

Re-Imagining Our Courts: Pandemic Response and Recovery Lead Courts Into the Future



A Report From the Court Recovery Task Force

Dear Justice System Partners,

The onset of the COVID-19 pandemic created challenges in all aspects of daily lives not experienced since the flu pandemic of 1918. Government, schools, and businesses closed. Many courts paused operations to devise emergency procedures. On May 25, 2020, a new wave of trauma swept over the nation as the murder of George Floyd brought us face-to-face with the racism endemic to our society. There was no “owner’s manual” to guide us. Yet, Washington’s legal community quickly came together to confer, collaborate, and innovate ways to deliver legal services and fulfill mandates to serve the public’s continuing need for access to the justice system.

Chief Justice Debra Stephens instituted a call for action and convened the statewide Board for Judicial Administration’s Court Recovery Task Force. Justice system partners were recruited as charter members, and more than 100 representatives from various organizations and associations devoted countless hours to committee work. We worked together and prioritized court needs; innovated, located, and delivered resources that transformed services; and used our experiences to overcome the daunting challenges we faced.

Thankfully, this process also informed a blueprint for our courts to keep evolving into the most efficient, respectful, and just legal system we can become. As usual, from crisis comes opportunity.

We invite you to read this report to understand the journey and hard work participants in Washington’s court system — court users, attorneys, system partners, staff, and judicial officers — have undertaken since early 2020. Our methods, our successes, and our failures are described. Resources are referenced.

We are deeply indebted to the many volunteers who have given so much to this endeavor, while balancing personal trauma and challenges resulting from these crises. We pledge to keep the momentum moving us closer to the re-imagined legal system we now know we can become.

With admiration and gratitude from the Task Force Co-Chairs,

Chief Justice Steven González
WASHINGTON SUPREME COURT

Judge Judith H. Ramseyer
KING COUNTY SUPERIOR COURT
SUPERIOR COURT JUDGES’ ASSOCIATION

Judge Scott Ahlf
OLYMPIA MUNICIPAL COURT
DISTRICT AND MUNICIPAL COURTS
JUDGES’ ASSOCIATION





SPECIAL THANKS

A special thank you to the Lessons Learned Committee Members for compiling and authoring this report: Chair Judge Judith H. Ramseyer, Jeanne Englert, Katrin Johnson, Penny Larsen, Carl McCurley, Frankie Peters, Jason Schwarz, Judge Lisa Sutton, and Lorrie Thompson.

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Executive Summary

“I am grateful to everyone who worked hard on the Court Recovery Task Force to provide access to justice during a difficult time. Through the work of many, we have found new ways to create the courts of the future, reducing the number of times litigants and lawyers need to travel to court and making courts easier to navigate. I appreciate that judicial branch partners from all branches of government and beyond did this work with the Technology Principles in focus and with a Diversity, Equity and Inclusion Lens. We commit not to go back to business as usual, but instead to incorporate the important lessons we learned together.”

CHIEF JUSTICE STEVEN GONZÁLEZ
WASHINGTON SUPREME COURT

Soon after it became apparent the COVID-19 pandemic would change daily life on a scale few had ever experienced, Chief Justice Debra Stephens convened a statewide task force to share experiences and coordinate responses to the fluid and devastating situation we faced. The Court Recovery Task Force (Task Force) was quickly organized with judges, court personnel, and court system partners. It divided into eleven committees that covered essential elements of court operations. Subject matter experts integral to their topics were invited to participate in the committees' work.

The shared goal was simple: keep courts operating and safely serving the public. How to accomplish this goal was far from simple.

Over two years, approximately 100 partners worked through the Task Force's committees to analyze challenges brought on by the pandemic, to identify and assess solutions, to develop tools that help others access solutions, and to share the knowledge being accumulated across Washington's court system. Court administrators were surveyed to understand public health measures courts had implemented; criminal defendants, unrepresented litigants, and jurors were surveyed to gather court user experiences. Emergency court rules were recommended to reduce the need for in-person contact, including expanded e-filing and e-signature practices, quashing and limiting the issuance of bench warrants where circumstances did not indicate risk to public safety, and expanded use of internet-based remote proceedings for routine court appearances.

Over time, a number of these emergency rules proved so effective they were recommended for permanent implementation.

With financial assistance from the federal government, courts rapidly expanded their ability to conduct court proceedings with enhanced health precautions. Courts leased fairgrounds and convention centers to conduct trials while observing extensive sanitation procedures and physical distancing for all court participants. With many court staff, system partners, and litigants participating from home or other isolated settings, all courts moved quickly to purchase technology hardware and software and adopted procedures to conduct virtual court proceedings. Courts quickly established routine hearings conducted over these virtual platforms. In Washington's most populous counties, courts implemented full-scale jury trials, from jury selection through verdict, on remote platforms. These innovations have been quite successful.

While innovations varied depending on the size, demand, and culture of individual courts, new technological capabilities have permanently transformed court proceedings from the traditional, in-court model. Courts of the future can be more nimble, responsive, and efficient.

Tools created by Court Recovery Task Force committees to support this transformation include:

- Best practice sample templates for virtual dependency proceedings.
- Facility checklists for off-site security and safety precautions.
- Best practices for virtual discovery, alternative dispute resolution, and pre-trial processes.

- A Virtual Court Directory containing links to remote hearings.
- Guiding principles for use of court technologies.
- Best practices for website development intuitive to court users.

Another primary goal of the Task Force was to synthesize the lessons it learned through this work to re-imagine a court system of the future that is more efficient, just, and responsive. The final report describes essential lessons that were learned through this process. Most notable is the lesson that for a branch of government steeped in history, tradition, and precedent, courts can adapt when it is a priority. Indeed, many of the adaptations experienced were not only necessary to operate during a crisis, they also point the way to a court system that respects the needs of court users and strives to eliminate racist practices endemic to our society.

Accordingly, the Court Recovery Task Force recommends that courts of the future will:

- Embrace positive change.
- Communicate and collaborate.
- Use technology to promote efficiency and access to justice.
- Gather feedback from court users, publish outcomes, and adapt.
- Implement practices and procedures through a racial justice lens.
- Prioritize the health, safety, and morale of its work force.
- Plan for emergencies.
- Actively work with local and state governments to guarantee stable funding.

Although the Task Force's activities have concluded, the work it has begun must continue. The case backlog created by the pandemic and restrictions on court operations jeopardizes guarantees of timely access to justice. Making technology universally available across courts, system partners, and court users is essential to continue the access and efficiencies we have learned can be effectively integrated into court procedures.

We also must hold ourselves accountable through standardized data collection and listening to the experiences of court users. As public servants, we generate public confidence in courts only if our performance is transparent, understood, and perceived as just by those we serve. The COVID-19 crisis has made the need for self-examination and innovation critical. The energy and creativity generated should continue to shape the courts of the future.



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Re-Examining and Re-Imagining

“The vision was for a diverse group of court professionals and justice system partners to share ideas and experiences, help gather information in real time and make recommendations for long-term improvements to the justice system — all with a view toward greater equity and inclusion.”

JUSTICE DEBRA STEPHENS
WASHINGTON SUPREME COURT

Creation of the Court Recovery Task Force

Early in 2020, the COVID-19 pandemic erupted worldwide. It created fear, tragedy, and disruption in all aspects of life and work across the nation and in Washington. By March 2020, Washington courts had paused operations, sent staff home, and sought ways to continue mandated court functions in the face of emergency orders at the national, state, and local levels to protect public health and safety.

