

**Blueprint for a  
Legal Regulatory  
Lab  
in  
Washington  
State**

**Washington Courts  
Practice of Law Board**

**Version 2.0**

**Feb. 2022**

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## Blueprint Change History

### Version 1.8 Changes

- Changed “sandbox” to “laboratory”.
- Added final recommendations. Reorganized Blueprint around recommendations.
- Updated next steps. Added shaded boxes to highlight differences between the Utah Legal Regulatory Sandbox and the proposed Washington Legal Regulatory Lab.
- Appendices have not changed since version 1.7 other than to globally change sandbox to lab.

### Version 2.0 Changes

- Clarified role of the Legal Regulatory Lab Board and the Washington State Bar Association in nontraditional legal services approved to operate after successful term in the lab.
- Clarified funding by grants.
- Incorporated final feedback from the Practice of Law Board members.
- Updated sample application (Appendix B) to reflect risk assessment estimation using models.

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## 1.0 Executive Summary

Under General Rule (GR) 25(b)(2), a key duty and function of the Practice of Law Board (POLB) is “considering and recommending to the Supreme Court new avenues for persons not currently authorized to practice law to provide legal- and law-related services that might otherwise constitute the practice of law as defined by GR-24.”<sup>1,2</sup>

This Blueprint for a Legal Regulatory Lab in Washington State (Blueprint) is such a recommendation. The Blueprint recommends that the Supreme Court create a Legal Regulatory Lab and a Legal Regulatory Lab Board to manage the lab.

The Legal Regulatory Lab will allow an applicant authorized to participate in the Legal Regulatory Lab to offer a nontraditional legal service. A nontraditional legal service is a legal service that would either violate a Rule of Professional Conduct (RPC), the Revised Code of Washington (RCW) 2.48.180 Unlawful Practice statute,<sup>3</sup> or some other regulation. By offering the nontraditional legal service in a highly monitored and regulated environment the Legal Regulatory Lab Board can evaluate if the nontraditional legal service provides consumers with competent legal assistance without exposing them to undue risk of harm. A Legal Regulatory Lab will provide consumers with more legal service choices to address their legal needs.

This Blueprint recommends a model for a Legal Regulatory Lab that borrows heavily from the work being done by the Utah Supreme Court, the Utah Supreme Court Office of Innovation, and the Utah Legal Regulatory Sandbox, which has operated in Utah since August 2020.

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<sup>1</sup> Washington Court General Rule 25, Practice of Law Board, available at [https://www.courts.wa/court\\_rules/?fa=court.rules.display&group=ga&set=GR&ruleid=gagr25](https://www.courts.wa/court_rules/?fa=court.rules.display&group=ga&set=GR&ruleid=gagr25).

<sup>2</sup> Washington Court General Rule 24, Definition of the Practice of Law, available at [https://www.courts.wa/court\\_rules/?fa=court.rules.display&group=ga&set=GR&ruleid=gagr24](https://www.courts.wa/court_rules/?fa=court.rules.display&group=ga&set=GR&ruleid=gagr24).

<sup>3</sup> RCW 2.48.180 Unlawful Practice a Crime, available at <https://app.leg.wa.gov/rcw/default.aspx?cite=2.48.180>.

The POLB has received advice and input from many experts on legal regulation reform. The POLB wants to acknowledge the contributions of the Access to Justice Board (ATJB) Technology Committee, in particular Ms. Ellen Reed, Washington State Bar Association Governors Sunitha Anjilvel and Jordan Couch, Washington State Bar Association staff experts, including Chief Disciplinary Counsel Douglas Ende, Chief Regulatory Counsel and Director of Regulatory Services Renata de Carvalho Garcia, and General Counsel Julie Shankland, members of the POLB, and attorney Craig Shank.

Outside of Washington, the POLB received advice and input from John Lund and Lucy Ricca from the Utah Office of Legal Innovation, Crispen Passmore, who is active in legal regulatory reform in the United Kingdom, and Dean Andrew Perlman of the Suffolk School of Law.

### **1.1 Regulatory Sandboxes and Labs**

Regulatory sandboxes and labs are not new, nor are they unique to legal services. “A regulatory sandbox is a policy tool through which a government or regulatory body permits limited relaxation of applicable rules to facilitate the development and testing of innovative business models, products, or services by sandbox participants.”<sup>4</sup>

The POLB is using the word “lab” instead of “sandbox.” This is not only because lab implies more supervision than a sandbox, but because a lab is a controlled and safe environment for experimental and scientific measured study.

“In financial markets, regulatory authorities have set up several initiatives, including regulatory sandboxes and innovation hubs, to engage and support financial technology (FinTech) startups.”<sup>5</sup>

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<sup>4</sup> Utah Supreme Court Standing Order 15, Aug. 14, 2020, available at <https://www.utcourts.gov/resources/rules/urap/docs/15.pdf>.

<sup>5</sup> Ahmad Alaassar, Anne-Laure Mention, Tor Helge Aas, “Exploring A New Incubation Model for FinTechs: Regulatory Sandboxes,” *Technovation*, May 2021, available at <https://www.sciencedirect.com/science/article/pii/S0166497221000183#bib15>.

For example, the Utah Supreme Court has created an Office of Legal Innovation, which is running a legal regulatory sandbox where “any entity that wants to offer nontraditional legal services must seek approval,”<sup>6</sup> and if approval is granted the entity can provide their legal service, and if no harm to consumers is found, may be licensed to provide the service under the appropriate ongoing regulation.

### 1.1.1 Recent Regulatory Reform News

Other jurisdictions beside Utah are considering or operating legal regulatory labs or moving to facilitate legal regulatory reform.

The Arizona Supreme Court has approved a firm that will operate using an alternative business structure (ABS)<sup>7</sup> to “focus on assisting clients with general corporate matters.”<sup>8</sup> Arizona appears to be moving forward with aggressive regulatory reform without using a sandbox or lab.

A committee of the Florida Supreme Court recommended “that Florida adopt a Law Practice Innovation Lab Program very similar to the approach taken in Utah. The advantage to taking this approach is that the concepts recommended by the Committee can be tested in a controlled environment where data can be collected, and public harm can be assessed and prevented.”<sup>9</sup>

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<sup>6</sup> Rebecca Love Kourlis and Neil M. Gorsuch, “Legal Advice is Often Unaffordable. Here’s How More People Can Get Help: Kourlis and Gorsuch, USA Today, Sept. 17, 2020, available at <https://www.usatoday.com/story/opinion/2020/09/17/lawyers-expensive-competition-innovation-increase-access-gorsuch-column/5817467002/>.

<sup>7</sup> “An alternative business structure, or ABS, is a business entity that includes nonlawyers who have an economic interest or decision-making authority in a firm and provides legal services in accord with Supreme Court Rules 31 and 31.1(c).” Arizona Judicial Branch, Alternative Business Structure, available at [Alternative Business Structure \(azcourts.gov\)](https://www.azcourts.gov/Alternative-Business-Structure)

<sup>8</sup> Lyle Moran, “Nonlawyer-owned Alternative Legal Services Provider Receives Arizona’s Approval to Integrate With a Law Firm,” ABA Journal, Jan. 14, 2022, available at <https://www.abajournal.com/news/article/nonlawyer-owned-alternative-provider-receives-arizonas-approval-to-integrate-with-a-law-firm>.

<sup>9</sup> John Stewart, et.al., Final Report of the Special Committee to Improve the Delivery of Legal Services, 19, June 28, 2021, available at <https://www-media.floridabar.org/uploads/2021/06/FINAL-REPORT-OF-THE-SPECIAL-COMMITTEE-TO-IMPROVE-THE-DELIVERY-OF-LEGAL-SERVICES.pdf>

A similar effort to create a sandbox or lab in California appears to have been slowed down as the California legislature has requested more information on the proposal from the California Bar Association, and it appears such a proposal in California may need legislative approval.<sup>10</sup>

Upsolve, a nonprofit which helps people defend themselves against debt collection suits has sued New York state’s attorney general, hoping to clear the way for volunteers to help consumers with such debt problems. The suit argues that using Unlawful Practice of Law statutes and rules that bar nonlawyers from giving the basic advice Upsolve provides violates the First Amendment.<sup>11</sup>

HelloPrenup, a startup founded by a lawyer and an ex-Microsoft employee, appeared on Episode 6, Season 13 (Nov. 2021) of the ABC television program “SharkTank” where “after making their pitch and fielding questions from the investors—aka the “Sharks”—the entrepreneurs ended up landing \$150,000 for their software platform that aims to help married couples get a prenuptial agreement.”<sup>12</sup>

## **1.2 POLB Recommendations**

The POLB recommends that the Supreme Court:

### **1.2.1 Create a Legal Regulatory Lab**

The Supreme Court should create a Legal Regulatory Lab based on the POLB Blueprint.

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<sup>10</sup> Cheryl Miller, Lawmakers Criticize State Bar Proposal Giving Nonlawyers Role in Legal Services, LAW.COM, Dec. 9, 2021, available at <https://www.law.com/therecorder/2021/12/09/lawmakers-criticize-state-bar-proposal-giving-non-lawyers-role-in-legal-services/?slreturn=20220013133102>

<sup>11</sup> Andy Newman, “They Need Legal Advice on Debts. Should It Have to Come From Lawyers?,” NYT, Jan. 25, 2021 available at <https://www.nytimes.com/2022/01/25/nyregion/consumer-debt-legal-advice.html>.

<sup>12</sup> Taylor Soper, “Shark Tank deal: Founders of prenup company land cash from Mr. Wonderful and Nextdoor founder,” GEEKWIRE, Nov. 2021, available at <https://www.geekwire.com/2021/shark-tank-deal-founders-of-prenup-company-land-cash-from-mr-wonderful-and-nextdoor-founder/>.



### **1.2.2 Create a Legal Regulatory Lab Board**

The Supreme Court should create a new Supreme Court Board called the Legal Regulatory Lab Board (LRLB) to operate the Legal Regulatory Lab.

### **1.2.3 Funding the Legal Regulatory Lab Board and Lab**

The Supreme Court should authorize the Legal Regulatory Lab Board to raise money to pay for operating the Legal Regulatory Lab Board and the Legal Regulatory Lab.

### **1.2.4 Authorize Successful Participants of the Legal Regulatory Lab to offer Legal Services in Washington**

The Supreme Court should authorize successful participants of the Legal Regulatory Lab to offer the nontraditional legal services to consumers. Such authorization would be subject to a license fee and process and subject to an annual review to ensure the legal service provider is complying with the regulations documented in the Supreme Court Order that authorized provision of the nontraditional legal service.

## **2.0 Recommendation One: Create a Legal Regulatory Lab**

The POLB recommends that the Supreme Court authorize a Legal Regulatory Lab that would allow legal professionals and entrepreneurs to offer a nontraditional legal service to consumers in Washington State. This Legal Regulatory Lab would also allow the Court through a Court-created board to determine the appropriate oversight of nontraditional legal services, including new business models for legal professionals and for online legal services with legal professional oversight. In Washington, legal professionals would include lawyers, limited license legal technicians (LLLTs), and licensed practice officers (LPOs) who are authorized and in good standing with the Washington State Bar Association.

