen@courts.wa.gov</a>

**Progress on Goals and Activities**

(Attach work products and recommendations for the Task Force to consider)

***We have attached work products that are expected to be distributed soon, but we welcome any input.***

**Immediate Priorities and Short Term Goals**

1. Offsite courtrooms and jury assembly areas
2. Use of pro tems and portability
3. Specialized cleaning/public health compliance (need for staff temps)
4. Funding support and coordination with other branches
5. Concerns regarding jury representation
6. Guidance on jury selection and trials
7. Recruit additional committee members as needed

**Activities**

**1. Established subcommittee groups**

To address the priorities above, our committee immediately established three subcommittee groups: **(1)** Public Health Screening and Facilities, **(2)** Jury trial selection, logistics and Implementation, and **(3)** COOP staffing, funding and jury pools.

**2. Offsite Facility and Jury Trial Considerations – Checklist**

Developed checklist as a resource to assist courts who are considering off-site facilities as an alternative or a way to supplement courtroom facilities. In particular, this checklist lists questions and topics of concern that courts should use when vetting a potential facility. This checklist was developed by Jessica Humphreys and Cynthia Martinez with input from jury administrators in King and Spokane County. This checklist is currently being reviewed by AOC staff and is expected to be posted on the BJA Court Recovery TF webpage and sent to court administrators via listserv. [Checklist is attached as Appendix A.](#)

**3. COVID-19 Checklist for Staffing: Continuity of Operations Plan Considerations**

Created checklist as a resource to assist courts with developing a COOP in response to COVID-19. In

particular, this checklist provides guidance on COVID-19 screening procedures, issues related to the collection of data on staff and visitors who test positive for COVID-19, cleaning protocols, etc. This plan was developed by Judge Faye Chess with input and information from Seattle Municipal Court's Executive Team who is working with the City of Seattle Human Resource Department as they respond to COVID-19. This checklist is currently being reviewed by AOC staff and is expected to be posted on the BJA Court Recovery TF webpage and sent to court administrators via listserv. [Checklist is attached as Appendix B.](#)

## Long Term Goals

### 1. **Statewide Communication Network**

Our committee discussed creating a statewide communication network for court security professionals to ensure compliance with GR 36 (Trial Court Security) and to share information related to how they are responding to COVID-19. Penny determined that setting up a Box folder, as opposed to an AOC page, would be the best tool, as security professionals can easily access it. Our Public Health Screening and Facilities Survey includes a question regarding whether or not security professionals would find this network beneficial.

### 2. **Jury representation**

Jury representation is an ongoing concern, but we are still unsure of whether data regarding jury selection demographics is being captured at this time. We received information from jury administrators in some jurisdictions that are sending out more jury summonses due to COVID-19, and reported seeing a decrease in the number of responses (down 15-20%).

*Our committee is currently focused on disseminating our work products, collecting feedback and information from court and security personnel that will help inform our long-term goals.*

Activities N/A

Challenges N/A

## Data Collection Efforts

### 1. **Public Health Screening and Facilities Survey**

Sheriff Brad Thurman and Ed Casey (Security Manager), with the help of Penny, have worked together to develop a security survey related to public health screenings and security concerns. The survey will be sent to over 100 respondents, including sheriff offices and other law enforcement agencies that secure courthouses. The purpose of the survey is to collect and share information about the courthouse security challenges that have arisen due to the pandemic and the policies and practices that have been put in place to deal with them. The survey was previously forwarded to the Lessons Learned Committee, who identified that there is some overlap with the Lessons Learned Survey, however, it should be noted that our audience will be different.

The survey results will be shared with all survey respondents and with members of the task force so that we can learn how our colleagues throughout the state are responding to the challenges. [Survey is attached as Appendix C.](#)

# APPENDIX A

## BJA Court Recovery Taskforce

### COVID-19 Checklist for Courts: Off-site Facility and Jury Trial considerations

Many courtroom facilities across the state are not suited, for a variety of reasons, to hold court hearings and/or to safely assemble a jury panel during the Covid-19 pandemic. An off-site facility may be a viable alternative or a way to supplement courtroom facilities.

Top consideration when picking an off-site space should be geographic location, size of facility and layout, technology needs and cost.