In May 2020, then-Supreme Court Chief Justice Debra Stephens envisioned the need for a broad-based, multifaceted group to respond to the pandemic. Chief Justice Stephens approached the Board for Judicial Administration (BJA), the policy and leadership board for the judiciary, to authorize creation of a “Court Recovery Task Force” (Task Force). The Task Force was authorized, with its mission to discuss, analyze, and propose emergency rules and procedures to assist courts, system partners, and court users across the state adapt to this rapidly-changing and unprecedented crisis.¹

Washington courts operate independently in a decentralized manner. Municipal, district, superior, and appellate courts have discretion within their jurisdiction to adopt certain procedures and rules to best serve their local circumstances. Funding also is variable from court to court. Superior Court judicial officers are funded by both the State and their county governments. Similarly, many court system partners (interpreters, law enforcement and corrections, government lawyers, and assigned counsel) are equally decentralized and are almost exclusively funded at differing levels by local jurisdictions. This local variation results in substantive differences in staffing, technology support, and facilities management. Consequently, individual courts experienced unique challenges and disparate resources to address pandemic-related adjustments. The Task Force needed to understand and incorporate diverse circumstances and, ideally, respond with generally applicable rules, policies, and resources that could be tailored to local needs.

Task Force leadership adopted the following framework²:

- Guiding principles promoted access to justice, racial equity, health and safety, system partner collaboration, flexible problem-solving, technology, and data-driven solutions. (Appendix 3)
- Committees were created to carry forward specific activities to promote understanding, innovations, and resource development on aspects common to all courts. Committees were able to recruit additional members to contribute specific input and expertise.

¹ During the pandemic, the Supreme Court adopted 30 emergency orders related to court operations. Some of these orders are still effective. Resulting proposals for court rule changes, civil and criminal, are not addressed in this report unless a committee substantially contributed to them. Court rule proposals are handled by a committee of the Supreme Court.

² The Task Force initially was co-chaired by Supreme Court Chief Justice Debra Stephens, Superior Court Judge Judith H. Ramseyer and Municipal Court Judge Scott Ahlf, and supported by Jeanne Englert, Administrative Office of the Courts (AOC). In January 2021, Chief Justice Steven González replaced Justice Stephens due to a transfer of leadership at the Supreme Court.

- Committee membership was designed to reach beyond judges and court administrators to include justice system partners and community members. For manageability, the Task Force was comprised of both voting and consulting members.
- Task Force activities were intended to address immediate pandemic-related court challenges and to use lessons learned from this process to re-imagine courts of the future.
- Ongoing communication and coordination between the Task Force and related justice system partners minimized duplication of effort, redundancy, and conflict.

Court Recovery Task Force Committee Structure

The Task Force began monthly meetings in June 2020, with eleven committees that worked independently and reported to the full Task Force: Adult Criminal, Appellate, Child Welfare, Facilities and Logistics, Family Law, General Civil Litigation, Juvenile Criminal/Civil, Lessons Learned, Public Outreach and Communication, Technology, and Therapeutic Courts. Approximately 100 judicial officers, court personnel, and justice system partners participated in the Task Force and its committees.³

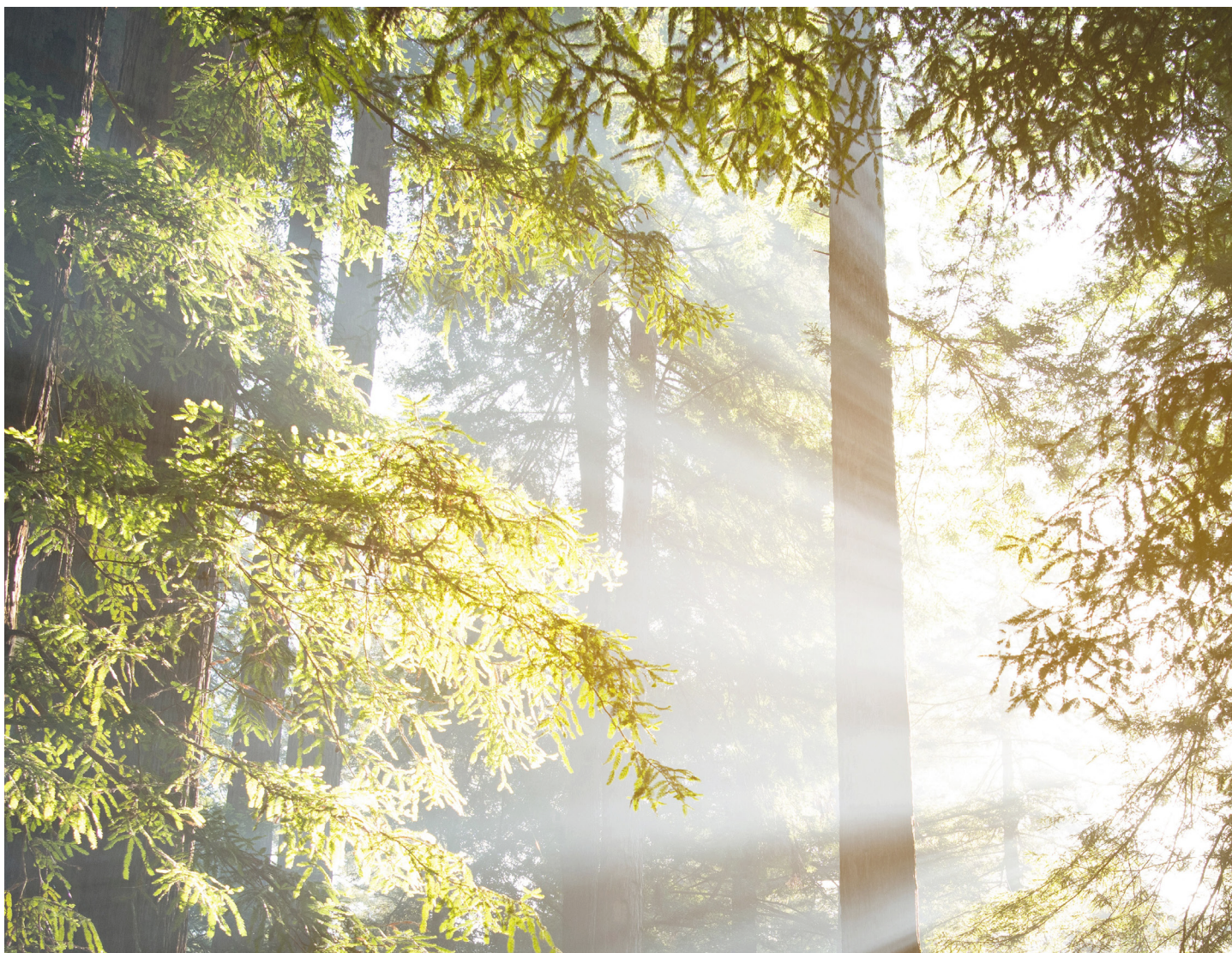
The Task Force incorporated valuable events to augment its work. In June 2020, the nation rose in response to George Floyd’s murder that brought the issue of institutional racism into sharp focus. The BJA and the Task Force sponsored the BJA Court Recovery Summit in August 2020. Jeffery Robinson, Director of the Who We Are Project and veteran Washington attorney, previewed his powerful documentary film, “Who We Are: A Chronicle of Racism in America.” More than 100 attendees from a variety of court-related disciplines attended. Small group discussions produced candid and difficult recognition of the institutional racism embedded in our society and justice system. Racial justice and disparate access to court services took on a renewed urgency as the imperative to address societal impediments to fair and equal justice during the pandemic and beyond were laid bare.