## **2.1 Appropriate Legal Regulatory Reform Testing**

The POLB recognizes that not every RPC or other regulation is appropriate for alternative regulation testing in the Legal Regulatory Lab. For example, RPC 1.1 Competence, 1.3 Diligence, and 1.4 Communications are so important to the practice of law and protecting consumers they are required for both traditional and nontraditional legal services.

However, modifications to other RPCs or other regulations could be examined in the Legal Regulatory Lab. For example, an applicant might want to propose a business model that could allow legal professionals to work with nonlegal professionals in the provision of a nontraditional legal service in the Legal Regulatory Lab, which could require changes to RPC 5.4 Professional Independence.

Therefore, the POLB recommends that the Legal Regulatory Lab be used to consider and recommend nontraditional legal services that test new and modified regulation of rules such as RPC 1.5 Fees, RPC 5.4(b) and (d) Professional Independence, and RPC 5.5 Unauthorized Practice of Law.

## **2.2 Encourage Innovation**

The POLB recommends that the Legal Regulatory Lab be a mechanism to encourage legal professionals and entrepreneurs to experiment with innovative business models and nontraditional legal services that will reduce the Access to Justice (ATJ) gap.

## **2.3 Enable In-Depth Data Collection**

The POLB recommends that the Legal Regulatory Lab be used to collect in-depth data about any reduction of the ATJ gap and the benefits and harms to consumers through the provision of a nontraditional legal service, which will allow the Supreme Court to make data-driven decisions about which nontraditional legal services providers should be allowed to offer in Washington after completion of a successful term in the Legal Regulatory Lab.

The data collected during operation in the Legal Regulatory Lab may lead to regulatory changes for both licensed legal professionals and nontraditional legal service providers.

Some data collected in Washington will differ from the data collected in Utah. For example, the POLB is recommending collection of data about the nontraditional legal services impact on the ATJ gap. However, most of the data will be collected in the same format to potentially facilitate cross-jurisdiction data analysis, and possible future reciprocity with other states such as Utah.

## **2.4 Timely Regulatory Reform**

The POLB recommends that the Legal Regulatory Lab be used to enable timely regulatory reform. The Legal Regulatory Lab should test the impact of a change to an RPC or other regulation so informed decisions about changes can be made promptly.

For example, recent changes to advertising RPCs took over 60 months from the start of rewriting to the final approval by the Supreme Court. Testing rule changes in a Legal Regulatory Lab might be completed in 24-30 months because regulation testing is focused on specific regulations with supporting data collected and analyzed to support or reject any change.

The possibility exists that some changes may become obvious based on less than 24-months' worth of data, but generally, participants would operate in the Legal Regulatory Lab for two years, which still would substantially reduce the time to improve regulation of legal services.<sup>13</sup>

## **2.5 Non-recommendations for the Legal Regulatory Lab**

### **2.5.1 No Skirting of Regulations**

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<sup>13</sup> Utah has already modified its Legal Regulatory Lab based on early data. For example, as of the Utah Supreme Court's December 10, 2020, statement on referral fees, the Innovation Office will not consider applications setting forth bare referral fee arrangements between lawyers and nonlawyers. Bare referral fees are compensation paid to nonlawyers for the sole purpose of ensuring the referral of legal work. The Innovation Office will continue to consider applications in which fee sharing is one component in a more comprehensive innovative proposal. See: <https://utahinnovationoffice.org/about/what-we-do/>.

The POLB is not recommending the creation of a non-regulated environment. Rather, the intent is to determine the appropriate regulations to protect consumers of legal services from harm.

### **2.5.2 No Unauthorized Practice of Law**

The POLB is not recommending the creation of an environment that encourages the Unauthorized Practice of Law (UPL). Every participant in the Legal Regulatory Lab would be subject to a specific Supreme Court Order that both authorizes participation in the Legal Regulatory Lab and details the regulations in effect in the lab.

Rather, the intent of the Legal Regulatory Lab is to provide a pathway for legal professionals and entrepreneurs to provide nontraditional legal service under the authorization and active supervision of the Washington Supreme Court or its delegate.

## **3.0 Recommendation Two: Create a Legal Regulatory Lab Board**

The POLB recommends that the Supreme Court create a Legal Regulatory Lab Board to manage and operate a Legal Regulatory Lab for the Supreme Court.

### **3.1 The Legal Regulatory Lab Board**

The POLB recommends that an independent Supreme Court Board, like the POLB, be created by the Supreme Court. The Legal Regulatory Lab Board would report to the Supreme Court and would be administered by WSBA.

The POLB investigated several possible structures for an authority to run the Legal Regulatory Lab, including a Board that would report to the Administrative Office of the Court, and a standalone Board.

After careful consideration of the alternatives, the POLB is recommending the Supreme Court stay with the model of an independent Board administered by the WSBA as this model already works in Washington as shown by the POLB, the ATJ Board, and the Disciplinary Board. These boards perform duties and responsibilities for the Supreme Court in an independent and autonomous manner, while benefiting from the administration and oversight of WSBA.

Note: This is a variation from the Utah Legal Regulatory Sandbox, where the Utah Office of Innovation reports to the Utah Supreme Court, with no apparent connection the Utah State Bar.

### **3.2 Legal Regulatory Board Responsibilities**

The responsibilities of the Legal Regulatory Lab Board would be to:

- Evaluate and recommend applicants for participation in the Legal Regulatory Lab
- Monitor performance of participants operating in the Legal Regulatory Lab
- Take corrective action, including suspension of participation in the Legal Regulatory Lab in cases of consumer harm.

### **3.3 Composition of the Legal Regulatory Lab Board**

The POLB recommends that, like the POLB, the Legal Regulatory Lab Board would have 13 voting members, where at least five members must not be legal professionals (that is, these members must be from the public or other stakeholders residing in Washington state.)

The Legal Regulatory Lab Board will have nonvoting staff liaisons with WSBA, the WSBA Board of Governors, the ATJ Board, and the POLB to facilitate communications between WSBA and the Boards.

Affirmative actions should be taken to nominate voting members with experience:

- Working in underrepresented communities
- Providing legal aid and pro bono services
- Working in the technology community.

### **3.4 Consulting Expertise and Chargeback for WSBA Services**

The POLB recommends that the Legal Regulatory Lab Board core membership would pull in expertise as needed based on the applicant and the nontraditional legal service, from a variety of sources, including the Washington Supreme Court, WSBA, the WSBA sections (for specific legal subject matter expertise), the law schools in Washington State, and members of the bar and the tech community.

For some of the legal-related services provided by WSBA to the Legal Regulatory Lab Board, such as providing a legal opinion about regulating a nontraditional legal service, the Legal Regulatory Lab Board would pay back to WSBA the cost of such an opinion. (See Recommendation Three: Funding the Legal Regulatory Lab).

Note: This is a variation from the Utah Legal Regulatory Sandbox, where the Utah Office of Innovation appears to be funded by grants and is not using any resources from the Utah State Bar or the Utah Courts. However, at some point Utah will likely have to use some application and participation funding to cover costs of the Office of Innovation and the Legal Regulatory Sandbox.

### **3.5 Legal Regulatory Lab Board and Conflicts of Interest**

The Legal Regulatory Lab Board may have a situation where a legal professional or public member of the board may have a personal or business relationship with an applicant to the Legal Regulatory Lab. If such a circumstance should arise, that Legal Regulatory Board member would have to recuse themselves from the consideration or voting on the application or review of the applicant’s participation in the Legal Regulatory Lab.

## **4.0 Recommendation Three: Funding the Legal Regulatory Lab Board**

The POLB recommends that the Supreme Court fund the Legal Regulatory Lab Board and operation of the Legal Regulatory Lab by authorizing the collection of fees from applicants and participants, and from licensing fees from those participants who after successful completion of a term operating in the lab, may provide the legal service in Washington.

### **4.1 Application Fees**

Generally, each applicant will pay the costs of reviewing their application, and participation in the lab.

Most of the review of an application will be made by the Legal Regulatory Lab Board. However, such a review may need assistance from WSBA, including legal expertise and administrative help. The POLB estimates that such assistance from WSBA in reviewing each application to participate in the Legal Regulatory Lab will require approximately four person hours—two hours provided by a legal professional and two administrative hours. Based on an estimated cost of \$200 per hour for the legal professional, and \$100 per hour for the administrative staff for a total cost of \$600.00 per application.

To cover these costs, the POLB recommends that the cost per application will be \$1,000, to be paid for by each applicant. The costs of such legal and administrative services provided by WSBA personnel, would be collected by the Legal Regulatory Lab Board, and transferred as a chargeback to WSBA.

#### **4.2 Participation Fees**

A participant's actions and operations in the lab will be reviewed by the Legal Regulatory Lab Board. Again, the POLB estimates that reviewing each quarterly report submitted by a participant will require services from the WSBA. These services are estimated at approximately two person hours—one hour provided by a legal professional, and one hour provided by administrative staff. Based again on an estimated cost of \$200 per hour for the legal professional, and \$100 per hour for the administrative staff for a total cost of \$300 per review. As there will be eight quarterly reviews during a two-year term in the Legal Regulatory Lab, then the total cost of services provided by WSBA for participation in the Legal Regulatory Lab would be \$2,400.

The POLB recommends this cost be paid by each participant in the lab will be \$2,500. Again, any legal and administrative service provided by the WSBA personnel will be transferred as a chargeback to WSBA. However, if the service is provided solely by the Legal Regulatory Lab Board, then the board retains the funds to cover its costs.

#### **4.3 Licensure Fees**

The POLB recommends that a successful participant of the Legal Regulatory Lab, who successfully completes participation in the Legal Regulatory Lab and who subsequently may provide legal services in Washington will pay an annual license fee to the Washington State Bar Association. Such fees will be determined when there are successful participants authorized to provide nontraditional legal services. Such a fee could be a one-time annual fee, or a transaction-based fee based on the number of consumers that use the legal service.

#### **4.4 Subsidization of Nonprofit Applicants and Participants**

The POLB recommends that the fees for nonprofit applicants and participants in the Legal Regulatory Lab be subsidized by the for-profit applicants and participants, by grant money raised for this purpose, and from licensure fees for the formerly nontraditional legal services (versus licensure fees from legal professionals).

#### **4.5 The Role of Grant Money**

The POLB recommends that the Legal Regulatory Lab Board be permitted to seek grant money for two purposes. As noted in Section 4.4 above, grant money will be sought to fund application and participation of nonprofits in the Legal Regulatory Lab. Grant money should also be raised to fund the testing of the lab models and processes in reducing the ATJ gap.

The POLB has investigated the availability of such grants and has a good faith belief that the Legal Regulatory Lab Board could apply for and get grants for these purposes, from charitable and for-profit organizations that fund legal reform.



## **5.0 Recommendation Four: Licensure of Successful Legal Regulatory Lab Participants**

The POLB recommends that the Supreme Court create a license class that will authorize successful participants of the Legal Regulatory Lab to offer legal services to people in Washington, under a specific court order that defines the level of regulation that the legal service must comply with, an annual report to the Legal Regulatory Lab Board and WSBA, and that any annual licensure fees to be paid to the WSBA.