Below is a framework of considerations to assist you in vetting a potential location and in resuming jury trials in general. **Note that this checklist contains considerations for planning purposes and does not constitute formal guidance.** For all COVID-19 related operational planning tasks, the Task Force strongly recommends consulting the latest guidelines from Washington State Department of Health (DOH) and the Center for Disease Control and Prevention (CDC). Any advice/guidance from DOH should be in writing. Contact links for these resources are in the reference section of this checklist.

#### Facility Space - Questions to ask venues

- Accessible by public transportation
- Is building ADA accessible? Is there a wheelchair on the premises?
- Is there a metal detector or wands on the premises for secure entry?
- Proximity to the courthouse or business district (if a consideration)
- How many entrances and exits?

Ideally there would be multiple entrances and exits to support an optimal traffic flow and limit interpersonal exposure. Consider a separate entrance out of the line of sight of the jurors for the defendant and DOC to arrive and leave. Also, a separate rest area/meeting area for defendant and attorney would be beneficial.

- Place to set up entry checkpoint at main entrance with tables for questionnaires and sanitizer stations?
- Map of facility for planning and distribution to visitors and staff

#### Parking Considerations

- ADA spaces
- Judge and employee spaces (separate)
- DOC Transport parking area- separate from juror spots
- Covered outdoor or spacious indoor open areas (for mask breaks)
- Jury holding rooms (near bathrooms)
- Separate break rooms or areas within the building (how many of each?)
  1. Jurors (estimate sq. footage by estimated pool size)

## BJA Court Recovery Taskforce

### COVID-19 Checklist for Courts: Off-site Facility and Jury Trial considerations

2. Litigants
3. Court Staff
4. Attorney-Client Consult
5. Judicial Chambers (1)

- Number of bathrooms (ideally at least two sets and family room) Separate restrooms for in-custody defendants, attorneys, and court staff that are totally separate from those of the jury can help to avoid a risk of mistrial.
- Cleaning and distancing measures in restrooms: what is the facility plan for distancing and cleaning schedules? (Examples: closing every other sink, limiting number of people)
- Calculate square footage needed for configuring social distanced seating for jurors and the courtroom you will create within the facility.
- Arrange a walk-through of chosen facility with stakeholders to get input and buy-in
- Ask your local health department or L&I office to do a walk through of the facility. Ask them provide you with their recommendations, in writing.
- Sanitizing stations at entry, exit and in front of restrooms
- HVAC system

Optimum: Upgraded to MERV 13 (Minimum Efficiency Reporting Value). MERV 13 is the highest grade of filtration that can be used in HVAC systems. The MERV 13 filters are more expensive and have to be changed more frequently. For these reasons, building management typically choose a lower value filter (MERV 10-12). Some older HVAC models cannot accommodate MERV 13 filters. Is system set to the maximum air flow and exchange? (Temperature may be chilly). This setting will ensure that inside air is exchanged with outside instead of just recycling inside air.

- Are elevators or staircases needed? How will they be regulated? Staff monitored?

#### Technology Considerations – consult with IT on needs and set up

- Electrical outlets and power strips:
  - Sound Equipment
  - Phone Charging
  - Computers, printers
- High-speed Wi-Fi access
- Routers, Power Strips, HDMI cables
- Projectors and/or televisions for evidence exhibitions and recordings
- Will you provide remote courtroom viewing for the public? If so, what do you need?



**BJA Court Recovery Taskforce**  
**COVID-19 Checklist for Courts: Off-site Facility and Jury Trial considerations**

**Sound and Communication Systems – Projecting voices and record**

- Consider purchasing an OWL Smart Camera <https://www.owllabs.com/meeting-owl>
- Acoustics of space (are sound absorbers needed?)
- Microphones and Hearing Devices – (cleaning considerations)
- Portable two-way or remote control radios for staff
- Disposable headphones or texting devices for Attorney-Client communications

**Safety Checklist**

- Traffic flow: design signage for the parking lot and facility?
- Cleaning: Staffing, Supplies and Schedule
- Screening questionnaires printed and collected
- Evacuation Plan: developed by security provider and communicated by the Judge
- COVID-19 Response Plan: developed by the Court (possibly with input from security provider and Department of Health) in the event that someone in the facility may experience COVID-19 symptoms or there is a risk of exposure.
- Biohazard Exposure Control Plan: developed by the Court (possibly with input from security provider and Department of Health) in the event that there is a risk of exposure in the facility.
- Map with traffic flow, bathrooms and exits for visitors
- Health checks for jury pool- before entering the building? Use 3 questions & completed COVID Questionnaire jurors would have received with their summons to determine entry?
- Security check before entering the building- will you use local law enforcement or a security company? Wanding? Metal detector?
- Food and water plan for jurors. Are there local take out/delivery options and a place for jurors?
  - Should jurors be advised to bring a lunch and snacks?
  - Can jurors go to their cars for snack breaks?
  - Are there vending machines in the location?
  - Is there a location for jurors to eat?