The Board for Judicial Administration and Task Force also instituted the Innovating Justice Award to recognize court and justice system partners across the state who demonstrated extraordinary vision, creativity, and effort to overcome the uncertainty and challenges with which our system was grappling. (Appendix 4)

The Task Force meetings were used to share statewide information, to problem-solve issues in small group sessions, and to discuss broader court issues such as language access, open access to courts, and the challenges and benefits of virtual hearings.⁴

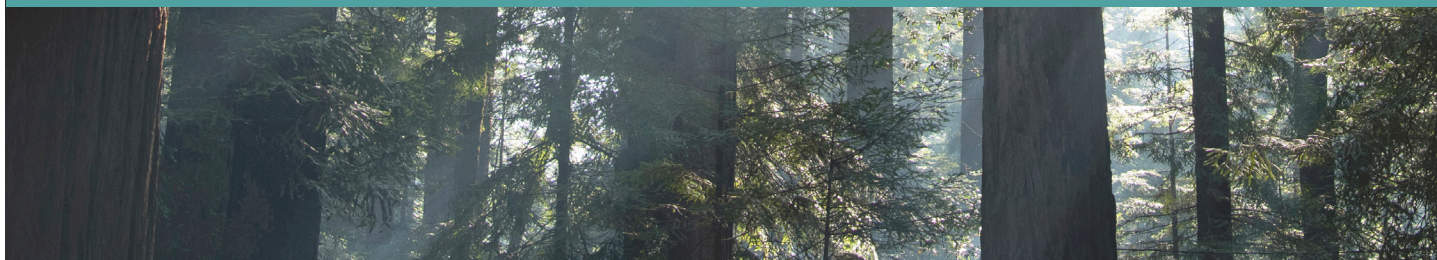
³ The Task Force Charter, members, and committee rosters can be found in Appendix 1 and 2. Committee reports and work products are found in Appendices 3, 6–12.

⁴ For convenience, the term “virtual” will be used in this report to refer to internet-based audio and video platforms.



“Guiding principles brought cohesion and focus to the Court Recovery Task Force, at a time of crisis and confusion.”

JUDGE JUDITH H. RAMSEYER
KING COUNTY SUPERIOR COURT
SUPERIOR COURT JUDGES' ASSOCIATION



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Committee Highlights

“Crisis reveals the cracks.”

LINNEA ANDERSON

COURT RECOVERY TASK FORCE, JUVENILE COMMITTEE
JUVENILE COURT ADMINISTRATOR, SAN JUAN COUNTY

The Task Force’s substantive work took place in its Committees. Each committee had a chair, support staff, and diverse members with subject matter expertise. Committees identified work priorities, implemented activities, made policy recommendations, and, in some cases, developed resources.

Adult Criminal Committee

The Adult Criminal Committee focused on the increased backlog in criminal cases and the ability of defendants charged with crimes to obtain a timely jury trial. It worked to enhance virtual consultation between criminal defense attorneys and their clients so defendants could safely consult with their lawyers and court proceedings could continue.

The Committee also:

- Administered a criminal defendant survey in four languages and a juror survey to assess court-user experiences during the pandemic. (Appendix 5)
- Drafted and submitted proposals for two permanent court rules. Proposed CrR/RLJ 4.11 provides a new hearing notice procedure for courts to follow before issuing a bench warrant for non-appearance, pursuant to CrR/RLJ 3.4. Proposed CrR/RLJ 4.12 would permit defense counsel to sign continuance requests on behalf of their clients consistent with the Emergency Order. These proposed rules will be published for comment before potential adoption by the Supreme Court.
- Drafted rules and orders to streamline and standardize new criminal case procedures.
- Provided ongoing feedback to the Supreme Court on emergency rules related to the issuance of arrest warrants, reduction in persons held in congregate settings, and to reduce in-person proceedings.

Having a representative on the Task Force from Department of Corrections and/or the county jails would have been helpful during discussions of inmates’ access to counsel and remote sentencing hearings.

Appellate Committee

The Appellate Committee’s primary objective was to alleviate pandemic-caused case backlogs in superior courts. Through successful legislation, the Committee reduced the need for intermediate review of appeals of final administrative law and land use decisions at the superior court level, allowing direct review by the Court of Appeals. These appeals are regulated by the Administrative Procedures Act (APA) and the Land Use Petition Act (LUPA), so an expedited review by the appellate court required changes to state law.

The Committee recruited members from the Attorney General’s Office; subject matter experts in administrative, environmental, and land use law; and private appellate attorneys. It solicited input from judges, private practitioners, the Administrative Law and Land Use sections of the Washington State Bar Association, and Legislators. On July 1, 2021, the Washington Legislature enacted SB5225 to permit expedited review by the Court of Appeals of final administrative decisions brought under the APA and LUPA, effective immediately. (Appendix 13)

Child Welfare Committee

The Child Welfare Committee developed sample templates for virtual dependency proceedings (Appendix 7) which complemented the Best Practice Guide created by a work group of the Commission on Children in Foster Care. (Appendix 13)

The Committee also:

- Developed a sample discovery agreement.
- Developed a sample witness list.
- Proposed changes to CR 43, Taking of Testimony.
- Updated guidelines for fact-finding and termination of parental rights trials.

Facilities and Logistics Committee

The Facilities and Logistics Committee worked with a network of system partners to assist courts in responding to pandemic-related logistical and facility challenges, including the following:

- Implemented a statewide Courthouse Security Communication Network that had not previously existed in Washington to share information.
- Disseminated a survey to courthouse security providers regarding security challenges caused by the pandemic and practices adopted in response.
- Disseminated a checklist of steps needed to procure offsite court facilities to safely bring together large groups of people for jury selection or an in-person trial.
- Created a planning checklist for potential outbreaks of COVID-19 in courthouses.

Facilities and Logistics Committee checklists are located in Appendix 8.

The Committee plans to maintain the Courthouse Security Communication Network to build relationships to assist during court emergencies.

Family Law Committee

The Family Law Committee worked to reduce barriers encountered by self-represented litigants caused by the pandemic. It explored variability between courts in the use of digital signatures and provided opportunities for feedback on GR 30, Electronic Filing and Service.

Virtual proceedings have been highly successful in family law matters, which often involve unrepresented litigants. The Committee supports continued use of and internet access to court forms, rules, contact information, and court proceedings. Future planning and innovation must involve input by court users, and consideration must be given to those with financial hardships, limited internet access, and persons with physical and communication disabilities and limited English proficiency.

The Committee also considered a proposal for a statewide informal family law trials rule. This rule would provide guidance to judicial officers when self-represented litigants are requesting dissolution of marriage. Currently, this option is only available in some counties.

General Civil Litigation Committee

The General Civil Litigation Committee identified numerous challenges in civil litigation caused by the pandemic. These included service of legal documents on a party, how best to conduct discovery, defining new processes for pre-trial motions, ways to move forward with civil bench and jury trials, and how to improve equal access to justice.

The Committee conducted a survey of judges and lawyers who had completed virtual trials and hearings. It reviewed other surveys, created sample trial orders, and created best practices for remote discovery, alternative dispute resolution, and pre-trial processes. (Appendix 9)

It recommended updates to Supreme Court emergency orders, submitted formal comments to proposed court rule amendments, and recommended that rules for virtual proceedings allow flexibility to recognize local court needs and staffing.

Juvenile Criminal/Civil Committee

The Juvenile Criminal/Civil Committee conducted crucial conversations between juvenile court judges, juvenile court line staff and administrators, academics and other professionals, and community leaders involved in juvenile justice. This diverse membership and perspective enabled the Committee to focus on two key issues creating barriers to case resolution. Committee members were catalysts for changes in the law on these issues:

- RCW 13.40.080 was amended to allow the extension of juvenile diversion agreements beyond the six-month cut-off to enhance successful program completion, at the request of the juvenile involved in the diversion. (Appendix 13)
- SB5609 was introduced to eliminate the requirement that a juvenile provide fingerprints in open court. While the bill did not pass in the 2022 Legislative session, it may be reintroduced in 2023.