### **5.1 Definition of Successful Legal Regulatory Lab Participation**

Successful Legal Regulatory Lab participation that would qualify a participant for licensure would be marked by the nontraditional legal service having been offered to consumers in Washington for two years, without an unresolved consumer complaint of harm, and without violation of the rules for the offering of the nontraditional service as detailed in the Supreme Court Order which authorized participation in the Legal Regulatory Lab.

### **5.2 WSBA and Nontraditional Legal Service Licensure**

As WSBA is authorized by the Supreme Court to admit and regulate legal professionals practicing law in Washington, and the Supreme Court has delegated the responsibility for administering membership to the bar including, managing discipline of legal professionals, the POLB recommends that WSBA also perform similar duties for nontraditional legal service providers who are admitted to practice law by completing successful participation in the Legal Regulatory Lab.

This means that while previously WSBA has been involved in regulating people practicing law, the change created by this recommendation is that WSBA would be regulating both people and entities practicing law or offering legal services in Washington state.

## 6.0 The Washington Legal Regulatory Lab Model

Although the POLB recommendation for a Legal Regulatory Lab follows the Utah model, there are places where the POLB is recommending minor improvements based on observations of the Utah Legal Regulatory Sandbox. This section of the Blueprint details the Washington model, which the Legal Regulatory Lab Board will incorporate into an operations manual approved by the Supreme Court when the Legal Regulatory Lab is created.

### 6.1 Legal Regulatory Lab Application Process

A person or entity wanting to offer a nontraditional legal service in the Legal Regulatory Lab will apply by detailing:

- The applicant person or entity's structure and key personnel
- The nontraditional legal services the person or entity wants to provide in Washington State
- How the nontraditional legal service will reduce the ATJ gap
- All potential harms to consumers the nontraditional legal service may create, and the risk that the harm might occur
- For each identified potential harm, how the applicant will mitigate such harm
- How these ATJ gap and harm mitigation factors will be measured and reported while operating in the Legal Regulatory Lab.

If the applicant's application shows that the nontraditional legal service meets the goals of participation in the Legal Regulatory Lab, then the Legal Regulatory Lab Board will recommend that the Supreme Court approve a Court Order that details the regulations the participant must comply with while offering the nontraditional legal service.

After approval by the Supreme Court, the entity may provide the defined and approved services and only the defined and approved services under the Court Order and under the ongoing supervision of the Legal Regulatory Lab Board.

While operating in the Legal Regulatory Lab, the participant will provide quarterly reports measuring performance against goals. Based on these reports, the participant may continue to operate in the Legal Regulatory Lab, or it may be necessary for a participant or the Legal Regulatory Lab Board to request a modification to the Supreme Court Order based on new knowledge gained from operating in the Legal Regulatory Lab.

Sometimes, it may also be necessary to terminate operation of the nontraditional legal service because the nontraditional legal service does not reduce the ATJ gap or is causing consumer harm.

Consumer harm could include factors such as loss of money, poor or incomplete legal service, untimely legal service, failure to exercise a legal right, or failure to meet a legal obligation. The Legal Regulatory Lab Board will provide a mechanism that ensures consumers know that the nontraditional legal service being offered to them is being offered through a Legal Regulatory Lab, and how they can report any issues with the nontraditional legal service to the Legal Regulatory Lab Board.

If at the end of the Legal Regulatory Lab term the participant is continuing to operate in compliance with the Supreme Court Order and to meet ATJ goals without causing consumer harm, then a Supreme Court Order that defines the nontraditional legal service's ongoing operation in Washington State will be drafted by the Legal Regulatory Lab Board for approving the Supreme Court.

If the Supreme Court approves such a Court Order, then the nontraditional legal service providers may continue to operate within the boundaries of that Supreme Court Order. Such a Supreme Court Order could also include specifics on any disciplinary action that would apply if the service deviated from the order, and any fee or other responsibilities that apply to the nontraditional legal service provider as it continues to operate.

This overall model for a Legal Regulatory Lab is shown in Figure 1.

## BLUEPRINT FOR A LEGAL REGULATORY LAB IN WASHINGTON STATE

Overall Legal Regulatory Lab Model

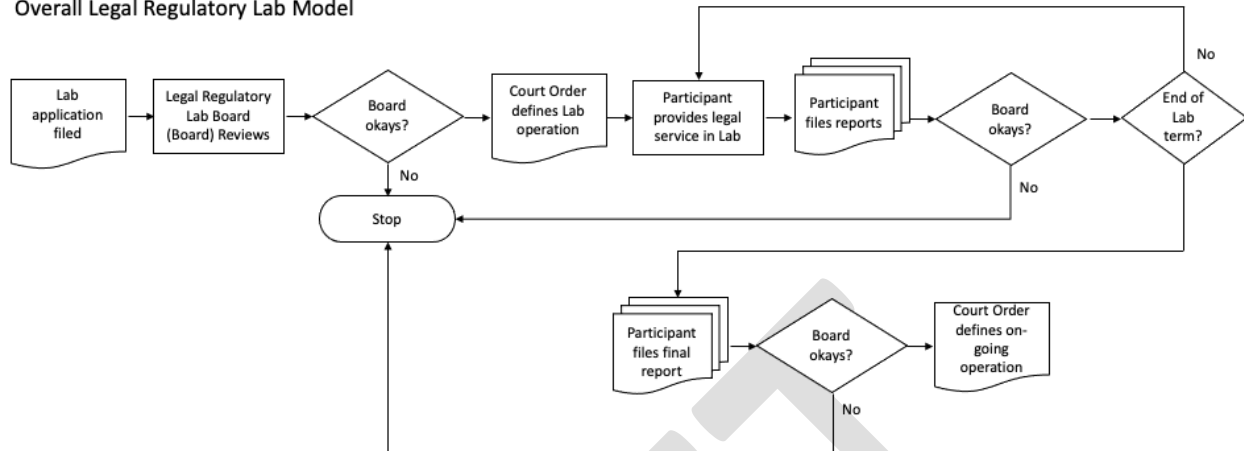


Figure 1. Overall Legal Regulatory Lab Model

While operating in the Legal Regulatory Lab, participants are still subject to all statutes, regulations, court rules, and court orders. For example, operating in the Legal Regulatory Lab does not protect the entity from prosecution for violations of the Washington State Consumer Protection Act (RCW 19.86).<sup>14</sup> A legal professional working for the nontraditional legal service providers is not automatically protected from discipline for violation of an RPC. The only protections or safe harbor provided by the Legal Regulatory Lab is for statutes and court rules relating to UPL and to specific RPCs as defined in the Supreme Court Order.

Similarly, participants approved for operation after successfully completing a term in the Legal Regulatory Lab remain subject all other applicable statutes, regulations, and court rules and to the Supreme Court Order, including business, licensing, and financial regulations.

To prevent consumer harm, the Legal Regulatory Lab model must be transparent. It must be obvious to consumers which nontraditional legal service providers may operate in the Legal Regulatory Lab, and which are authorized after operating successfully in the Legal Regulatory Lab to continue to provide legal services in Washington.

<sup>14</sup> Washington Consumer Protection Act, RCW 19.86, available at <https://apps.leg.wa.gov/rcw/default.aspx?cite=19.86>.

## 6.2 A Model for Assessing Legal Regulatory Lab Applications and Participation

The POLB has created a model to guide the Legal Regulatory Lab Board decisions on whether to accept an applicant to the Legal Regulatory Lab, and to assist in monitoring a participant’s time in the Legal Regulatory Lab. The model helps guide decisions based on the risk of harm to consumers, when such risk—if any—is most likely to occur, and whether the nontraditional legal service being evaluated in the Legal Regulatory Lab impacts the ATJ gap (see Figure 2).

Legal Regulatory Lab Risk Analysis Model

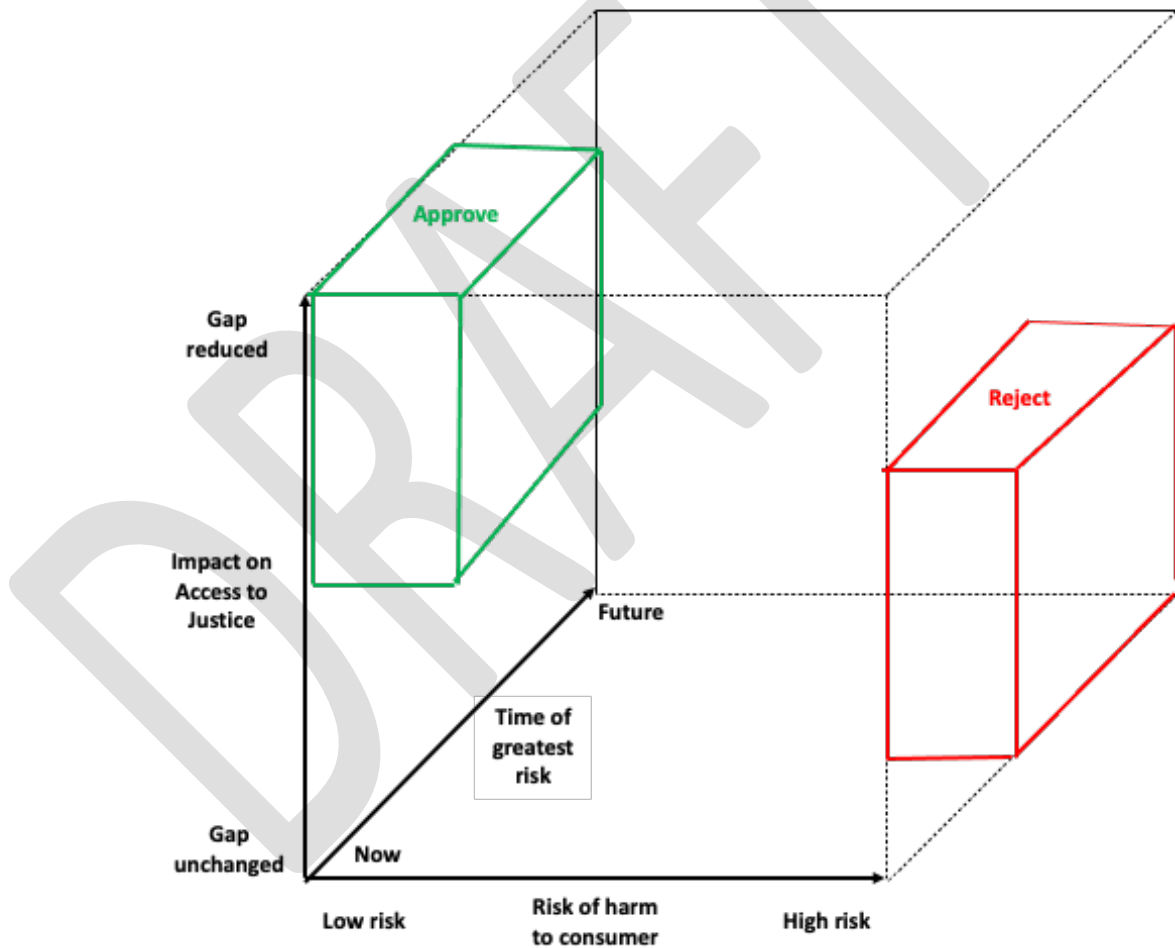


Figure 2. Legal Regulatory Lab Risk Analysis Model

### 6.2.1 Risk of Harm to Consumer

The horizontal axis of this model (labeled ‘Risk of harm to consumer’) shows that applicants for participation in the Legal

Regulatory Lab will be evaluated based on the estimated risk of consumer harm created by allowing consumers to use the nontraditional legal service.