**BJA Court Recovery Taskforce**  
**COVID-19 Checklist for Courts: Off-site Facility and Jury Trial considerations**

**Supplies and Furnishings (facility provided, rented or purchased)**

- N95 Masks (AOC has distributed some to courts for jurors)
- Gloves
- Face shields (upon request)
- Hand sanitizer in bulk and refillable bottles for sanitizing stations
- Pens for users to keep after completing questionnaires
- Safety Screening Questionnaires For example, [CDC Screening Questionnaire](#)
- Plexiglas (consult with L&I on need, see [COVID-19 and Washington State Courts](#) page 9)
- Tables for screening and sanitizing stations
- Comfortable chairs for extended seating times (estimate how many needed for everyone)
- Risers
- Stanchions
- Curtains
- Barricades and cones

**References and Other Resources**

CDC <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Center for Jury Studies/NCSC Webinars: <http://www.ncsc-jurystudies.org/jur-e-bulletin-and-more/covid-resources>

- Reestablishing Jury Pools in the COVID-19 Era - [webinar](#)

NCSC [Coronavirus and the courts](#)

SCJA Jury Trial Workgroup [Resuming Jury Trials in Washington State June 2020](#)

Washington State Department of Health

- [COVID-19 and Washington State Courts August 2020](#)
- <https://www.doh.wa.gov/Emergencies/COVID19>

Washington State Department of Labor and Industries [Novel Coronavirus \(COVID-19\) Resources](#)

# APPENDIX B

## BJA Court Recovery Taskforce

### COVID-19 Checklist for Staffing: Continuity of Operations Plan Considerations

In response to COVID-19, Washington courts have had to create strategies to mitigate the risk of exposure to the virus within your courthouse and to ensure the continuation of courthouse operations so that courts safely remain open to the public and maintain a safe workplace for staff, court administrators. The following items are consideration when creating or updating a Continuity of Operations Plan (COOP) and communicating with your local health department.

**Note that this checklist contains considerations for planning purpose and does not constitute formal guidance.** For all COVID-19 related operational planning tasks, the Task Force strongly recommends consulting the latest guidelines from Washington State Department of Health (DOH) and the Center for Disease Control and Prevention (CDC). Any advice/guidance from DOH should be in writing. Contact links for these resources are in the reference section of this checklist.

#### Implement Court Facility Entry Screening

- Screen all court staff and visitors when they enter the courthouse.
- Implement social distancing measures, including barriers or walls if needed.
- Consult with public health resources on the proper use of Personal Protective Equipment
- Give screening information in languages employees and visitors can understand.
- Create a screening flow to prevent people from crowding when they enter the building.
- Use verbal or printout screening tools: [CDC Screening Questionnaire](#)
- If a staff or visitor has one of the symptoms associated with COVID-19, been in contact with someone known to have COVID-19 or is experiencing symptoms, tested positive for COVID-19 in the past 10 days, or within the past 14 days were told by a medical or public health professional to self-monitor, self-isolate, or self-quarantine because of concerns about the COVID-19 infection, the following questions could be asked to your local public health agency:
  - Should we prevent potentially exposed persons from entering the courthouse?
  - How do we separate potentially exposed or infected persons from other people and assure they can get a ride home or to a medical facility if needed?
  - Besides instructing staff who were potentially exposed to call their healthcare provider for further instruction, are there other steps to take?
  - Is it recommended staff get tested for COVID-19 no later than 48 hours after exposure?
  - Should staff quarantine at home (or at another location) for 14 days after last exposure?

#### Develop an Infectious Disease Preparedness and Response Plan

## BJA Court Recovery Taskforce

### COVID-19 Checklist for Staffing: Continuity of Operations Plan Considerations

Occupational Safety and Health Administration (OSHA) gives guidance on how to create a plan and what needs to be considered in creating and maintaining a plan. [Guidance on Preparing Workplaces for COVID-19](#).