As a result of the Committee's work, juvenile court partners and community members formed an alliance to study access-to-service issues beyond the Task Force. This alliance will continue to collaborate on coordinated efforts to improve juvenile justice.

Lessons Learned Committee

The Lessons Learned Committee served as a clearinghouse for the other committees. It captured their work products, monitored procedures used, and marshalled system partner input to the Supreme Court on potential court rule changes. This Committee collected lessons learned and recommendations from all committees to digest and synthesize best practices, innovations, and recommendations derived from our collective experiences.

Early on, the Committee conducted a comprehensive survey of court administrators to collect data on changes in court operations and assess ongoing needs. These surveys confirmed that most courts adopted the Washington State Department of Health's COVID-19 recommendations, and most courts adopted alternative methods for filing documents and obtaining signatures on court orders and documents. Courts also issued significantly fewer warrants for a criminal defendant's failure to appear in court as

opportunities to appear virtually increased. Jails, prosecutors, and courts made concerted efforts to reduce jail populations due to health risks. Survey results for “Changing Court Practices Amidst COVID and Beyond” are located in Appendix 5.

A survey of self-represented litigants was distributed in four languages at each court statewide. Low response rates indicated the need for more feedback from court users. (Appendix 5)

Public Outreach and Communication Committee

The Public Outreach and Communication Committee’s primary objective was to create easily accessible directories and resources for courts, attorneys, and the public to find information about court responses to COVID-19.

The committee worked with AOC’s Communications and Public Outreach Department for the following:

- Created the Eviction Resolution Program dedicated website, outreach materials, and media campaign.
- Authored several articles about Task Force activities and the judicial branch’s response to operations during the pandemic as reported in the 2021 State of the Judiciary address.
- Created and maintained a dedicated COVID-19 website.
- Created a Court Recovery Task Force website.
- Created a Virtual Court Directory containing resources for virtual court proceedings.

See Appendix 10 for Committee resources.

The Committee found that the media, public, and bar associations desired clear and consistent practices among courts throughout the state. However, they experienced the challenges of communicating and providing timely resources in a non-unified court system due to the need for varying court practices in individual courts.

Technology Committee

The Technology Committee determined that the use of adaptive technology unquestionably allowed courts to conduct business safely during the pandemic. The type and scope of technologies used by courts varied dramatically by jurisdiction and court level. These differences result from uneven technological resources across courts and court users, inconsistent funding for technology improvements, and a non-unified governance structure that determines technology needs and resources throughout the judicial branch.

To help guide courts with the increased use of technology, the Committee issued “Guiding Principles for Identifying, Developing, Implementing, and Utilizing Court Technology.” These Principles were identified based on court survey feedback and other published guidelines. (Appendix 11)

The Committee also conducted an extensive assessment of how court users experience Washington court websites. The Committee produced its “Website Guidelines and Best Practices,” to assist courts in developing websites that are both comprehensive and intuitive for court users. (Appendix 11)


Therapeutic Courts Committee

The Therapeutic Courts Committee administered a statewide survey to presiding judges that revealed three key themes and recommendations:

- The positive impact of participants appearing in therapeutic courts through virtual platforms.
- The reliance of therapeutic courts on external partners to conduct their work.
- The importance of ongoing collaboration among therapeutic courts statewide.

Therapeutic courts ordinarily require frequent attendance by participants. Court closures and delays significantly impeded courts’ ability to monitor respondents’ progress. In response, courts permitted respondents to appear virtually. This change produced unanticipated benefits, such as more frequent and increased participation by respondents, including respondents being more forthcoming on their addiction recovery efforts. Accordingly, many therapeutic courts are committed to continuing a hybrid approach after the pandemic, with both virtual and in-person hearings and team meetings. (Appendix 5)

The Committee’s work also involved the development and distribution of communication and outreach materials, data collection, and sharing experiences among therapeutic courts statewide, which reinforced the benefits of collaboration. (Appendix 12)



Court and judicial partners came together outside of traditional work silos to provide diverse input and robust communication to address shared goals.

4

Lessons Learned

To adapt meaningfully, a judicial system needs effective methodology and objective data to document the impact of its work on court users.

The key lesson learned is that courts can evolve and innovate by being open to new methodologies and technologies. The legal system can be more responsive to court users, increase access to justice, improve efficiency, and require fairness. The diverse and collaborative Task Force structure showed us the way. Task Force members uniformly endorsed the following essential lessons.

Inclusive and Diverse Collaboration Leads to Improved Communication and Leadership

The unique perspectives and diverse array of Task Force members enabled extensive communication and collaboration about court operations that led to quick and effective solutions. The Task Force's top priority was to determine how to continue offering court services and address the growing backlog of trials when in-person proceedings were unavailable or severely restricted. Outside groups presented at Task Force meetings on discrete topics such as gender bias and virtual trial techniques. Several committees conducted system partner surveys to gather court-user input and additional diverse perspectives and experiences.

Because Task Force members represented a variety of courts and statewide organizations, relationships were formed and information “spilled over” into other work settings. For example, a member knew whom to contact with experience in a matter unrelated to Task Force work. Members were tapped to participate in other statewide activities, such as discussions about Supreme Court emergency rules and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funding requests. This collaboration and network of relationships built around shared challenges enhanced an understanding of the unique roles by participants across the court system spectrum and respect for their work.

Other collaborative work included:

- Drafting and amending emergency and permanent court rules, including rules to reduce the use of bench warrants to decrease jail populations, rules expanding the use of e-signatures, allowing lawyers to sign certain documents for their clients to reduce the need for physical contact between them, and alternative service provisions to promote public safety.
- Legislative activity resulted in allowing juvenile diversion programs to be extended to promote successful completion and expanding the role of appellate courts to reduce trial court backlog.
- Reports and instructional materials were prepared describing best practices for conducting virtual hearings, jury selection and trials, and technology and website guidelines. (Appendix 9, 11)

Courts Can Adapt to Change

1. Physical, Technological, and Staffing Innovations

The legal system's coordinated response to the pandemic showed that courts and court users can adapt to an emergency while respecting local needs and

conditions. Justice system partners used technology to dramatically re-design the courtroom experience from a centuries-old in-person model to a 21st century virtual one. Courts demonstrated their flexibility by renting and equipping fairgrounds, convention centers, and armories to conduct jury selection and trials that required physical distancing and safety measures that historic courthouse buildings could not accommodate. In so doing, they also increased access to justice and decreased the inconvenience of long in-person court dockets for court users and system partners.

Many courts embraced the concept of court as a service, quickly adapting to video platforms for court hearings and trials. These courts learned about available technologies, updated their infrastructures, and developed practices to strive for participation by all court users. Court users included not only judicial officers and court staff, many of whom worked from home, but also parties, incarcerated individuals, witnesses, attorneys, interpreters, and the viewing public. Where available, virtual access to court proceedings offer participants substantial cost savings.

The use of virtual platforms changed the nature of interactions during court proceedings as participants now joined from settings other than the controlled courtroom environment. Reactions to these experiences were mixed. One therapeutic court judge celebrated the opportunity for a drug court graduate to have family members participate from Mexico. Some welcomed insights this expanded environment offered.