### **6.2.2 Reducing the ATJ Gap**

The vertical axis of this model (labeled ‘Impact on ATJ’) shows that applicants for participation in the Legal Regulatory Lab will be evaluated based on how much their proposed nontraditional legal service reduces the ATJ gap.

### **6.2.3 When Risk of Harm is Greatest**

The diagonal axis in this model (labeled ‘Time of greatest risk’) shows that applicants for participation can also be measured against whether potential harm to consumers is likely to be noticed or occur in the present (now) or the future (later).

### **6.2.4 Model Usage Examples**

Applicants proposing to use the Legal Regulatory Lab to test a nontraditional legal service that appears to reduce the ATJ gap, that is determined to have a low risk of harm, and where harm to consumers—if any—occurs in the present (making the harm easier to mitigate) it would likely be approved. For example, an online legal service designed to assist a person get a temporary protection order might fall in the green area of the Legal Regulatory Lab Risk Analysis Model and be easily approved for participation in the Legal Regulatory Lab.

Applicants proposing to use the Legal Regulatory Lab to test a nontraditional legal service with a lesser impact on the ATJ gap and a higher risk of harm (especially where harm might not be recognized immediately) will need deeper consideration and may be denied admission to the Legal Regulatory Lab.

Such applicants may have to submit additional information and be subject to additional data collection requirements while in the Legal Regulatory Lab and potentially after successfully leaving the Legal Regulatory Lab. For example, an online trust generation application that reduces the ATJ gap but might not show evidence of harm for several years might not be appropriate for participation in the Legal Regulatory Lab.

Between the green and red box in the Legal Regulatory Lab Risk Analysis Model may fall proposed nontraditional legal services that may be granted admission to the Legal Regulatory Lab if suitable data can be collected and analyzed to determine reduction of the ATJ gap, the benefit to consumers, and the risk of harm to consumers to determine whether admission to the Legal Regulatory Lab is appropriate.

Once in the Legal Regulatory Lab, ongoing evaluation and review will continue to evaluate where within the Legal Regulatory Lab Risk Analysis Model a particular applicant's nontraditional legal service lies, whether the benefits outweigh any risk of harm to consumers, and whether continued operation in the Legal Regulatory Lab or a form of licensure should be allowed.

### **6.3 Measuring Risk of Harm to Consumers**

To put a scale on the Legal Regulatory Lab Risk Analysis Model to measure risk of harm to consumers, the POLB recommends that applicants must disclose each anticipated potential harm to consumers, and for each potential harm indicate a score based on the likelihood of the harm occurring (very likely, possible, or almost certain), versus the impact of the harm (negligible, manageable, or catastrophic). A potential harm scoring 6 or higher may be too risky for participation in the Legal Regulatory Lab.

Although an applicant will self-score each risk, the Legal Regulatory Lab Board will review this data and create the final score in each risk category.

		Harm		
		Negligible (1)	Manageable (2)	Catastrophic (3)
Likelihood	Almost Certain (3)	3	6	9
	Possible (2)	2	4	6
	Very Unlikely (1)	1	2	3

Figure 3: Measuring Risk of Harm to Consumers

#### 6.4 Measuring Access to Justice Impact

To put a scale on the Legal Regulatory Lab Risk Analysis Model for measuring impact on the Access to Justice gap, the POLB recommends that applicants must disclose any anticipated impact their nontraditional legal service may have on the ATJ gap and indicate a score based on the likelihood of addressing the ATG gap and the level of impact.



		Impact		
		Significant (1)	Moderate (2)	Almost None (3)
Likelihood	Very Unlikely (3)	3	6	9
	Possible (2)	2	4	6
	Almost Certain (1)	1	2	3

Figure 4: Measuring Access to Justice Impact

Here a harm scoring 6 or higher would not eliminate a nontraditional legal service from being admitted to the Legal Regulatory Lab, but, if resources in the Legal Regulatory Lab were constrained, those applicants with low scores (more likely positive impact on the ATJ gap) would be admitted first.

### 6.5 Measuring When Harm Occurs

To put a scale on the Legal Regulatory Lab Risk Analysis Model for measuring when a possible harm to consumers might occur, the POLB recommends that applicants must disclose when potential harms to consumers—if any—are likely to occur, and for each potential harm indicate a score based on the likelihood of the harm occurring (almost certain, possible, or very unlikely), versus when the harm would occur (less than 4 years, 5 to 10 years, or 11 years or greater). A time of impact score of 6 or higher would be too risky for participation in the Legal Regulatory Lab.

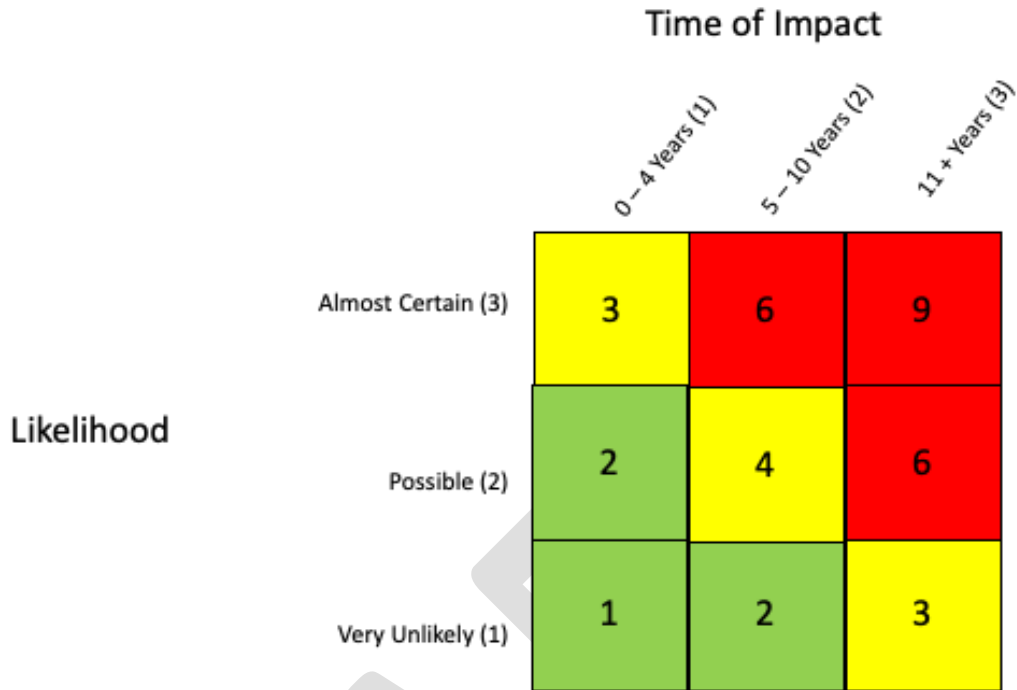


Figure 5: Measuring When Harm Occurs

## 6.6 Variance from the Utah Regulatory Sandbox

Note: Section 6.6 describes Utah’s risk analysis model, which relies on the type of nontraditional legal service to assign a risk to lab participants.

The Utah Legal Regulatory Sandbox appears to assign risk to participants based on the business or service model being evaluated as follows:

### 6.6.1 Utah Low Risk Service Model Applicants

In the Utah Legal Regulatory Sandbox, these participants are considered to have a low risk of creating consumer harm:

- Legal professional employed or managed by a nonlegal professional
- Less than 50% nonlegal professional ownership
- Software-based legal document completion with legal professional involvement.

### **6.6.2 Utah Low or Moderate Risk Service Model Applicants**

In the Utah Legal Regulatory Sandbox, these participants are considered to have a low or moderate risk of creating consumer harm:

- Legal professionals sharing fees with nonlegal professionals
- Intermediary platform<sup>15</sup>
- 50% or more nonlegal professional ownership.

### **6.6.3 Utah Moderate Risk Service Model Applicants**

In the Utah Legal Regulatory Sandbox, these participants are considered to have a moderate risk of creating consumer harm:

- Nonlegal professional provider with nonlegal professional involvement
- Software provider with legal professional involvement.

### **6.6.4 Utah High Risk Service Model Applicants**

In the Utah Legal Regulatory Sandbox, these participants are considered to have a high risk of creating consumer harm:

- Nonlegal professional provider without legal professional involvement
- Software provider without legal professional involvement.

### **6.6.5 Disbarred, Revoked, and Suspended Legal Professionals**

The POLB recommends that disbarred, revoked, and suspended legal professionals cannot apply or participate in the Legal Regulatory Lab in Washington.

Note: Utah appears to allow some participation by disbarred or suspended lawyers in the Utah Legal Regulatory Sandbox.

<sup>15</sup> Intermediary platform means a software- or online-based service that connects lawyers with interested consumers, or which offers other legal practice support services such as timekeeping, billing, videoconferencing.

### 6.7 Admission to the Legal Regulatory Lab

A proposed flowchart for the admission process to the Legal Regulatory Lab is shown in Figure 6.

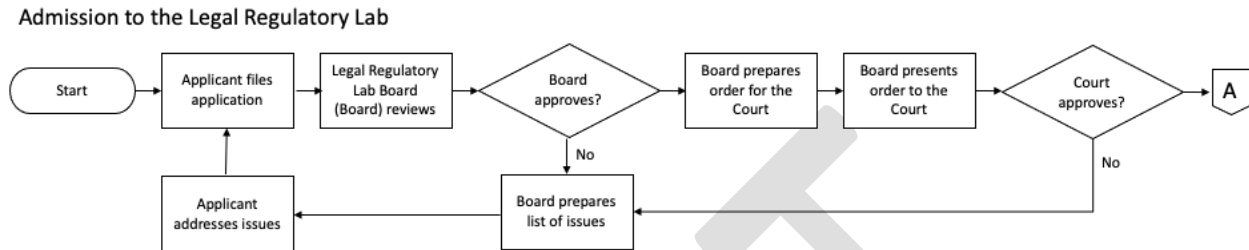


Figure 6. Admission to the Legal Regulatory Lab

Admission to the Legal Regulatory Lab begins with an applicant applying (see Legal Regulatory Lab Application below) with the Legal Regulatory Lab Board. (For a sample completed application, see Appendix B.)

The Legal Regulatory Lab Board will review the application, using the Legal Regulatory Lab Risk Analysis Models and other criteria as warranted.

If the Legal Regulatory Lab Board approves the application, it will draft an order for the Supreme Court (see Legal Regulatory Lab Approval Order below) that defines the regulations in effect and operational data to be collected while the applicant is offering nontraditional legal service and participating in the Legal Regulatory Lab. (For a sample Supreme Court order, see Appendix C.)

If the Supreme Court approves the order, then the applicant can operate for a maximum of two years in the Legal Regulatory Lab and offer the nontraditional legal service in Washington State for as long as the operating reports show no harm to consumers, and the Court Order remains in effect.