**The plan should consider the following steps and/or actions:**

- Implementation of telecommuting in all aspects of the court's work.
- Schedule changes to reduce interactions between staff and the public (e.g., Employees going to "pods," where they alternate work weeks). This helps limit the risk of exposure.
- Working closely with the court's stakeholders such as public defenders, private attorneys, and prosecutors to reduce in-person interactions (e.g., courtroom changes, telephonic appearances, and using electronic documents).
- Implement Basic Infection Prevention Measures, such as:
  - Frequent hand washing.
  - Encourage staff to stay home if they are sick.
  - Encourage respiratory etiquette, including covering coughs and sneezes.
  - Providing hand sanitizer, tissues and trash cans.
- Maintain regular cleaning and disinfecting schedule in the building.

**Develop policies and procedures to mitigate the impact of exposure to COVID-19 in the courthouse if a staff member test positive for COVID-19.**

- Contact local public health department to learn about the contact tracing process.
- Designate a single point of contact for information for gathering information and notification in accordance with direction from your local public health agency. The court's human resources or administrator should coordinate with defender associations, prosecutor's office, and other organizations whose staff comes in regular contact with the court.
- Immediately deep clean affected areas of the courthouse.
- Create a template notification of the potential exposure to the following audiences: (1) close contact, (2) may have been exposed, and (3) general notification to all staff.
- If a staff member has tested positive for COVID-19, this information must be kept confidential. Consult with your HR department on what information can and cannot be communicated or shared about the employee in the notification.
- Report city and county level tracking to the appropriate city and county department.

### **Staff replacement and other expenses during the COVID-19 pandemic**

- Explore more active employee cross-training and virtual training for key staff roles.

## BJA Court Recovery Taskforce

### COVID-19 Checklist for Staffing: Continuity of Operations Plan Considerations

- If possible, participate in the city and/or county's talent deployment department to offer and request temporary help.
- Update the court's pro-tem judge list to ensure there are available pro-tem judges to cover the calendars.
- If funding is necessary to cover the cost of staffing temporary employees, hiring pro-tem judges, and other COVID-19 related expenses , including cleaning supplies, PPE, thermometers, protective shields, consider applying for the CARES Act funding reimbursement available through the AOC. [Inside Courts - AOC CARES Funding](#)
- Collection of data on court staff and visitors that have tested positive for COVID-19. Court administrators should refer to the guidance from authorities at the state and local departments of health on what information you can collect from court staff and visitors that test positive for COVID- 19. Employment laws such as The Americans with Disabilities Act (ADA) and the Rehabilitation Act do not interfere with employers following advice from the CDC and other public health authorities on appropriate steps to take relating to workplace safety. Please also consult your HR department on collection data and reporting.

### References and Other Resources

Washington Department of Health: [COVID-19 Guidance for Washington Courts](#)

Washington Labor and Industries:

- [Coronavirus Prevention: General Requirements and Prevention Ideas for Workplaces](#)
- [Novel Coronavirus \(COVID-19\) Resources](#)

OSHA [Guidance on Preparing Workplaces for COVID-19](#)

FEMA <https://www.fema.gov/news-release/20200806/planning-considerations-organizations-reconstituting-operations-during-covid>

CDC <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

# APPENDIX C

## **Security Considerations for Courthouses during COVID-19 - Survey**

**On behalf of the Facilities and Logistics Committee, of the Court Recovery Task Force, sponsored by Washington Courts Board for Judicial Administration, thank you for participating in this survey.**

**The purpose of this survey is to gather and share information about the courthouse security challenges that have arisen due to the pandemic and the policies and practices that have been put in place to deal with them. The results of the survey will be shared with all survey respondents so that you can learn how your colleagues throughout the state are responding to the challenges. The results will also be shared with members of the task force.**

**There are 14 questions that consist of multiple-choice or fill-in. If you have questions, please contact Penny Larsen, Senior Court Program Analyst for the Board for Judicial Administration at [Penny.Larsen@courts.wa.gov](mailto:Penny.Larsen@courts.wa.gov).**



## Contact Information

Please tell us about your position and the courthouse(s) you serve.