Others question its utility in more traditional activities such as virtual-based jury selection. Several courts routinely conduct virtual jury selection and swear by it. Prospective jurors love the convenience; attorneys appreciate voir dire with video panels of 15–20 rather than a room of 50 or more persons; judges value the scheduling flexibility and efficiency in selecting a jury. Yet others caution that in-person jury selection is preferable, they may be reluctant to try a video-based alternative, are unsure they have the knowledge to manage a video platform for this important activity, or are concerned about potential prejudice to their clients. For courts conducting criminal trials, the courthouse as a service means allowing, but limiting, virtual proceedings to protect constitutional rights of defendants and victims.

Courts also upgraded websites to better communicate with court users and implemented e-filing and e-signature technologies. The need to preserve fairness and due process, to focus on accessibility by end-users, and to move toward standardization of certain technologies across court levels and localities is a baseline for the Task Force and is emphasized by the Technology Committee in its report, “Guiding Principles for Identifying, Developing, Implementing and Utilizing Court Technology.” (Appendix 11)

Even while courts were transitioning to internet and video services, the Task Force was well aware of the technological divide. The ease and flexibility of technology is not available to all court users. Reliable internet access is not universally available throughout Washington. People with limited English proficiency and physical disabilities face greater challenges when accessing information online

and participating in virtual hearings. People living in poverty may lack technology, software, internet connectivity, and other resources to participate equally. Criminal defense attorneys faced critical choices between health, safety, and professional standards, specifically where jails lacked technology for confidential virtual meetings. Some courts made WIFI, computer kiosks, and even laptops and cell phones available to litigants, but access still often required travel or relocation to access these resources.

2. **Federal Funding was Essential to Adaptation**

The COVID-19 pandemic brought into sharp focus the reality that all system participants are connected. A substantive adaptation by one system partner affects the work and needed responses of others. Funding, on an emergency basis and going forward, is essential to adjust to an evolving environment. Adaptations in response to this emergency could not have been accomplished in Washington without federal assistance.

The Administrative Office of the Courts, the Office of Public Defense, and local governments received and allocated federal CARES Act funding to achieve the physical, technological, and staffing modifications needed to address pandemic challenges and keep the court system functioning.

This emergency federal funding was used to:

- Retrofit courthouses and courtrooms to enforce physical distancing.
- Acquire sanitizing materials and personal protective equipment.
- Purchase the technology hardware and software needed to move operations into an off-site and virtual environment.
- Hire staff, public attorneys, and pro tem judicial officers to deal with volatility in the workforce, staging new locations and platforms, and the immense workload backlog generated by the reduction in operations.
- Fund assigned counsel throughout the state to update their own technology and facilities to be compatible with court adaptations.

Innovation Includes Identifying and Addressing Unmet Needs

In addition to learning from its successes, the Task Force has gained insight from less successful efforts.

1. **Lack of Effective Data Collection Impaired Access to Valuable Feedback**

The lack of shared knowledge around local practices in different jurisdictions and low court user survey response rates prevented the Task Force from adequately measuring how court users felt about evolving practices and procedures. Although the Task Force tried numerous ways to collect information, response rates from court users and sometimes system partners were lower than required for reliable results. The specific cause is unknown. Several factors may have contributed, such as survey fatigue (many entities were seeking feedback during this period), survey

access (committees offered electronic, paper, and QR codes for responses), and language access (the Task Force translated several court user surveys into four languages, but the majority of responses were in English). The lack of a uniform court data management system and discrepancies in data captured make it difficult to conduct a systemic review. By not having uniform data collection from court users on many of the adjustments implemented during the pandemic, the Task Force missed the opportunity to affirm or question the value of its changes.

2. Challenges to Meaningful Racial Equity Reform

Although the Task Force sought to bring a racial equity lens to its work, the lack of input about the consequences of COVID-related accommodations prevented an informed assessment of the experiences of diverse populations. For example, courts had to rely on anecdotal reports on the effect of changes to court rules regarding trials, bench warrants, and court appearances on Persons of Color. While raw numbers of jail populations were reduced in response to the pandemic, disproportionality among racial groups remained. Objective measures to assess short and long-term effects of changes to court operations on racial inequity were lacking.

Affirmatively focusing modifications on issues most strongly related to racial equity may have taken a back seat to the urgency of simply maintaining court operations in response to the COVID emergency. The necessity of viewing and measuring all court innovations through a racial justice lens cannot be lost during a time of crisis.

3. Even More Extensive Representation is Needed

The Task Force's work would have been enhanced with more extensive representation by court users—those whose involvement in the justice system is required or imperative to their well-being. Although it may be challenging to obtain feedback from these populations, understanding their experiences is essential. The voices of incarcerated persons, persons seeking or responding to protection orders, unrepresented family law parties, interpreters, and jail and state corrections staff would have added valuable perspectives.

4. Backlog of Cases Must be Addressed

The pandemic's disruption caused a significant backlog of cases in courts statewide. Addressing this backlog is an ongoing effort, dependent on physical space, sufficient system partners and staffing, adequate time for preparation, and jurors. Most backlog involves jury trials, as they require a large number of potential jurors and jurors to serve, as well as either the physical space to accommodate many participants in a courtroom or the capacity to conduct trials virtually. The backlog highlights the way in which courts and their system partners are interdependent. When counsel is unable to prepare for trial — conduct discovery or meet with clients and witnesses — this delays trial readiness. The consequences are perhaps most acute in criminal cases where a defendant is in pretrial detention, but it affects both civil and criminal cases. If courtrooms, court staff, attorneys, or judicial officers are not available, the delay in one part of the system has a ripple effect in others. The backlog is the largest unmet need from the pandemic. It warrants ongoing collaboration and coordination of effort with justice system partners.



“The team has been much more creative with recommendations and responses for both incentives and sanctions, and drastically reduced the use of jail as a response.”

THERAPEUTIC COURT SURVEY RESPONDENT



5

Going Forward

Perhaps the most stunning revelation emerging from the pandemic is that — when the need arises — courts are capable of implementing dramatic, large-scale change relatively quickly.

The most important lesson we can take from the uncertainty, challenges, innovation, hard work, failures, and successes of the past two years is how they inform courts of the future. We have accumulated a broad base of experiences on which to build this more just, effective, efficient, and considerate court.

The court system of the future will...

- **Embrace Positive Change**

Importantly, the need over the past two years was uniformly acknowledged, which created the unique context where all key participants agreed on the shared goal: keep courts operating. By working together, setting priorities, and acquiring funding, this goal was achieved, tailored by the needs and responsibilities of specific jurisdictions and system partners. Positive change that embraces modernity, respect, access, and effectiveness can and should be pursued.

- **Communicate and Collaborate**

Mutual understanding leads to effective collaboration. Task Force members universally praised the benefits of communicating with others inside and outside of our organizations and collaborating across all levels of the court system. As we confronted a crisis that required unprecedented responses, acting in isolation was ineffective. Videoconferencing allowed committees to work throughout the pandemic from their homes or offices, often with less planning and delay. The ability to use technology to collaborate as we create our courts of the future is a lesson that cannot be lost as homeostasis returns. Local courts and system partners should work together to maximize outcomes as rules and procedures continue to evolve.

- **Use Technology to Promote Efficiency and Access to Justice**

Unquestionably, technological advancements offer access to courts and efficiencies never imagined when many Washington courthouses were constructed. Meetings, conferences, and training routinely occur over virtual platforms, which promotes participation and tremendous savings in both time and cost. Courts conduct hearings, bench trials, jury selection, and full-blown civil trials from voir dire to verdict over virtual platforms. The public accesses these matters by coming to the courthouse to observe in-person or via streaming and internet broadcast.