If the Legal Regulatory Lab Board has issues with or questions about the application, or the Supreme Court has any concerns about issuing the order, the applicant may address the issues and ask that its application be reviewed again.

## **6.8 Legal Regulatory Lab Application**

At a minimum, applicants to the Legal Regulatory Lab must provide the following information:

### **6.8.1 Description of the Proposed Nontraditional Legal Service**

A description of the proposed nontraditional legal service, including:

- a) The nature and scope of the nontraditional legal service, including the specific legal issue(s) the nontraditional legal service will address
- b) The intended market for the nontraditional legal service and whether it is or intends to operate in another jurisdiction's Legal Regulatory Lab
- c) The entity providing the nontraditional legal service, including state of incorporation and key management
- d) When the provision of nontraditional legal service would be anticipated to be offered in Washington
- e) The costs of the nontraditional legal service to consumers
- f) Which RPCs or other regulations need to be modified, and how they would be modified, to provide the nontraditional legal service in the Legal Regulatory Lab.

### **6.8.2 How the Nontraditional Legal Service Reduces the ATJ Gap**

A description of the nontraditional legal service benefits, including:

- a) Which specific consumers the nontraditional legal service is designed to serve
- b) How the nontraditional legal service provides a high-quality legal service
- c) How the nontraditional legal service is cost-effective
- d) How the nontraditional legal service is more accessible to consumers than available legal services

- e) Other aspects of the nontraditional legal service that help close the ATJ gap
- f) An overall ATJ impact score, based on the Legal Regulatory Lab risk analysis models.

### **6.8.3 Risk of Harm to Consumers**

A description of the risk of harm to consumers that the nontraditional legal service will create, including:

- a) What potential harm could befall a consumer using the nontraditional legal service
- b) Consumers most at risk of harm
- c) When the risk is likely to occur (near- or long-term)
- d) How any risk of harm can be measured (that is, what data will be collected to show risk and steps to mitigate the risk)
- e) For each identified potential harm to consumers, a risk impact score based on the Legal Regulatory Lab risk analysis models.

### **6.8.4 Personal or Entity Information**

A description of the person or entity proposing the nontraditional legal service, including:

- a) Name of the person or entity
- b) Type of person or entity (for person, legal professional or non-professional)
- c) State of incorporation (domestic and foreign registrations and registered agents)
- d) Entity officers
- e) Years of operation
- f) Financial information
- g) Business plan for the nontraditional legal service
- h) Number of legal professionals (if any) involved in the creation and management of the nontraditional legal service

- i) Number on nonlegal professionals (if any) involved in the creation and management of the nontraditional legal service
- j) Any legal or disciplinary actions against any person involved in the nontraditional legal service.

#### **6.8.5 Other Material Information**

Any other information that will help the Legal Regulatory Lab Board and the Supreme Court evaluate admission to the Legal Regulatory Lab, such as a description of RPCs or other regulations that may need to be modified in the Legal Regulatory Lab.

### **6.9 Legal Regulatory Lab Approval Order**

When the Legal Regulatory Lab Board recommends approval an applicant for operation in the Legal Regulatory Lab, the Legal Regulatory Lab Board will draft an order for the Supreme Court outlining the nontraditional legal service provider's duration and the oversight of the Supreme Court via the Legal Regulatory Lab Board while the nontraditional legal service is in the Legal Regulatory Lab. Elements of such an order include:

#### **6.9.1 Approved Nontraditional Legal Service**

A description of the nontraditional legal service, including any legal transactions that the nontraditional legal service can perform.

#### **6.9.2 Unapproved Legal Services**

A description of the specific legal work that the nontraditional legal service cannot perform.

#### **6.9.3 Appropriate Regulation**

A description of regulations, including any RPCs, that will apply to the provision of the nontraditional legal service, and any new or proposed modified RPCs that might be needed.

#### **6.9.4 Data Reporting**

A description of the data to be reported to the Legal Regulatory Lab Board on a quarterly basis, and mandatory data to be provided at the end of the Legal Regulatory Lab duration. The data collected will be analyzed to show whether the ATJ gap was reduced, and whether the entity managed risk to consumers.

Required data will differ by the services being provided, but may include:

- a) Number of consumers served since last report
- b) Number of completed transactions or services
- c) Number of incomplete transactions or services (and explanation)
- d) Average cost per transaction or service
- e) Elapsed time to provide each transaction or service
- f) Number and type of complaint(s)
- g) Number of complaints resolved and manner of resolution
- h) Time to resolve each complaint
- i) Other data based on the transaction or service.

#### **6.9.5 Mitigation Plan**

A description of the mitigation plan if harm to consumers occurs.

#### **6.9.6 Legal Regulatory Lab Duration**

The duration of time the applicant may operate in the Legal Regulatory Lab (typically two years for all applicants).

#### **6.9.7 Rejected Applicants**

An applicant who is not approved for participation in the Legal Regulatory Lab will be given the opportunity to revise its application and address any matters that resulted in rejection from the Legal Regulatory Lab.



### 6.10 Operating in the Legal Regulatory Lab

A proposed flowchart for operating in the Legal Regulatory Lab is shown in Figure 7.

Operating in the Legal Regulatory Lab

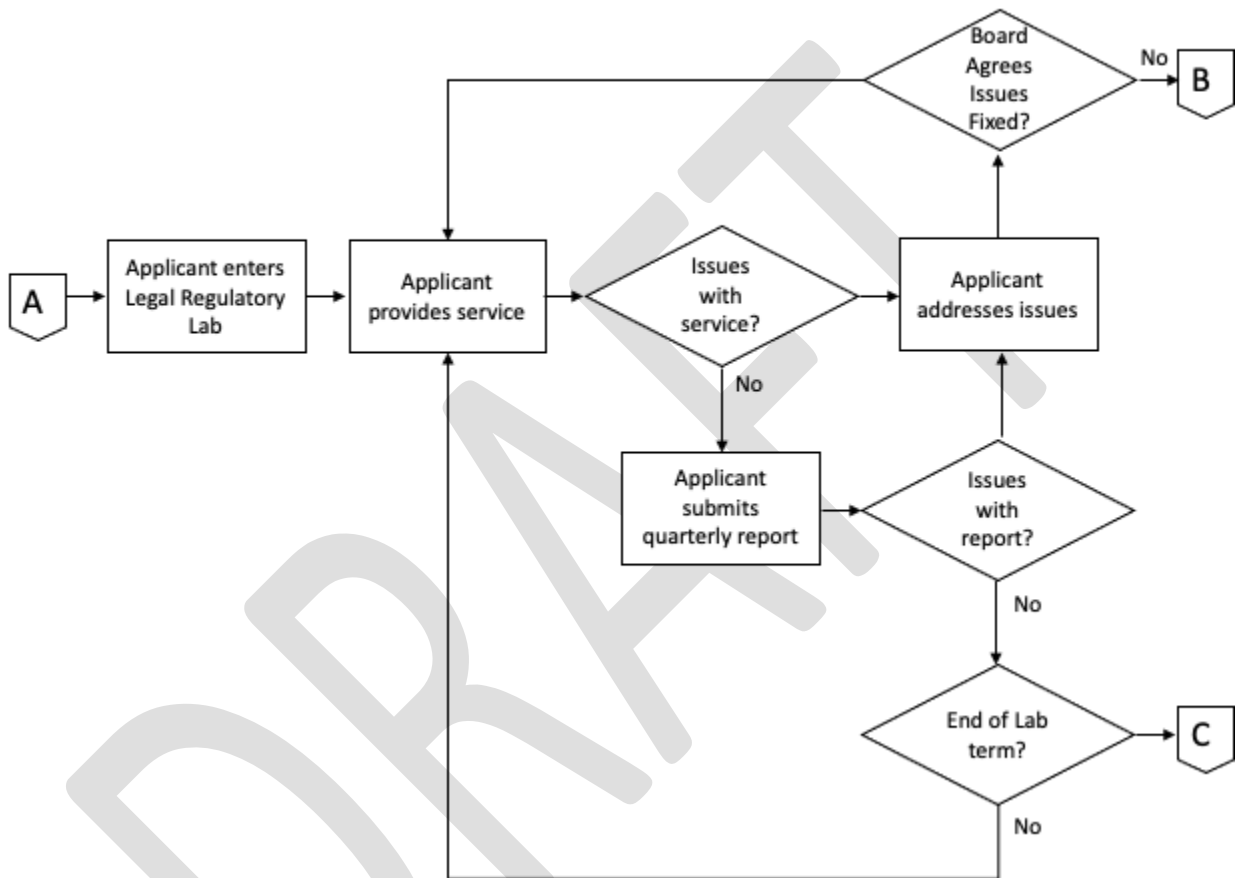


Figure 7. Operating in the Legal Regulatory Lab

Operation in the Legal Regulatory Lab begins with the applicant getting an order from the Supreme Court defining operation of the nontraditional legal service in the Legal Regulatory Lab.

If there are issues reported with the nontraditional legal service, the applicant must address such issues to the satisfaction of the Legal Regulatory Lab Board to continue operating in the Legal Regulatory Lab.

Even if there are no issues or consumer complaints reported with the nontraditional legal service, the applicant must submit quarterly reports to the Legal Regulatory Lab Board (see Data Reporting above). If there are issues with the report, the applicant must address the issues to the Legal Regulatory Lab Board's satisfaction to continue to provide the legal service in the Legal Regulatory Lab.

However, if the applicant does not address the issues and continues to operate, then the protection of the legal regulatory Lab ends (see Termination from the Legal Regulatory Lab, below).

If the applicant operates in the Legal Regulatory Lab and continues without issue to the end of the term, then the applicant leaves the Legal Regulatory Lab (see Licensure, below).

Operations in the Legal Regulatory Lab continue in this manner until the end of the time in the Legal Regulatory Lab as defined in the Supreme Court Order. If the Supreme Court does not authorize continued operation of the nontraditional legal service after the end of the time in the Legal Regulatory Lab, an orderly shutdown will be needed to ensure no consumers are harmed by withdrawal of the nontraditional legal service.

#### **6.11 Termination from the Legal Regulatory Lab**

A proposed flowchart for termination from the Legal Regulatory Lab for cause is shown in Figure 8.