### 1. Name

### 2. Title

- |   |   |
|---|---|
| <input type="radio"/> Sheriff                 | <input type="radio"/> Bailiff             |
| <input type="radio"/> Security Manager        | <input type="radio"/> Security Officer    |
| <input type="radio"/> Law Enforcement Officer | <input type="radio"/> Judge               |
| <input type="radio"/> Court Security Officer  | <input type="radio"/> Court Administrator |
| <input type="radio"/> Other (please specify)  |   |

### 3. Please list the court facilities you serve

Primary location

Secondary location

Other location

Other location

### 4. When does your facility conduct entry screening?

- Full-time at all public entrances
- Only when the court is in-session
- Only when requested by courts for potential high risk events
- No entry screening occurs at the courthouse
- Other (please explain)

## Impact of pandemic procedures on security duties

### Tell us how your security staff are handling court duties during the pandemic

5. What public health related duties are you or your staff performing?

- Collecting completed COVID-19 screening forms
- Taking temperatures
- Conducting verbal COVID-19 screenings
- Directing foot traffic
- Monitoring mask usage
- Providing Personal Protective Equipment (PPE) to people entering courthouse
- Explaining and monitoring social distancing
- Other (please specify)

\* 6. Are masks/shields required in order to enter the courthouse?

- Yes
- No
- Sometimes (please specify)

7. When are masks/shields required in the courthouse?

- All of the time
- Most of the time
- Not sure
- Sometimes (please specify)

8. What policies are in place when people refuse to wear a mask or follow the social distancing policy?

- Refuse entry to person
- Have person sign a waiver for medical exemption
- Contact court staff to communicate with person
- Ask person to leave for non-compliance after entry
- Other (please specify)

9. Please list the issues or challenges that are coming up and how are they being addressed, to share with your colleagues and the task force.

Please describe the issue and response

Please describe the issue and response

Please describe the issue and response

Please describe the issue and response

Please describe the issue and response

10. What are the top five unmet needs that you see in security or facilities management?

Describe need

Describe need

Describe need

Describe need

Describe need

11. Are there practices or policies that have been put in place in response to the pandemic that you would like adopted indefinitely?

Describe practice

Describe practice

Describe practice

Describe practice

Describe practice

12. Is there anything not already covered that you would like the task force to know regarding screening and facilities?

13. Are you using CARES funding to expand security services at the courthouse or at alternative sites?

Yes

No

Other (please specify)

**The Court Recovery and Court Security Task Forces are gauging interest in forming a state-wide communication network for Courthouse Security Professionals to exchange information on addressing challenges and establishing best practices related to the pandemic and meeting the requirements of General Rule (GR) 36.**

**Court Administrators will also be invited to join the network. Members will receive access to a secure online portal. This will be a place to share materials and resources and post communications related to courthouse security.**

14. Would you be interested in joining a network of Washington Courthouse Security professionals?

Yes

No

15. Please provide your email address to receive more information on the network.

September 2020

# BJA RECOVERY TASK FORCE COMMUNICATIONS SUBCOMMITTEE

*The following goals were identified at the September 15<sup>th</sup> meeting of the subcommittee.*

## SHORT TERM GOALS

### **A. VIRTUAL COURT DIRECTORY (JANUARY 2021)**

**Members: Carolyn Jewett**

- i. Expand and utilize the [Virtual Court Directory](https://www.courts.wa.gov/COVID19) currently online at [www.courts.wa.gov/COVID19](https://www.courts.wa.gov/COVID19) and rebrand as an Access Directory.
- ii. Determine a baseline of information for every court to have information listed, including:
  1. *Court website address (if not already listed)*
  2. *A description of court operations*
  3. *Who to contact for health-related accommodations; court operation questions*
  4. *What virtual platforms are being used by the court to appear remotely (and how to access)*
  5. *How to obtain assistance of an interpreter*
  6. *Others?*
- iii. Reach out to leadership for the DMCJA, DMCMA, SCJA, SCA to send requests for courts to submit the information. Follow-up with individual courts who have not responded.
- iv. See if CARES funding can be obtained to translate this information into the top 15 languages

### **B. EVICTION FOR NON-PAYMENT OF RENT (ASAP)**

**Members: Wendy Ferrell, Lorrie Thompson, Vanessa Torres Hernandez, others?**

- i. Execute a communications plan to educate the public on how to access the seven pilot project sites in Washington, including:

1. *Creation of a dedicated website*
2. *Press release*
3. *Step-by-step simple instructions on how the public can access the program*
4. *Draft guest op-eds for the dedicated judges, to explain the concept to the public and encourage participation*
5. *Possible poster/PSA for listing on court websites and distribution to community organizations*

**C. CREATION OF COMMUNITY ORGANIZATION CONTACTS (JANUARY 2021)**

**Members:**

- i. Create a thorough listing of all community and public organizations that courts should reach out to for reentry operations communications
  1. *Identify what type of information is most helpful for each organization.*

**LONG TERM GOALS**

**D. CREATION OF A “BEST PRACTICES” MANUAL (ESTIMATE: JUNE 2021)**

**Members:**

- i. Work with the assistance of the WSBA’s COVID-19 rapid response team to identify best practices of court operations. What is working well in certain courts that should be considered for adoption statewide?
- ii. Develop recommendations for courts to consider
- iii. Communicate with the courts to encourage innovation and adoption of these best practices

**E. DEVELOPMENT OF PUBLIC SERVICE ANNOUNCEMENT - TEMPLATE VIDEOS (ESTIMATE: JUNE 2021)**

**Members: Carolyn Jewett**

- i. Identify most cost-effective manner to develop videos that could be adapted for local courts (Zoom webinar, others?)
- ii. Identify topics
- iii. Develop scripts
- iv. Produce videos



**Board for Judicial Administration (BJA)  
Court Recovery Task Force  
Monday, June 15, 2020, 2:30 – 4:30 p.m.  
Videoconference**

**DRAFT MEETING MINUTES**

**Participants:**

Chief Justice Debra Stephens, co-chair  
Judge Scott Ahlf, co-chair  
Judge Judith Ramseyer, co-chair  
Kelley Amburgey-Richardson  
Linnea Anderson  
Cindy Bricker  
Alice Brown  
Judge Faye Chess  
Judge Harold Clarke  
Adam Cornell  
Jennifer Creighton  
Jerrie Davies  
Cynthia Delostrinos  
Judge David Estudillo  
Justice Steven González  
P.J. Grabicki  
Vanessa Hernandez  
Jessica Humphreys  
Tracy Jeffries  
Ray Kahler  
Mike Killian  
Kathryn Leathers

Robert Lichtenberg  
Cynthia Martinez  
Carl McCurley  
Sophia Byrd McSherry  
Amy Muth  
Briana Ortega  
Glen Patrick  
Terry Price  
Judge Ruth Reukauf  
Juliana Roe  
Dawn Marie Rubio  
P. Diane Schneider  
Jason Schwarz  
Judge Jeffrey Smith  
Judge Lisa Sutton  
Lorrie Thompson  
Brad Thurman

**AOC Staff:**

Jeanne Englert  
Penny Larsen  
Caroline Tawes

Call to Order

Chief Justice Stephens called the meeting to order at 2:35 p.m. and introduced the co-chairs. Participants were asked to share their priorities for the Task Force (listed below).

Background and Overview

Chief Justice Stephens reviewed the Task Force charter and short- and long-term deliverables that will help the courts in their recovery. She also discussed membership and asked members to consider who else should be invited. Jeanne Englert will set up a Box drive for Task Force documents that will be accessible to the members.

Judge Ahlf reviewed the Task Force guidelines and also shared the ATJ Technology Principles and Race Equity Organizational Toolkit included in the meeting materials.



Additional Efforts

Judge Ramseyer introduced Judge Harold Clarke and Glen Patrick to discuss work already underway. Judge Clarke discussed the work of the Resuming Jury Trials workgroup. The report from the Resuming Jury Trials Workgroup, *Resuming Jury Trial Guidelines in Washington State Report* is currently being reviewed by the Supreme Court and will be sent out later this week.

Glen Patrick shared information from the Department of Health (DOH) Guidance Document on reopening courts amidst the pandemic. The guidance document will be shared with courts as soon as finalized.

The co-chairs thanked Mr. Patrick, Judge Clarke and the Resuming Jury Trials Workgroup for their excellent work

Additional national resources listed in the meeting materials were identified.