Significant technology gaps in stable internet access, hardware, and data plans keep the justice system from using technology to its full potential. Emergency funding allowed most courts and justice system partners to obtain resources to permit video and internet operations, but the result is a potpourri of technology hardware and software that varies within and across jurisdictions. Standards for baseline capabilities and compatible platforms throughout the continuum of system partners would facilitate maximum utilization.

Lack of experience and fear of the unknown also hinder advancements. Virtual proceedings are not right for all occasions, but local differences need not impede efforts to institutionalize technological advancements where organizations and court users can imagine their benefits. Experts in both the technology and its specific applications must be funded and developed, including IT professionals, bailiffs, and

court clerks who are on the front lines with court users. Training and easy-to-follow instructional materials are needed to address the range of comfort and knowledge levels held by court practitioners and court users. Training is a continuing enterprise as uses and users expand. Courts at all levels must have discretion to adopt technology that promotes access to justice and efficiencies in their jurisdictions. Differentiation fosters innovation and offers the opportunity to share experiences that can influence and guide others.

Courts cannot evolve alone. Changes to the courtroom landscape impact system partners; changes made by system partners impact the courts. Local courts should communicate with and advocate for system partners' needs. Understanding the interdependence of system partners is an important tenet as we contemplate courts of the future.

- **Gather Feedback from Court Users, Publish Outcomes, and Adapt**

To provide court services that are responsive to its users, courts must gather feedback from both professional and public participants to understand their experiences. Feedback is essential to accountability. Surveys, feedback forms/links, and focus groups are just some of the ways professionals and public members can provide feedback on a regular basis.

Because of Washington's decentralized court structure, standardized data collection along updated and pertinent metrics must be developed. Standardized data collection can disclose efficiencies and biases, and promotes transparency. Aggregate data provided by courts and system partners allow us to assess, refine, and improve services that are responsive to court users' and system partners' needs. Regularly reporting results will create an incentive for improvement. If improvements are not indicated, public reporting of results is an incentive for recognition and appreciation. Either way, it is value-added.

- **Implement Procedures and Practices Through a Racial Justice Lens**

Courts and justice system partners are committed to eliminating institutional racism that has been built into our social fabric for generations. Awareness of inequities based on race, heritage, gender and gender identity, religion, and age has grown. Efforts to eliminate these conscious and unconscious biases are ongoing, but translating goodwill and best intentions into concrete action is complicated and lags in many ways.

- Courts and system partners must critically analyze the values and objectives underlying prevailing practices to end the consequences of bias-driven practices from another age that continue to pervade our institutions.
- Courts and system partners should collect data on racial disparity at important points in decision-making to inform its prevalence, and use this data for training and to change rules and laws to eliminate the disproportionate impact of structural bias on Black, Indigenous, and People of Color communities.
- Community voices are essential to understand the myriad effects justice system practices have on Black, Indigenous, and People of Color communities.

- Professionals across the justice system continuum must reflect the communities we serve.
- Resources must be allocated to support programs that foster life skills and successful transition from criminal justice, dependency, and mental health systems.

The justice system alone cannot eliminate endemic discrimination, but there is much it can and must do to scrutinize and revise its practices to enforce “equal justice under law.”

- **Prioritize the Health, Safety, and Morale of its Work Force**

The pandemic has taken a large toll on all. The pandemic illuminated the delicate life-work balance faced by many court employees, such as staff working through their children’s virtual schooling, or their need to protect fragile immune conditions. Public servants are sustained by the value they add to their communities, not by large salaries or public acclaim. Intangible benefits should be offered by justice system employers. This may include work place recognitions, flexible scheduling, childcare allowances, personal safety procedures, and sensitivity to the demands public service employees confront balancing work and personal lives. Employees and system partners themselves should identify and prioritize the value of intangible benefits, and justice system employers must be open to implementing them.

- **Plan for Emergencies**

An emergency, by its nature, is neither scheduled nor fully predictable, but the fact of future emergencies is certain. All courts and justice system partners must update existing Continuity of Operations Plans (COOP), or create plans where they do not currently exist, to define essential procedures in the face of emergency. Essential procedures include: (1) contact information for emergency authorities; (2) chain of authority within an organization and after hours/alternative methods of contact; (3) checklists/templates to guide emergency procedures; (4) back-up/retention of critical records; (5) alternative/safe locations to meet or conduct business on an emergency basis; and (6) notification methods for an organization’s work force and clients/court users.⁵

- **Actively Work with Local and State Governments to Guarantee Stable Funding**

As a co-equal third branch of government, courts are unique in their inability to generate an independent source of funding. Courts and justice system partners, i.e., interpreters, assigned counsel, government lawyers, victim advocates, and service providers, rely on state and local executive and legislative bodies for funding. These differences in funding result in year-to-year uncertainty and variation across jurisdictions.

Emergency federal funding allowed courts and system partners to adjust to provide mandated court services at the high level achieved. If the justice system is committed to re-imagining and substantively refining services to enhance fairness, efficiency, and effectiveness, there must be reliable funding to do this work. Courts must work cooperatively with their government-funded partners and other branches of state and local governments to secure the funding needed to support innovation and access to justice.

⁵ Resources to prepare COOP are available through the State Emergency Operations Center.

6

Conclusion

“The transforming of court practices to meet the needs of our participants during the pandemic has shown that our criminal justice system has the ability to adapt and provide new and innovative services for our communities.”

JUDGE SCOTT AHLF
OLYMPIA MUNICIPAL COURT
DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION

The tragedy, fear, and enormous challenges confronted and overcome during the COVID-19 pandemic have created a dynamic environment that—at least momentarily—has loosened the bonds of inertia. It presents a unique opportunity to build on lessons learned, both successful and unsuccessful, to actively assess, define, and prioritize our essential work. Justice, for example, does not require queues of litigants brought into courthouses to attend status conferences. Many proceedings can be conducted virtually or through counsel, lessening demands on a party to miss work, arrange for childcare, or incur the cost of transportation to and from the courthouse. Intentional collaboration results in mutual respect and meaningful results.

The Task Force harnessed this energy toward coordinated change. Momentum should not be lost as local and statewide entities recover from the uncertainty of the past two years. It can and should be used to innovate and recalibrate policies and practices to consciously strive toward the best justice system we can imagine.

To reach goals the court system of the future must achieve, continuing work groups should actively pursue the following unfinished tasks of the Task Force:

- **Address Case Backlog**
While extraordinary improvements have been achieved, the scale of case backlog threatens due process and just and timely resolution of cases for civil and criminal parties. To address the unique needs of criminal and civil matters work groups should continue to bring system partners together to develop short and long-term solutions to address this critical need.
- **Uniform Access to Technology**
To maximize the efficiencies and cost savings of virtual proceedings where most effective, work toward uniform technology platforms. Uniform platforms will simplify and enhance access to essential hardware and software, training and education, and user competence across court levels, jurisdictions, and system partners in Washington.
- **Universal Broadband**
Ensure universal broadband and data plans for Washington court users.
- **Confront and Dismantle Institutional Racism**
Affirmatively identify and amend rules, laws, and policies responsible for racial inequity in our justice system. Support education and individual responsibility to expose and address discriminatory practices throughout the continuum of justice system partners.
- **Gather and Disseminate Meaningful Data**
Identify relevant metrics to measure the use of essential court services, develop uniform data collection methodologies around these metrics, and gather and publish statewide data to inform innovative and effective court practices.

If, as a justice system, we continue to use the processes modeled by the Task Force to identify shared goals, learn from and with one another, and work together to address deficiencies and strengthen operations, we are positioned to achieve a re-imagined court system that more fully and fairly delivers on our mandate to provide justice for all.

7

Appendices

Most notable is the lesson that for a branch of government steeped in history, tradition, and precedent, courts can adapt when it is a priority.