Exiting the Legal Regulatory Lab (Termination for Cause)

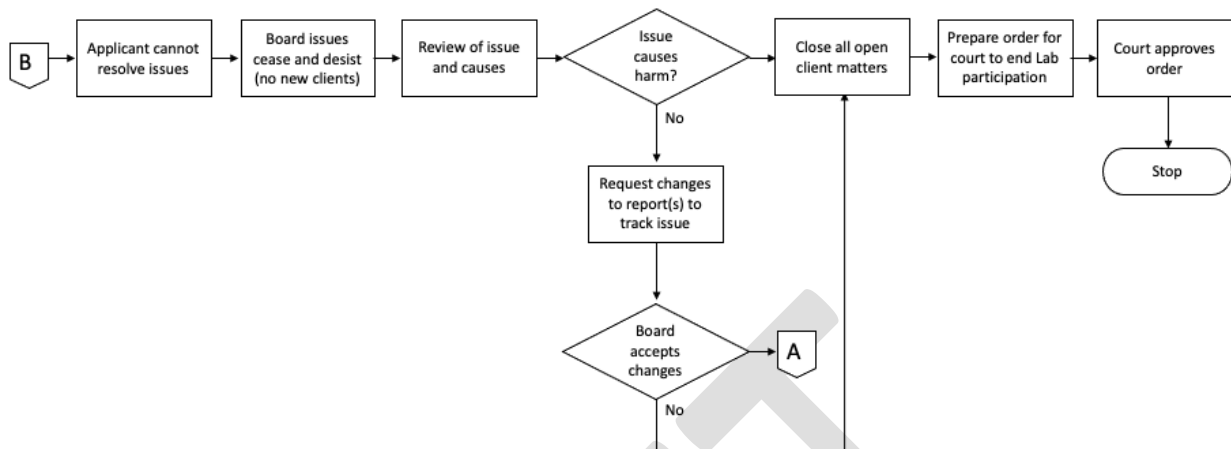


Figure 8. Exiting the Legal Regulatory Lab (Termination for Cause)

If an applicant’s operation in the Legal Regulatory Lab creates issues, such as consumer harm, then the Legal Regulatory Lab Board will instruct the applicant to cease taking on new clients and conclude existing transactions while the Legal Regulatory Lab Board reviews the issues and causes.

If the Legal Regulatory Lab Board determines the issue is harming consumers, then the applicant will close all pending matters promptly and place the applicant under the review of the Legal Regulatory Lab Board. The Legal Regulatory Lab Board will review the reported data and data about the incidents of harm and may have a hearing with the applicant to review the situation. If the Legal Regulatory Lab Board determines the legal service is causing harm, then the Legal Regulatory Lab Board will prepare a court order to terminate the applicant’s authorization to operate in the Legal Regulatory Lab.

It will be necessary to decide how to handle nontraditional legal service that do not affect the ATJ gap and do not harm consumers. The Supreme Court may not want to authorize such services—mere lack of harm may not justify allowing continued operation.

If the issue does not involve harming consumers, then the Legal Regulatory Lab Board will work with the applicant to continue to monitor the issue (which may require additional reporting), and the applicant may resume operation in the Legal Regulatory Lab.

If after receiving an order from the Supreme Court withdrawing authorization to provide the nontraditional legal service, and the applicant ignores such an order and continues offering such services in the Washington State legal market, then the applicant would be subject to action under the Consumer Protection Act and UPL statutes, and any other laws that apply.

### 6.12 Licensure (Exiting the Legal Regulatory Lab)

A proposed flowchart for successfully exiting from the Legal Regulatory Lab is shown in Figure 9.

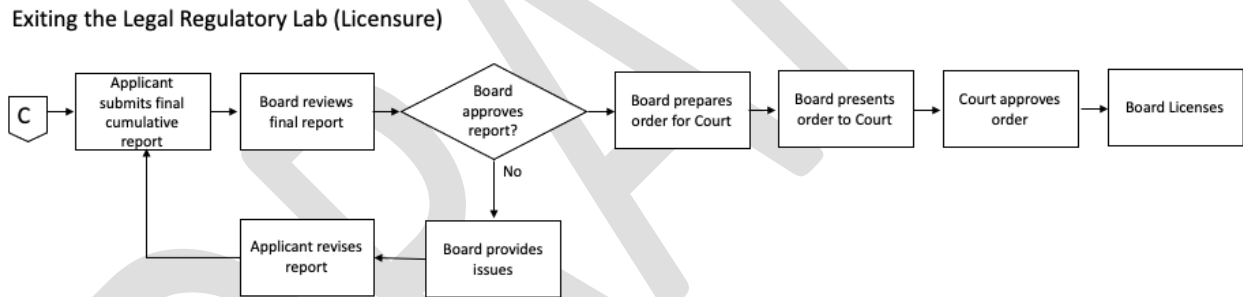


Figure 9. Licensure (Exiting Legal Regulatory Lab)

If an applicant completes the duration of the time in the Legal Regulatory Lab and there are no outstanding issues after review of the final report by the Legal Regulatory Lab Board, then the Legal Regulatory Lab Board will prepare an order for the Supreme Court.

The Supreme Court will have the discretion to approve or not approve the order, particularly if the Supreme Court feels the data does not support the conclusion the nontraditional legal service should be allowed to continue to operate. If the Supreme Court approves the order, then the applicant may provide the nontraditional legal service within the structure defined by that Supreme Court Order. The Supreme Court can determine whether the nontraditional legal service addresses ATJ to such a positive degree that it will allow other nontraditional legal service providers to follow the same order (without going through the Legal Regulatory Lab).

**6.13 Duration of Participation in the Legal Regulatory Lab**

Once created, the Legal Regulatory Lab and the Legal Regulatory Lab Board will exist and continue to fulfill its duties and functions as outlined by the Supreme Court Orders until the Supreme Court changes such orders. Each applicant will be authorized by the Supreme Court Order to participate in the Legal Regulatory Lab under the applicant's relevant court order for two years.

Note: This differs from Utah, where the Legal Regulatory Sandbox is approved for a two-year duration, but which will likely be renewed for a longer term.

## 7.0 Next Steps

This is a Blueprint for the Legal Regulatory Lab. The next steps include:

- a) Incorporating feedback from the Court, the WSBA Board of Governors, and other parties
- b) Formalizing the Legal Regulatory Lab Board and appointing members
- c) Fund-raising (grants)
- d) Determining the RPCs and other regulations that can be tested within the Legal Regulatory Lab and that cannot be tested within the Legal Regulatory Lab
- e) Formalizing application processes
- f) Formalizing the court orders (templates)
- g) Creating a reporting database schema and database for collecting Legal Regulatory Lab data (and standardizing with other states)
- h) Finding two test organizations to run through the process to determine what changes are needed to improve the Legal Regulatory Lab and expand capacity.

## 8.0 Appendix A: What Problem Does a Legal Regulatory Lab Address

### 8.1 The Practice of Law in Washington State

Under Washington State statutes and court rules, only an authorized and licensed lawyer, a person supervised by an authorized and licensed lawyer, a Limited License Legal Technician (LLLT), or a Limited Practice Officer (LPO) can lawfully provide legal services to the public.

### 8.2 The ATJ Gap in Washington State

The Civil Legal Needs study update stated: “more than three-quarters of all low-income households in Washington State experience at least one civil (not criminal) legal problem each year. In the aggregate, low-income people experience more than one million important civil legal problems annually.”<sup>16</sup>

Additionally, “low-income people face more than 85 percent of their legal problems without help from an attorney. Attorney assistance is most successfully secured in family-related matters, but even here only 30 percent of legal problems reported are addressed with the assistance of an attorney. Removing family-related problems, low-income people receive help from an attorney with respect to less than 10 percent of all civil legal problems.”<sup>17</sup>

An update to the study in 2015 found that due to a variety of economic and social factors, “the average number of civil legal problems per low-income household having nearly tripled since 2003.”<sup>18</sup>

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<sup>16</sup> Washington State Supreme Court, Task Force on Civil Equal Justice Funding, The Washington State Civil Legal Needs Study, September 2003, available at <https://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>.

<sup>17</sup> Id.

<sup>18</sup> Washington State Supreme Court, Civil Legal Needs Study Update Committee, 2015 Washington State Civil Legal Needs Study Update, Oct. 2015, available at [https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf).

The Civil Legal Needs Update challenged the courts and the officers of the courts including judges, lawyers, LLLTs, and LPOs to ensure that low-income people in Washington State understand their legal rights and know where to look for legal help when they need it; to squarely address not only problems presented, but the systems that result in disparate experiences depending on one's race, ethnicity, victim status or other identifying characteristics; and to know the costs and consequences of administering a system of justice that denies large segments of the population the ability to assert and effectively defend core legal rights.

It is clear “for decades, the United States has sought to bridge this ATJ gap through incremental improvement, such as volunteerism (i.e., pro bono work) and legal aid.”<sup>19</sup> However, “closing this ATJ gap requires both incremental improvement and breakthrough change.”<sup>20</sup>

### **8.3 Online Legal Services**

A variety of entities are offering online legal services. Many of these entities are helping people with their civil legal problems. Under the statute and rules, these entities may be unlawfully practicing law.

One such entity, Legal Zoom, assists people by providing form-based legal services, and they may refer a person to an authorized legal practitioner (lawyer, LLLT, or LPO). Today, LegalZoom operates in Washington State under an Assurance of Discontinuance between LegalZoom and the Washington State Attorney General's Office.<sup>21</sup>

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<sup>19</sup> Robert W. Gordon, *Lawyers, the Legal Profession & Access to Justice in the United States, A Brief History*, DAEDALUS, Winter 2019, at 177, 178.

<sup>20</sup> Georgetown Law Ctr. *On Ethics & the Legal Profession, 2020 Report on the State of the Legal Market*, 2-3 (2020)

<sup>21</sup> *In Re the Matter of LegalZoom.com, Inc. a Delaware Corporation*, Sept. 15, 2010 available at [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press\\_Releases/2010/LegalZoomAOD.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press_Releases/2010/LegalZoomAOD.pdf).



This agreement essentially requires LegalZoom to follow guidelines outlined in the agreement, such as not “Comparing, directly or by implication, the costs of Respondent’s self-help products, i.e., legal forms as contemplated in GR24(b)(8), and clerical services with those provided by an attorney, without, in close proximity to each such comparison, clearly and conspicuously disclosing to Washington consumers that Respondent is not a law firm and is not a substitute for an attorney or law firm.”<sup>22</sup>

Although it is not clear whether LegalZoom was the first entity to offer online legal services to people in Washington, many others have followed and online legal services are available covering a wide variety of legal services including family law, immigration, arbitration assistance, traffic infractions, and other civil legal matters. Some of these entities are Washington based (that is, registered with the Washington Secretary of State) and others are foreign entities.

At its annual meeting with the Supreme Court on Feb. 4, 2021, the POLB identified there were over 50 OLS providers providing legal services in Washington State. Approximately 20 of these providers, such as WestLaw and CLIO, primarily provide services to legal professionals. Over 14 legal service providers, such as Avvo and LegalZoom, provide services to both legal professionals and the public, including referring people to a legal professional (generally a lawyer). Finally, over 17 legal service providers, such as FairShake and Hello Divorce, target their services to the public.

These OLS providers offer legal services across a wide spectrum of legal matters, including family law, contract disputes, traffic infractions, and immigration. Several service models are in use, including referrals to legal professionals and do-it-yourself services. They are getting positive reviews from both the public and the press and are raising significant venture capital, which means they will continue to offer more services.

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<sup>22</sup> Id. at 2.1(a).

To be clear, these services may not be targeting people in Washington specifically; because they are internet services, they are there if people in Washington try to use them.

The advantage of such online legal services is they are addressing the ATJ gap in Washington. People using such services are likely doing better with their legal matter than simply being a pro-se litigant. They provide timely and often simplified advice. Typically, they are also less expensive than traditional legal services.

The disadvantage of such online legal services is they are not regulated in a similar manner as traditional legal services and may not be following Washington statutes and court rules. They may not be offering accurate and complete advice. Consumer harm may be going unreported.