Activities and Timeline

The entire Task Force will meet approximately once a month. Work on plan details for specific case types and court operations will take place in committees. A list of suggested committees was included in the meeting materials and the members discussed the topics. The list will be refined and sent by Jeanne Englert along with a survey to Task Force members asking them to indicate their top three choices of committee assignments and if they can take a leadership role on a committee.

Jeanne Englert will send requests for meeting times for the next six months. Meeting minutes will be public and there will be discussions about the best way to make the Task Force meetings more available to stakeholders and the public.

There being no other business, the meeting adjourned at 4:33 p.m.

**Action Items from the June 15, 2020 Meeting**

<b>Action Item</b>	<b>Status</b>
Jeanne Englert will set up a Box drive for Task Force documents that will be accessible to the members.	Done
Jeanne Englert will send a survey to Task Force members asking them to indicate their top three choices of subcommittee assignments and if they can take a leadership role on a subcommittee.	Done

Top Priorities from Court Recovery Task Force Participants:

- Guidance on Jury selection and trials.
- Family focused/acknowledge equity.
- Enduring systems to promote access to the courts for communities traditionally marginalized by the legal systems (especially low income, people of color, LEP populations, and people with disabilities).
- All service other than initial process electronically.
- Uniform electronic filing system statewide like Pacer.
- All non-dispositive hearings and conferences by video conference.
- Require all filing to be electronic.
- Fillable forms that can be e-mailed via the courts.wa.gov site for all litigants to the jurisdiction they are in.
- I am interested in knowing how the AOC can best provide support and service to the courts in adapting to the new normal that Judge Ahlf mentioned.
- After the obvious, which is how to resume operations safely, we have a number of concerns.
  - 1. Will the delay frustrate justice, 2. With the reductions in eligible jurors, will we have issues obtaining jurors and will the pools represent our community; 3. In poor communities, will the expanded use of technology further disadvantage the poor; 4. Will the judiciary have realistic expectations of prosecutors and defense while we are handling our current caseload and the backlog caseload.
- Communication and buy-in from the public; jury assembly process.
- Consideration of what to do for self-represented folks without easy access to technology.
- Changes to some of the Civil Rules, such as remote/video depositions, to keep discovery progressing in civil cases. Leadership/guidance to county Superior Courts for how to resume civil jury trials after the backlog in criminal cases is addressed.
- Identifying principles and systems for effective delivery of justice statewide while maintaining local flexibility in procedures, as appropriate.

- Discover and develop the tools needed to facilitate virtual hearings effectively with a court interested team.
- Obtain and disseminate how different jurisdictions around the State are adapting to the “new normal.”
- Ways we can segue towards a more electronic future — digital files and technology being common, widely-available for state courts.
- Access to justice, especially in remote areas — increase bandwidth for better connection, kiosks/public buildings where the public can access computers to participate remotely, when in-person is not an option.
- Access to information in other languages, especially audio recordings and online forms for court participants.
- A commitment to learn from experience and adapt as the work unfolds.
- Develop a routine to regularly collect feedback from court users.
- Confidence in health/safety practices for everyone while ensuring due process.
- Use the lessons that we all have learned through this process to make our courts more accessible to individuals we serve.
- I’m interested in the criminal court and the reimagining the courts task forces. I’m interested in addressing the unique impact the pandemic will have on the public defense system — including managing public defense caseloads, assuring defense counsel health and safety during hearings, and ensuring that pretrial detention accounts for implicit racial bias, which is heightened by the pandemic since COVID-19 has a disproportionate impact on communities of color.
- Ensure safe and equal access to the courts for all participants while addressing the disparities that individuals face in using technology to access the courts.
- Current technology limits full participation of limited English speakers and their interpreters which may not be obvious to those who have not attempted this.
- Making sure we are looking at issues with a race equity lens, also considering how the “new normal” will impact historically marginalized groups within our society to promote equity and access to justice for all. Facilitating involvement/input/advising from the Supreme Court Commissions.
- How best to move criminal matters forward.

- Take advantage of this opportunity to develop new modern, better ways of doing our work.
- Be careful not to be too aggressive with jury trials being mindful of the state the county is in of reopening.
- Cleaning protocols; educate public accessing courts. Interested in the APA issues. Also interested in improvements long term strategies for change.
- The Interpreter Commission is ready to assist with best practices for remote interpreting platform effectiveness and service connectivity with remote participants. Every remote court proceeding is affected by having interpreters in the mix