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Changing Court Practices Amidst COVID and Beyond

*A survey report on changing court practices in response
to COVID-19 in Washington State Courts*

**BJA Court Recovery Task Force
Lessons Learned Committee**

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Introduction

In the spring of 2020, the Board for Judicial Administration (BJA) launched the Court Recovery Task Force to assess current court impacts from COVID-19; develop and implement strategies to ensure that every court can provide fair, timely, and accessible justice; and provide recommendations for ongoing court operations and recovery after the public health emergency subsides. This is an effort to collect information on these court impacts.

The BJA Court Recovery Task Force Lessons Learned Committee surveyed Washington courts' responses to COVID-19 to date. These responses are key to (1) establishing a baseline of data and the impacts of COVID-19 to better understand court changes and (2) determining ongoing needs during this unprecedented time. Information about current practices also will (3) help the Task Force to identify other data needs and evidence that can be used to assess the impact of COVID-19-related innovations so we can determine best practices going forward.

Key Survey Findings

- Many courts have made considerable physical, technological, and procedural changes. These changes were intended to reduce the spread of COVID-19 in courthouses and jails while permitting courts to adhere to constitutional mandates and allow essential court functions.
- A majority of courts were using recommended health and safety measures.
- While most courts still conducted some in-person hearings, many enhanced technology to increase the use of remote court hearings and reduced the need for staff and public members to be physically present in court.
- A majority of courts have used alternatives to filing procedures such as e-signatures and electronic documents and waiving signatures in criminal matters.
- Courts struggled to balance public health and safety measures with the constitutional rights of criminal defendants, particularly the right of confidential consultation with counsel during hearings.
- While a majority of courts, prosecutors, and jails have taken efforts to reduce jail populations to reduce the risk of infection, most courts also continued to issue warrants for failure to appear which is possibly contrary to the Supreme Court Order ([No. 25700-B-646, October 13, 2020](#)).
- Of courts responding, 14% of municipal courts held trials since March 2020 compared to 55% of district courts and 81% of superior courts.

The Washington State court system is a decentralized judicial system. The Supreme Court has rule making power but implementation is left to individual courts resulting in

varied court procedures. Another factor that limits uniform practice is unequal funding availability across courts. One of the functions of the Task Force is to look at individual court level responses to the pandemic and to consider creative and innovative opportunities “to reimagine justice” for the citizens of our state based on these changes. These survey results are an early step to quantify and analyze those opportunities.

Survey Methodology

The Lessons Learned Committee initially developed questions that were sent to all Task Force committees to solicit additional questions based on each committee’s work to date. To minimize impact on courts, the survey incorporated questions from other BJA Taskforce committees. A mock survey was tested on the Lessons Learned Committee and a sampling of Court Administrators before it was finalized. In September 2020, the Changing COVID Practices survey was sent to court administrators at all court levels statewide.

Eighty-eight (88) Court Administrators responded, from 33 of Washington’s 39 counties.

Court Level	Percentage of Total Responses
Municipal	44%
District	27%
Superior	25%
Court of Appeals	2%
Supreme Court	1%

Most courts used recommended safety measures

While measures may differ, the majority of courts responded that they have implemented recommended safety measures for individuals entering the courthouse.

Safety Measures Implemented	Percentage Responded Yes
Everyone was asked to wear a face covering in the courtroom and other public spaces	85%
Social distancing was enforced	84%
Masks and/or shields were provided to public members and courtrooms	74%
Public spaces were sanitized after each use	77%
Courts asked about symptoms, provided health screening at entrances, and/or gave a temperature check	25%

Courts also mentioned that they provided signage to alert people to symptoms, had hand sanitizer available and increased its use, reduced court hours, and/or had limited or no in-person hearings.

Technology played a large role in court operations

Seventy-eight percent (78%) of courts reported that they used an audio/video platform to conduct court hearings. Of those:

- 86% used Zoom
- 36% used the telephone
- 10% used WebEx

Courts chose their platforms based on the following considerations. These considerations were also what they liked most about the platforms they chose.

- Cost
- End-user and host-user friendly
- Breakout rooms
- Ability to integrate with a livestream option
- Waiting room

More than 20% of courts chose an option based on local IT requirements, the ability to share documents, and the ease of the screen share function.

Twenty-nine percent (29%) of courts mentioned concerns about security attributes of their platform even though it was not a high consideration when choosing a platform.

Technology and access considerations

Courts reported implementing more procedures to ensure that the public had access to the courts. Most often cited were:

- In-person hearings for those who did not have internet access (76%)
- Electronic filing (49%)
- Electronic signatures (50%)

To ensure access to justice for court users who lacked technology or internet access, some courts allowed telephonic hearings, provided iPads or telephone access, increased e-filing and online payments options, or created kiosks to share information and facilitate filing or payment options.

To accommodate non-English speaking persons and court users who are deaf and hard of hearing, respondents reported the following.

Language Access Accommodations	Percentage Responded Yes
Provided interpreters in remote hearings	71%
Provided telephonic interpreting	66%
Offered in-person interpreters	59%
Used interpreters in breakout room discussions	34%
Translated written materials	34%

Most courts reported not having evaluated the court users' experiences with technology. Approximately 12–18% of courts have reached out to local bar associations or asked attorneys for feedback. The Lessons Learned Committee is pursuing court users' experiences as a priority for further data collection.