#### **8.4 UPL Complaints and Online Legal Services**

As of April 2021, the POLB has had two UPL complaints brought to its attention. Neither were referred to the Attorney General's Office or a county prosecutor for action because there was no evidence of harm to the consumer in either case. However, this does not mean that the entities were not practicing law.

#### **8.5 Addressing ATJ and Online Legal Services**

Several jurisdictions in the US and Canada are addressing the ATJ gap by examining the role that online legal services could play. Several alternatives be considered from doing nothing to using a regulatory lab to take a risk-based and data-driven approach to regulatory reform, particularly regarding regulating online legal services and ABS.

The danger of doing nothing is that the online legal services are not going away. Again, this is evidenced by the investment of venture capital into the companies offering such services. And there is the danger such services will become accepted by the public and spontaneous deregulation will occur. Some would argue this is already taking place. An example of spontaneous deregulation can be found in what happened to municipalities when ride-share and home-share services entered cities without regard to cab and zoning ordinances.

As various businesses try to create new service delivery models aimed at filling the urgent need for legal advice, they find their ideas and initiatives stifled by certain existing regulatory rules. Many smaller legal service startups can't secure funding because there are questions as to whether their businesses may operate; meanwhile, regulators hesitate to amend the existing rules, citing potential harm to the public because of these new business models and service providers. New business models, innovative partnerships, and creative approaches to new licenses are all shut down by the lack of flexibility under the current rules.

With so many people unable to access meaningful legal assistance, the time has come for us to consider opening the pool of legal service providers and eliminating the limitation that only attorneys and LLLTs may own law firms. Without data, we cannot do so responsibly. There is a simple way to solve both problems: a Legal Regulatory Lab.

DRAFT

## **9.0 Appendix B: Sample Washington Legal Regulatory Lab Application**

This is a mockup or illustrative sample of how an applicant might supply information to the Legal Regulatory Lab Board for consideration to test a nontraditional legal service in the Legal Regulatory Lab. The company is fictitious, but much of the data is accurate and might reflect information for an online software based legal service.

### **9.1 General Legal Regulatory Lab Information for Applicants**

#### **9.1.1 Purpose of the Legal Regulatory Lab**

The Legal Regulatory Lab tests and evaluates innovative models for providing nontraditional legal service that reduce the ATJ gap, while minimizing the risk of harm to the public. Such innovative services may not be capable of being offered under the Rules of Professional Conduct (RPC) or would be considered the Unlawful Practice of Law under the Revised Code of Washington (RCW) 2.48.180.

#### **9.1.2 Authority for the Legal Regulatory Lab**

The Washington State Legal Regulatory Lab is authorized by Washington Supreme Court Order (number), dated (date).

#### **9.1.3 Disbarred or Suspended Legal Professionals**

No legal professional disbarred or suspended by any bar or licensing authority can participate in any entity offering nontraditional legal service in the Legal Regulatory Lab.

#### **9.1.4 No Temporary Admission to Practice in Washington**

The Legal Regulatory Lab is not a means by which out-of-state lawyers can practice law in Washington State, without otherwise complying with the WSBA regulations as delegated by the Washington Supreme Court to the WSBA.

### **9.1.5 No Impact on Washington State or Federal Laws or Regulations**

The Legal Regulatory Lab does not and cannot impact requirements imposed by other applicable Washington or Federal Laws, the laws or requirements imposed by other jurisdictions, or the requirements imposed by other regulatory agencies. Authorization to provide nontraditional legal service within the Legal Regulatory Lab does not release or indemnify any entity or individual from conforming to all other applicable laws, regulations, and court rules.

### **9.1.6 Legal Professionals Still Bound by RPCs**

Except as temporarily modified by the Supreme Court Order allowing the entity to provide nontraditional legal service within the Legal Regulatory Lab, legal professionals working with entities in the Legal Regulatory Lab shall maintain their duties under the RPCs.

### **9.1.7 Applications and Reports are Public Information**

Applications for admission to the Legal Regulatory Lab, and reports of operations in the Legal Regulatory Lab are public documents to ensure the transparency of the Legal Regulatory Lab.

Entities whose nontraditional legal service involve trade secrets as defined by RCW 19.108.010(4) may request such trade secrets be handled by the Legal Regulatory Lab Board under RCW 19.108.050.

### **9.1.8 Penalties for False or Misleading Application Information**

Making false or materially misleading statements in this application is the basis for loss of authorization to participate in the Legal Regulatory Lab, and other criminal and civil sanctions may apply.

### **9.1.9 Changing Information**

If information supplied as part of this application changes, the entity shall ensure the information is updated promptly.

## 9.2 Description of the Proposed Nontraditional Legal Service

### 9.2.1 Legal Service Model

- Legal professionals employed or managed by non-legal professionals
- Less than 50% non-legal professional entity ownership
- Over 51% non-legal professional entity ownership
- Legal professional sharing fees with non-legal professional
- Non-legal professional service provider with legal professional involvement
- Non-legal professional service provider without legal professional involvement
- Software or internet service provider with legal professional involvement
- Software or internet service provider without legal professional involvement**
- Other: \_\_\_\_\_

### 9.2.2 Primary Legal Service Category of Legal Service

Select One

- Accident/Injury
- Adult care
- Business
- Civil misdemeanor
- Criminal Expungement
- Discrimination
- Domestic Violence
- Education
- Employment
- End-of-life Planning
- Family law
- Financial issues
- Healthcare
- Housing (Rental)**
- Housing (Mortgage)
- Housing (Manufactured Home)

- Immigration
- Military
- Native American and Tribal Law
- Public benefits
- Real estate
- Traffic

**9.2.3 Secondary Legal Service Category of Legal Service**

Select all that apply

- Accident/Injury
- Adult care
- Business
- Civil misdemeanor
- Criminal Expungement
- Discrimination
- Domestic Violence
- Education
- Employment
- End-of-life Planning
- Family law
- Financial issues
- Healthcare
- Housing (Rental)
- Housing (Mortgage)
- Housing (Manufactured Home)**
- Immigration
- Military
- Native American and Tribal Law

- Public benefits
- Real estate
- Traffic

#### 9.2.4 Nature and Scope of the Nontraditional Legal Service

“Safe Rental Spaces Washington” (SRSWA) is an online legal service (OLS) designed to assist tenants with a smartphone, tablet, or personal computer secure their rights against a landlord renting an unsafe (uninhabitable) premise.

SRSWA helps a tenant secure their rights under the Washington Residential Landlord Tenant Act (RLTA), including the Revised Code of Washington (RCW) 59.18.070(1), 59.18.070(2), 59.18.070(3), 59.18.080, 59.18.090, and common law cases *Apostle v. City of Seattle* (70 Wash. 2d 59), *Javins v. First National Realty Corporation* (428 F.2d 1071), *Foisy v. Wyman* (83 Wash. 2d 27), and *Landis & Landis Const. LLC v. Nation* (286 P. 3d 979).

To use the application, the tenant downloads the SRSWA application from the Apple or Android store to their smartphone or tablet. A version for Windows or macOS based devices can be downloaded from the SRSWA website. The application is a free download. The tenant enters information about their landlord, property, who notices about the tenancy are to be sent to per the lease, and the issue making their rental unit unsafe (uninhabitable).

Machine learning based artificial intelligence determines whether the issue is an imminent health hazard, such as no heat in the winter or extreme rodent infestation, a minor problem, such as a refrigerator or stove not working, or some other matter making their residence unsafe.

Based on the specific uninhabitable condition, the SRSWA application will generate and send a notice requiring that the landlord commence repairs in the statutorily defined period. Such notice will be sent so it proves service, such as certified mail.



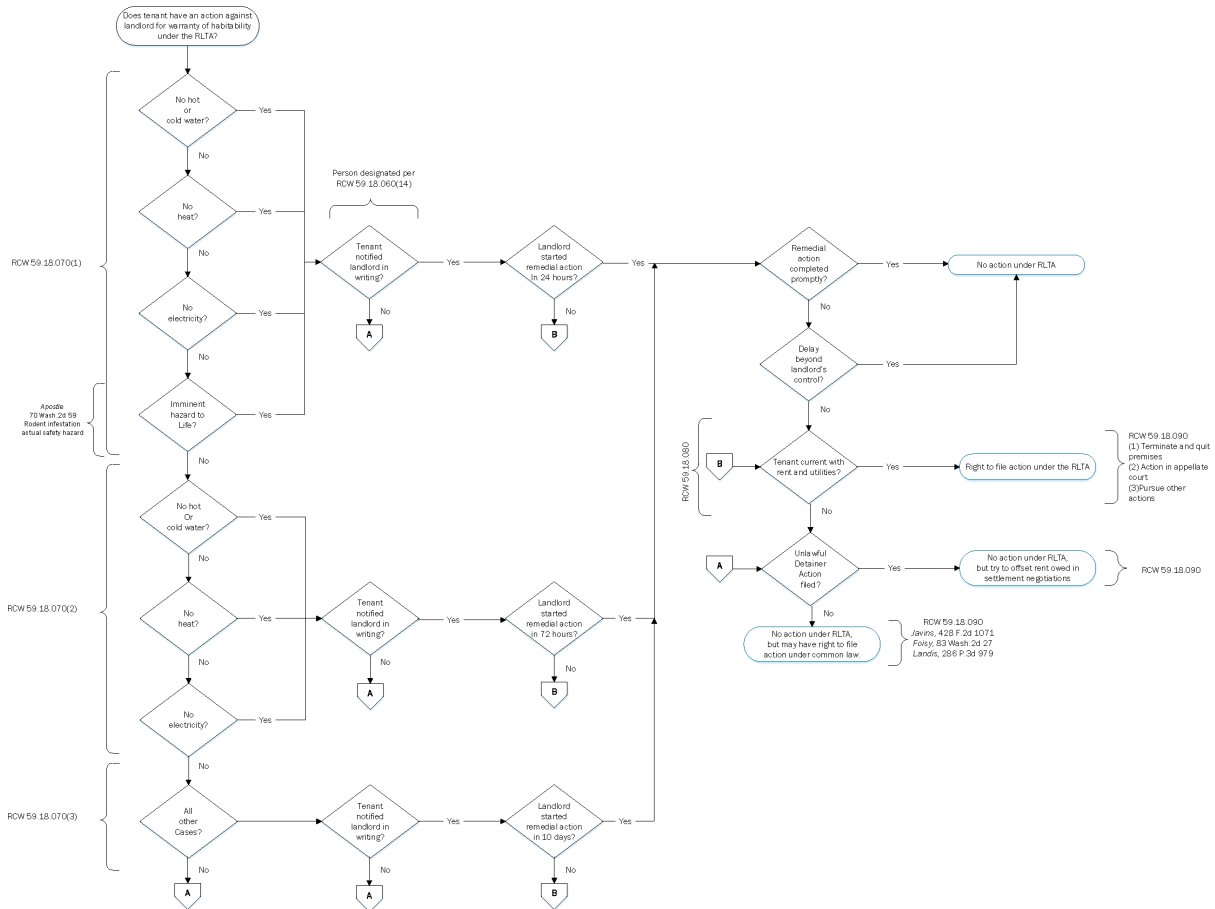
If the landlord does not commence remedial action in the statutorily defined period, and the delay is the landlord's fault (landlord could rectify issue if they chose to but have not yet acted), then the SRSWA application will guide the tenant through exercising their statutory rights including terminating the lease and quitting the premises, suing the landlord for damages in small-claims court, or effecting repairs and charging the landlord for the cost of repairs and damages.