Indeed, many of the adaptations experienced were not only necessary to operate during a crisis, they also point the way to a court system that respects the needs of court users and strives to eliminate racist practices endemic to our society.

APPENDIX 1

Court Recovery Task Force Membership

VOTING MEMBERS

Chief Justice Steven González, Co-Chair
Washington Supreme Court

Judge Judith H. Ramseyer, Co-Chair
King County Superior Court
Superior Court Judges' Association (SCJA)

Judge Scott Ahlf, Co-Chair
Olympia Municipal Court
District and Municipal Court
Judges' Association (DMCJA)

Linnea Anderson
San Juan Juvenile Court Administrator
Washington Association of Juvenile Court
Administrators (WAJCA)

Judge Rachelle Anderson
Spokane County Superior Court
SCJA

Renea Campbell*
Klickitat County Superior Court
Washington State Association of
County Clerks (WSACC)

Abigail Daquiz
NW Justice Project,
Office of Civil Legal Aid Representative

Jessica Humphreys
Yakima County Superior Court Administration
Association of Washington Superior Court
Administrators (AWSCA)

Judge Carolyn Jewett
San Juan County District Court
DMCJA

Mike Killian*
Benton/ Franklin Superior Court
WSACC

Sophia Byrd McSherry
Washington State Office of Public Defense (OPD)
Deputy Director

Frankie Peters
Thurston County District Court
District and Municipal Court
Management Association (DMCMA)

Judge Ruth Reukauf
Yakima County Superior Court
SCJA

Dawn Marie Rubio
State Court Administrator
Administrative Office of the Courts (AOC)

Judge Jeffrey Smith
Spokane County District Court
DMCJA

Justice Debra Stephens
Washington Supreme Court

Judge Lisa Sutton
Court of Appeals,
Division 2

*Sharing position for their respective
associations, one vote

CONSULTING MEMBERS

Judge Johanna Bender
King County Superior Court
Minority and Justice Commission (MJC)

Cindy Bricker/Sarah Burns
Commission on Children in Foster Care, AOC

Alice Brown
Litigation Manager for American Family for
Washington and Oregon

Judge Faye Chess
Seattle Municipal Court
MJC

Adam Cornell
Snohomish County Prosecutor
Washington Association of
Prosecuting Attorneys

Theresa Cronin
Law Office of DC Cronin
MJC

Cynthia Delostrinos
Associate Director, Office of
Court Innovations

Judge Anthony Gipe
Kent Municipal Court
MJC

PJ Grabicki (Peter J.)
Attorney, Randall Danskin
Washington State Bar Association

Katrin Johnson
Public Defense Services Manager, OPD
Interpreter Commission

Ray Kahler
Attorney, Stritmatter Kessler, et al.
Washington State Association for Justice

Kathryn Leathers
General Counsel, Governor's Office

Cynthia Martinez
Attorney, City of Yakima
Washington State Association of
Municipal Attorneys

Carl McCurley
Washington State Center for Court Research, AOC

Amy Muth
Law Office of Amy Muth, PLLC,
Washington Association of
Criminal Defense Lawyers

Briana Ortega
Stamper Rubens, P.S.
MJC

Judge Marilyn Paja
Kitsap County District Court
Gender and Justice Commission (GJC)

Terry Price
University of Washington School of Law
Access To Justice Board

Juliana Roe
Policy Director for Public Safety and Human Services,
Washington State Association of Counties

Jason Schwarz
Attorney, Director Snohomish County OPD
Washington Defender Association

P. Diane Schneider
Northwest Language and Cultural Center
MJC

Judge Jackie Shea-Brown
Benton/Franklin County Superior Court
GJC

Sharon Swanson
Government Relations Advocate,
Association of Washington Cities

Sheriff Brad Thurman
Cowlitz County Sheriff
Washington Association of Sheriffs & Police Chiefs

SPECIAL THANKS

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Thurston County District Court Administrator

Jerrie Davies
Kitsap County District Court, Office Supervisor

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Grant County Superior Court

Vanessa Torres Hernandez
NW Justice Project

Judith Lurie
NW Justice Project

Glen Patrick
Deputy Director, Department of Health

AOC STAFF

Jeanne Englert
Penny Larsen
Caroline Tawes

APPENDIX 2

Committee Rosters

APPENDIX 3

Goals and Meetings

- [Charter](#)
- [Guiding Principles](#)
- [Meeting Materials](#)

APPENDIX 4

Innovating Justice Awards

The BJA Innovating Justice Award recognized individuals or groups for providing exceptional leadership in helping courts deliver innovative and responsive justice using a race equity lens during the COVID crisis.

- [Recipients and Public Service Announcements](#)

APPENDIX 5

Task Force Surveys

The Task Force disseminated a number of surveys, sometimes in multiple languages, in order to hear directly from court officials, jurors, attorneys, defendants, self-represented litigants, and other court users about their experiences operating or accessing courts during COVID. In addition to the surveys linked here, the following reports were compiled:

- [Changing Court Practices Amidst COVID Survey](#)
- [Therapeutic Courts Impact from COVID Survey Summary](#)
- [Court User Surveys](#)
- [Court User Survey Report](#)

APPENDIX 6

Tools and Resources Generated by [Task Force Committees](#)

APPENDIX 7

Child Welfare

- [SAMPLE Pre-Trial Order for Remote Dependency Fact Finding](#)
- [SAMPLE Discovery Agreement](#)
- [SAMPLE Witness List](#)

APPENDIX 8

Facility and Logistics

- [Checklist for procuring off-site court facilities and coordinating jury activities](#)
- [Steps for updating Continuity of Operations Plans \(COOP\) for potential pandemic outbreak in courthouses](#)

APPENDIX 9

General Civil Litigation Committee

- [Remote Jury Trials Work Group: Best Practices in Response to Frequently Asked Questions](#)

APPENDIX 10

Public Outreach and Communication Committee

In conjunction with AOC Communication Division:

- [Access to Remote Court Hearings Virtual Court Directory](#)
- [Eviction Resolution Pilot Program \(ERPP\) website](#)
- [Full Court Press CRTF Article 2021](#)
- [State of the Judiciary Address CRTF article](#)
- [Created and maintained a dedicated COVID-19 website](#)
- [Court Recovery Task Force website](#)

APPENDIX 11

Technology

- [Guiding Principles for Identifying, Developing, Implementing and Utilizing Court Technology, April 2021](#)
- [Findings of Combined Review of Superior and District Court Web Pages](#)
- [Website Guidelines and Best Practices](#) to assist courts in developing websites that are both comprehensive and intuitive for court users