Criminal defendants and access to confidential advice of counsel

During hearings, about 86% of courts reported using virtual breakout rooms, larger rooms or other court spaces for in-person hearings, or telephones for private conversations. Courts should review their efforts to ensure that a criminal defendant's constitutional right to confidential advice of counsel is available during criminal court hearings and trials while maintaining public health measures. Of the remaining 14% of responding courts, some had no mechanism to facilitate a confidential conversation between a defendant and defense counsel other than encouraging a meeting before or after the hearing. Some jurisdictions who allowed confidential consultation during the course of a hearing or trial do not have tools to accommodate the request while maintaining social distancing or other safety measures to protect the defendant and defense counsel.

Courts were still holding in-person proceedings

The majority of courts held in-person proceedings such as bench trials, jury trials, in and out of custody hearings, ex parte, calendar, and motions hearings. Of courts who held in-person proceedings and responded to the follow-up question about proceedings,

- 87% of courts conducted in-person proceedings
- 90% of courts made physical changes or rearranged the layout of their courtrooms
- 24% of courts rented or have relocated court proceedings to larger facilities

Changing court practices

Accommodations for COVID impacts were dependent on the court size, location, hours of operation, and types of cases heard. Courts minimized onsite staffing when possible, created information kiosks, and created online options for court users to access the courts.

Communication

Almost all courts (94%) reported posting courthouse and hearing changes at their courthouse or on the court's webpage. Courts reported routinely reminding parties of upcoming hearings through paper notices and summons more than any other communication method, such as phone, text, or email.

Filing procedures

Courts have made significant changes to filing procedures during the pandemic. The survey showed that a majority of responding courts implemented procedures to reduce the number of in-person hearings and the resulting courthouse traffic.

Practice Implemented	Percentage Responded Yes
Court accepted ex parte agreed orders in criminal matters	88%
Judges accepted working copies in electronic formats	85%
Parties waived signature in criminal matters	82%
Attorneys could use e-signatures	77%
Documents could be e-filed	69%
Public could use a filing drop box outside of the court	62%
Public members could use e-signatures	55%

Bench warrants and confinement

Ninety-one percent (91%) of courts issued adult bench warrants. This was notable given the Supreme Court’s Emergency Order ([No. 25700-B-646, October 13, 2020](#)) prohibited the issuance of such warrants to reduce jail populations and the risk of infection associated with crowded jails. More than 75% of adult bench warrants were issued for failure to appear and violations of court orders or conditions, and more than 50% of the time when there was a risk to themselves or others. For courts who reported on juvenile warrants, about 10% indicated their courts issued bench warrants.

Approximately 64% of courts that responded have released people from confinement due to the virus and 84% of jails or prosecutors associated with responding courts have imposed booking restrictions to reduce the number of persons detained.

Video hearings summons

For parties summoned to video hearings, 35% of courts said that attendance had stayed the same. An equal number of courts (11% each) felt that participation had either increased or decreased.

Less than one half of the courts held trials since March 2020 to date

Forty-one percent (41%) of courts reported having held trials since March 2020. Of those conducting trials remotely, 40% allowed parties to submit online documents/evidence.

The table shows the trial type and format held **among the 41% of courts holding trials.**

	In-person	Remote	Both
Criminal trials	93%	0%	7%
Voir dire	93%	3%	3%
Civil jury trials	85%	0%	14%
Bench trials	50%	11%	39%
Family law hearings	12%	6%	82%

Of the courts that held trials, 91% reported they have held jury trials, 30% reported reducing the number of jurors for civil trials, and 13% reported using interpreters.

Courts reported that the COVID-related modifications that worked best for trials were safety measures and the use of offsite facilities. Courts reported some challenges with remote voir dire and lack of space in the courthouse and for jury deliberations.

Jurors

- 42% of courts holding trials reported that jurors' response to summons decreased.
- 45% of courts reported that the diversity/composition of the venire had stayed the same.
- 48% of courts did not know if there had been changes to jury composition. This is not a surprising response as only 25% of courts reported that they routinely compared the demographic composition of the venire to that of the population in their jurisdiction.

A little over 50% of courts have conducted formal or informal surveys of jurors after their service. Most courts reported positive feedback on adopted safety measures.

Some courts also reported that, as a result of COVID, they reduced the number of hearings, held remote jury selection, reduced the number of jurors seen at a given time, and have offered the option to appear remotely.

Top changes courts want to keep

Courts had to quickly respond to health conditions and adjust court practices to maintain essential services in the face of COVID-19. Courts identified the following as their top choices of practices they would like to keep:

- Remote hearings
- Safety modifications such as increased sanitization and social distancing
- Electronic filing and electronic signatures or waiving of signatures

A smaller number of courts also mentioned wanting to continue telecommuting options for staff, smaller calendars/separate dockets/staggered hearings, live streaming of hearings, email notifications, small jury groups, technology upgrades, and increased options for both in-person and remote appearances.

Recommendations

The survey findings reflect the various and often different ways courts have implemented safety procedures, modified court practices, and shown tremendous flexibility in providing services during the pandemic.

Based on the survey responses, the Lessons Learned Committee recommends:

- 1) Investigate the use of more uniform technology options to increase access and ease of use for those who work across several jurisdictions and must master

multiple platforms.

- 2) Assess videoconferencing platforms to assure they meet privacy and security requirements.
- 3) Implement procedures and technology to assure access to confidential advice of counsel while also enforcing public health and safety measures.
- 4) Identify what courts are doing instead of remote hearings and whether there are funding barriers that can be overcome to improve this capability since about 25% of courts reported not using a video/audio platform to conduct remote hearings.
- 5) Identify barriers and explore methods for continual and consistent reduction of jail populations, including compliance with Supreme Court Emergency Orders proscribing the issuance of bench warrants for failure to appear.
- 6) Gather feedback from court users and other groups to identify and implement options for increased access to technology and modified court practices.
- 7) Collect data on racial equity, language access, disability access, and economic impacts.