If available, the lease can be scanned, including documents on the status of the mechanical systems in the rental unit, and the mold, smoke detector, and tenant's obligations under the lease will be scanned and machine learning analyze the data to modify the algorithm.

Application is doing more than merely functioning as a scrivener to fill-in forms but is deciding about the tenant's legal rights such as determining which part of the statute applies in each scenario, delivering notices in manner which assures proof of service, and commencing a legal action including potential starting a civil case in small claims or other court.

In complex cases, the SRSWA application will assist the client in finding lawyers willing to sue the landlord.

# BLUEPRINT FOR A LEGAL REGULATORY LAB IN WASHINGTON STATE



## 9.2.5 The Intended Market for the Nontraditional Legal Service

The population of Washington State in July 2019 was 7,614,893.<sup>23</sup> The Census Bureau estimated there were 3,195,004 housing units. A housing unit is a house, an apartment, a group of rooms, or a single room. 63% of the housing units are owner occupied, so 37% are rented. With about 2.55 people per housing unit, the calculated number of people renting would be  $(3,195,004 * 0.37) * 2.55$  or 3,014,486.27.

<sup>23</sup> <https://www.census.gov/quickfacts/WA>.

The number of households in Seattle are 323,446.<sup>24</sup> Using the same estimates as for the state, the number of rental households would be  $(323,446 * 0.37)$  or 119,675 units. Looking at City of Seattle Code complaints for 2019<sup>25</sup>, the number of complaints about power, heat, plumbing, mold, and bugs was about 25% of the total code complaints. This means that approximately  $(119,675 * 0.25)$  or 29,918 rental units in Seattle had a potential safety or habitability issue.

Using this number statewide,  $(3,195,004 * 0.25)$  or 798,751 rental units per year in Washington had a habitability issue.

The SRSWA application is not designed for any other jurisdiction at this time, as each state has different landlord-tenant law statutes.

#### **9.2.6 When the Provision of Nontraditional Legal Service Can Begin**

The SRSWA application is in beta testing and will be ready for initial distribution to consumers in January 2022.

### **9.3 How the Nontraditional Legal Service Reduces the ATJ Gap**

#### **9.3.1 Which Specific Consumers the Nontraditional Legal Service Targets**

The SRSWA application targets tenants in Washington State.

#### **9.3.2 How the Nontraditional Legal Service Provides High-quality Service**

The SRSWA algorithms, machine learning training, and test data has been reviewed by lawyers who advise tenants in the RLTA for a variety of agencies, including the King County Bar Association Housing Justice Project, and the Tenants Union. It follows the statutory definition of what constitutes or makes a rental unit uninhabitable, and the rights of tenants and the obligations of landlords. A professor at Seattle University who teaches a Landlord-Tenant class has also reviewed the application's logic and algorithms and helped to create test data.

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<sup>24</sup> <http://www.seattle.gov/opcd/population-and-demographics/about-seattle>

<sup>25</sup> <https://data.seattle.gov/Community/Code-Complaints-and-Violations-Map/rsmq-5vwm>

Anonymized data about each transaction, and the status of the transaction over time, and source documents are used with machine learning to better train the algorithm and ensure it is working correctly and protecting tenant's rights.

Consumers can report a problem through the application, and a chat interface assists them with most issues. Consumers with complex problems outside the scope of the application will be referred to an attorney who provides legal services to tenants.

### **9.3.3 How the Nontraditional Legal Service is Cost-effective**

The SRSWA application is free to download. Tenants will be charged only all costs associated with their transaction, such as the costs of sending certified mail or other notices.

Washington Tenant Software makes money by selling information about bad rental units, and bad landlords (those continually failing to repair rental units) to companies such as Zillow and Apartments.com who value such data. No tenant data is sold or traded to pay for SRSWA costs.

### **9.3.4 How the Nontraditional Legal Service is Consumer Accessible**

Although a tenant/consumer might figure out how to correctly follow an uninhabitable issue through the legal process correctly, few seem able to do more than report to a county or city code enforcement office which might take timely action.

Most consumers make incorrect assumptions such as they can withhold or stop paying rent, leading to potential eviction (unlawful detainer) actions.

According to the US Census, Washingtonians have a high percentage of computers in their homes (greater than 90%), and most have access to high-speed internet, making the application highly available.

Few attorneys will take on uninhabitability matters for tenants, as few tenants can afford to pay hundreds of dollars per hour for such legal service.

Therefore, the SRSWA application should enable more tenants to exercise their legal rights under the RLTA.

### **9.3.5 Other Aspects of the Nontraditional Legal Service that Close the ATJ Gap.**

Many tenants live with the problem, and incur additional costs because of damage to their health, loss of wages, or harm from attempting repairs on their own.

The lower the income, the less likely the person can make repairs. Many fear retaliation including eviction or non-renewal of the lease. Others worry about being labeled a problem tenant, making it hard to rent another unit.

Few attorneys practice the tenant side of landlord-tenant law.

### **9.3.6 Estimated ATJ Reduction Score**

Given the information in this section on reducing the ATJ gap, the SRSWA application estimates the likelihood of reducing the gap is possible (2), and the impact is significant (1), giving the application a score of 2.

## **9.4 Risk of Harm to Consumers**

### **9.4.1 What Potential Harm Could Befall a Consumer**

Consumers may be harmed if they overstate the nature of the problem, fail to take subsequent steps in the process promptly, or stop using the application once they initiate a complaint to the landlord.

To mitigate the harm, the SRSWA application will email the consumer with the status of their matter on an ongoing basis, and clearly detailing the next steps and deadlines.

It may not scale across WA because of each court having different court rules (for example, not all Washington county courts

support e-filing). However, it may be possible to modify the application to accommodate different statutes, but that is not part of the current plans.

**9.4.2 Consumers at Most Risk of Harm**

The SRSWA application will be initially released in English and Spanish. Although every attempt has been made to use non-legal language and terms, uninhabitability and unlawful detainer matters can include complex scenarios and fact patterns, therefore, those with low reading skills or literacy may make mistakes using the application.

Those consumers in poorer communities, where affordable housing is at a premium, are at risk of retaliation from the landlord, but such risk may be less than if the tenant tried to act on their own (without assistance of the application or a legal professional).

**9.4.3 Potential Consumer Harm Score**

<b>Risk</b>	<b>Likelihood</b>	<b>Harm</b>	<b>Mitigation</b>	<b>Risk Score</b>
Misstatement of inhabitability issue	2	2	Clear descriptions of problems	4
Failure to follow steps, take required step	2	2	Application prompts consumer to take next step before any deadline	4
Stop using the application before resolution of the matter	1	3	Application notes lack of activity and representative follows up	3
			Average Risk	3.6

**9.4.4 When the Risk is Likely to Occur (Present or Future)**

The greatest risk of consumer harm occurs when the consumer initially uses the application and lessens over time (uninhabitable issues have a relatively short timeline).

<b>Risk</b>	<b>Likelihood</b>	<b>Occurs</b>	<b>Mitigation</b>	<b>Risk Score</b>
Misstatement of inhabitability issue	2	1	Clear descriptions of problems	2
Failure to follow steps, take required step	2	1	Application prompts consumer to take next step before any deadline	2
Stop using the application before resolution of the matter	1	1	Application notes lack of activity and representative follows up	1
			Average Risk	1.6

**9.4.5 How Any Risk of Harm can be Measured**

The application collects anonymized data about usage, including started transactions, unfinished or abandoned transactions, and failed transactions.

Consumers can report and track issues with the application through a portal and an issue id for tracking will be assigned to any complaint entered through the application.

Consumer satisfaction will be measured after each transaction.

**9.5 Entity Information**

**9.5.1 Type of Entity**

Washington Tenant Software is a Washington State LLC. The LLC is the developer of the SRSWA application.

**9.5.2 Officers**

John and Jane Doe are the members of Washington Tenant Software LLC. John Doe is the member manager.

**9.5.3 Years of Operation**

Washington Tenant Software was incorporated in 2019.

**9.5.4 Financial Information**

Washington Tenant Software has raised \$2 million dollars from Angel Investors and is not expected to seek any additional funding until it is in the market. SRSWA is the entity's first application.

**9.5.5 Business Plan for the Nontraditional Legal Service**

In 6.5.4, WTS has raised capital to fund the initial release of the application. In 6.3.3 Washington Tenant Software makes money selling information about landlords and rental units, not client or tenant data.

**9.6 Other Material Information**

SRSWA intends to compensate lawyers advising about the RLTA with monetary payments for work performed and does not intend on having any legal professionals on staff or as members of the corporation.

SRSWA is a software development firm and is not a law firm.



## 10.0 Appendix C: Sample Supreme Court Order Laboratory Participation

### THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE )  
APPLICATION OF WASHINGTON TENANT )  
SOFTWARE – SAFE SPACES WASHINGTON ) ORDER  
PARTICIPATION IN THE WASHINGTON ) No 00000-A-000  
COURTS LEGAL REGULATORY SANDOX )

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WHEREAS, the Washington State Supreme Court has determined to implement a strategic initiative to evaluate and assess efficacy of nontraditional legal services to provide legal services that lessen the ATJ gap in Washington state while minimizing risk of consumer harm, and to evaluate the correct level of regulation for such nontraditional legal services;

NOW, THEREFORE, IT IS HEREBY ORDERED:

Washington Tenant Software, a Washington State entity, may offer legal services from its Safe Rental Spaces Washington application in Washington State as an entity providing software or internet services provider without legal professional involvement.

Washington Tenant Software shall only offer legal services in Washington State in the Housing—Rental legal services area.

Washington Tenant Software may refer clients with a complex habitability issue, which the Safe Rental Spaces Software cannot process, to a licensed and authorized legal professional in Washington, and to charge a referral fee to such legal professionals.

Washington Tenant Software shall conform to the HIGH-risk reporting requirements imposed by the Washington Courts Legal Regulatory Lab Board.

Washington Tenant Software shall prominently display disclosure to consumers using the Safe Rental Spaces Washington application it is operating in the Washington Courts Legal Regulatory Lab, that it is a non-legal professional ownership company and is not a law firm, and how consumers can report a problem with the application or service.

If Washington Tenant Software desires to change these requirements, it must submit any such change to the Washington Courts Legal Regulatory Lab for assessment and a modification to this order.

This authority is granted for 24 months from the date the nontraditional legal service is provided to consumers in Washington State, as reported to the Washington Courts Legal Regulatory Lab Board.

This authority and any such extension or permanent authorization is subject to Washington Tenant Software's compliance with the conditions and regulations set forth by the Washington Courts Legal Regulatory Lab Board, the Washington Courts Legal Regulatory Lab Board's recommendation to the Supreme Court, and verification by the Washington Courts Legal Regulatory Board's verification that Washington Tenant Software has a record of compliance with all requirements, statutes, regulations, and court rules and the nontraditional legal services are not harming consumers.

DATED at Olympia, Washington this <day> day of <month>, <year>.

DRAFT