APPENDIX 12

Therapeutic Courts Outreach

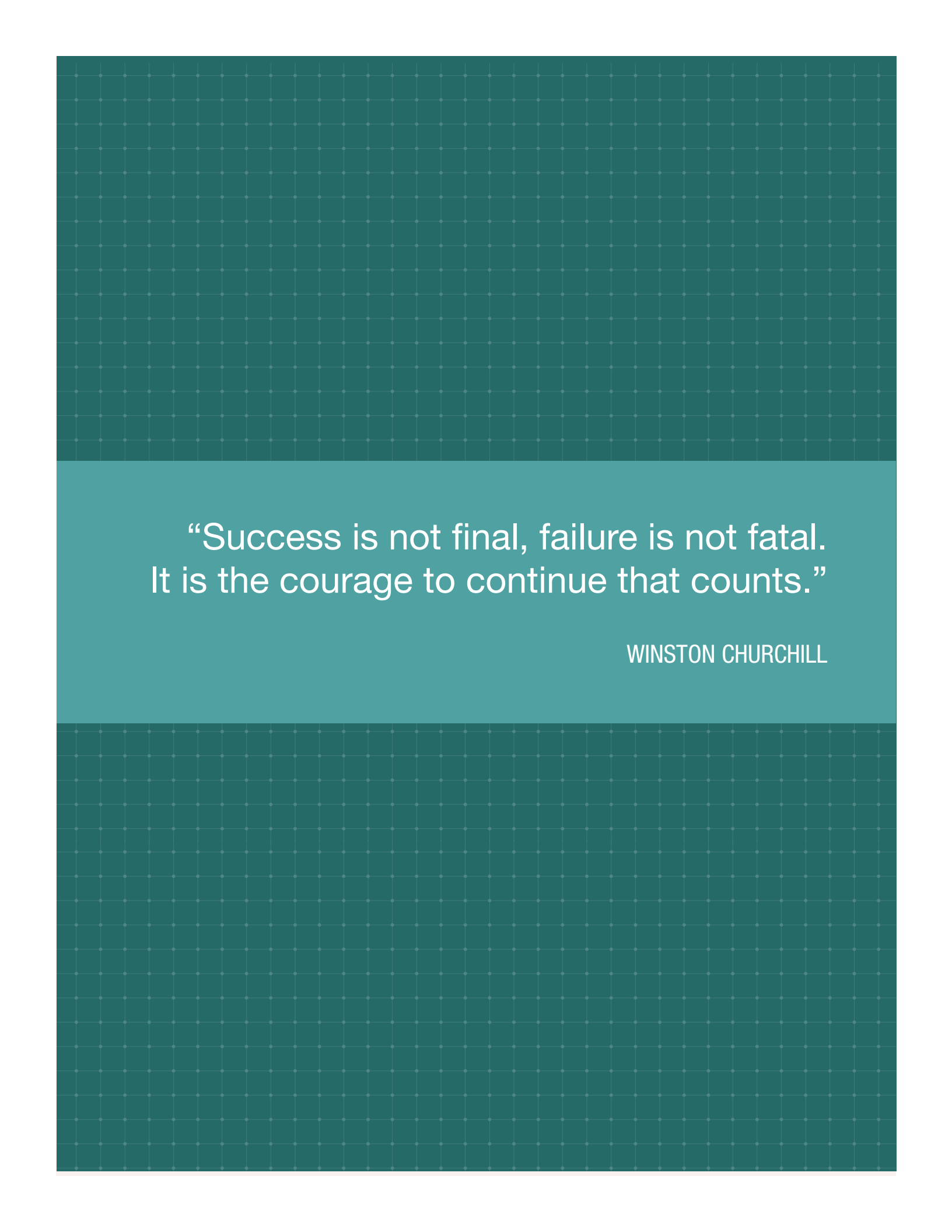
- [Draft news article and talking points for informing the public](#)

APPENDIX 13

Additional Reports and Materials

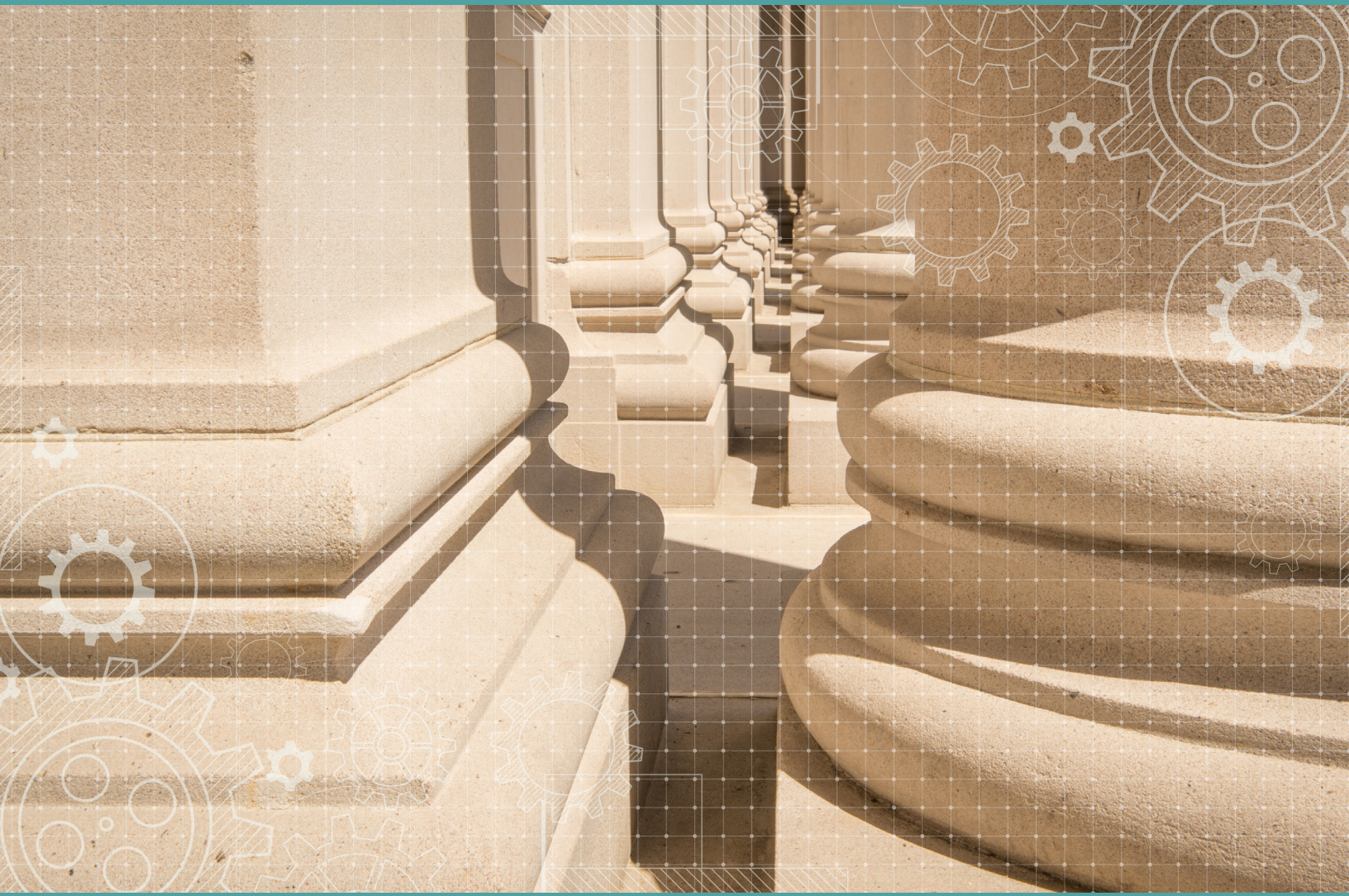
- [Washington State Senate Bill 5225, sponsored by the Task Force Appellate Committee, allowing direct appeals of Administrative Procedure Act and the Land Use Petition Act cases to the state Court of Appeals, reducing superior court caseloads.](#)
- [RCW 13.40.080 was amended to allow the extension of juvenile diversion agreements beyond the six-month cut-off to enhance successful program completion, at the request of the juvenile.](#)
- [Court Recovery Task Force Mid-Term report, September 2021.](#)
- [Defending Clients in the COVID-19 Environment: Survey Results from Private and Public Defense Counsel.](#)
- [Resuming Dependency Fact Finding and Termination of Parental Rights Trials in Washington State, by a workgroup of the Supreme Court Commission on Children in Foster Care.](#)

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“Success is not final, failure is not fatal.
It is the courage to continue that counts.”

WINSTON CHURCHILL



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