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Emma Wormington

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# WHY MISSOURI STATE COURTS SHOULD IMPLEMENT AN ONLINE DISPUTE RESOLUTION PLATFORM TO RESOLVE TRAFFIC TICKETS, WARRANTS AND PLEAS, AND MISDEMEANORS

*Emma Wormington\**

## I. INTRODUCTION

### *A. Overview*

At the beginning of the COVID-19 pandemic, COVID forced United States courts to abruptly change various processes as a result of an urgent requirement that all court proceedings be conducted virtually.<sup>1</sup> Prior to the pandemic, courts traditionally used various audio and video technologies primarily to supplement court processes to ensure efficiency and accessibility.<sup>2</sup> However, beginning in March 2020, courts shut their doors to the general public in order to mitigate the spread of COVID.<sup>3</sup> Courts quickly shifted many court processes to online platforms if resources were available to do so, and subsequently relied on those online platforms while courts were closed.<sup>4</sup>

Generally, courts had not relied on electronic communications (*e.g.*, Webex, or similar video-based platforms) to conduct routine proceedings—such as criminal defendants' first appearances—until the COVID pandemic forced courts to

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\* B.A., University of Kansas, 2019; J.D. Candidate, University of Missouri School of Law, 2023; Associate Member, *Journal of Dispute Resolution*, 2021-2022. I am grateful to Professor Christina Wells for her insight, guidance, and support during the writing of this Note, as well as the *Journal of Dispute Resolution* for its help in the editing process.

1. JOINT TECH. COMM., JUDICIAL PERSPECTIVES ON ODR AND VIRTUAL COURT PROCESSES (2020), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0028/40978/JTC-Judicial-Perspectives-on-ODR-and-Other-Virtual-Court-Processes.pdf](https://www.ncsc.org/_data/assets/pdf_file/0028/40978/JTC-Judicial-Perspectives-on-ODR-and-Other-Virtual-Court-Processes.pdf). The COVID-19 pandemic began in mid-March 2020, *id.* Courts shut down as a result of severe limitations on in-person gatherings, *id.* Instead of traditional in-person court operations, courts shifted to virtual processes in an attempt to continue court operations, *id.*

2. *See id.*; Herbert B. Dixon, *The Basics of a Technology-Enhanced Courtroom*, A.B.A. (Nov. 1, 2017), [https://www.americanbar.org/groups/judicial/publications/judges\\_journal/2017/fall/basics-technology-enhanced-courtroom](https://www.americanbar.org/groups/judicial/publications/judges_journal/2017/fall/basics-technology-enhanced-courtroom) (examples of technology used to supplement court processes include video displays, monitors at the witness stand, evidence cameras, laptop connections, electronic storage of exhibits, and software for video conferencing).

3. Sup. Ct. Mo., *Order In re: Response to the Coronavirus Disease (COVID-19) Pandemic*, MO. CTS., (Mar. 22, 2020), <https://www.courts.mo.gov/page.jsp?id=153093>.

4. JOINT TECH. COMM., *supra* note 1.

consider these online platforms as an alternative to traditional, in-court proceedings.<sup>5</sup> Beyond using electronic communications to conduct routine procedural hearings, a small number of courts even conducted virtual bench trials and virtual jury trials.<sup>6</sup> The courts' ability to adopt virtual technologies in a quick manner enabled them "to continue to do the functions essential for the judicial branch."<sup>7</sup>

Despite the U.S. court system's ability to pivot to virtual technologies and their success in doing so, courts across the country are backlogged with a large accumulation of pending cases two years into the pandemic.<sup>8</sup> Missouri state courts are no exception. For example, a St. Louis, Missouri court is running approximately 1,900 cases behind on its docket, which is higher than its pre-pandemic normal backlog.<sup>9</sup> An online dispute resolution (hereinafter "ODR") platform, used to resolve traffic violations, warrants and pleas, and certain misdemeanors, would alleviate some of the burden on the Missouri state court system by increasing judicial efficiency and accessibility, and directly combat the backlogged docket issue by quickly moving minor cases through the court system.<sup>10</sup>

### B. Background – Missouri

Missouri state courts are continuing to manage the case backlog due to court shutdowns and navigating the challenges of virtual court proceedings in COVID times.<sup>11</sup> Like other courts across the country, Missouri state courts were required to shut their doors to the general public in order to mitigate the spread of COVID.<sup>12</sup> In March 2020, the Missouri Supreme Court suspended in-person proceedings.<sup>13</sup> The Missouri Supreme Court stated that "[d]espite the suspension of in-person court proceedings, Missouri courts still must continue to carry out the core, constitutional functions of the Missouri judiciary as prescribed by law and continue to uphold the constitutional rights of litigants seeking redress in any Missouri court."<sup>14</sup> Like

5. *As Pandemic Lingers, Courts Lean Into Virtual Technology*, U.S. COURTS (Feb. 18, 2021), <https://www.uscourts.gov/news/2021/02/18/pandemic-lingers-courts-lean-virtual-technology>.

6. *Id.* ("As the coronavirus (COVID-19) has dragged on, a small number of courts have adapted electronic proceedings to meet more challenging situations. Several courts have conducted virtual bench trials, which do not require a jury. ... In perhaps the most ambitious experiment yet, the Western District of Washington recently began holding all-virtual jury trials in civil lawsuits.")

7. JOINT TECH. COMM., *supra* note 1.

8. Griff Witte & Mark Berman, *Long After the Courts Shut Down for COVID, the Pain of Delayed Justice*, WASH. POST (Dec. 19, 2021, 6:00 AM), [https://www.washingtonpost.com/national/covid-court-backlog-justice-delayed/2021/12/18/212c16bc-5948-11ec-a219-9b4ae96da3b7\\_story.html](https://www.washingtonpost.com/national/covid-court-backlog-justice-delayed/2021/12/18/212c16bc-5948-11ec-a219-9b4ae96da3b7_story.html).

9. Christine Byers, *St. Louis Court Backlog Hits 1,900 Cases*, KSDK (Feb. 9, 2021, 6:29 PM), <https://www.ksdk.com/article/news/local/st-louis-court-backlog-hits-1900-cases/63-bdca4a71-ec2f-4c05-91b2-037f821f45dc>. The increase in backlog is largely attributable to COVID – restricting access to the courthouse may mitigate the spread of COVID, but it also has limited the ability to hold jury trials. Criminal defendants are face three options: accepting a plea offer, proceeding with a bench trial, or holding out for a jury trial.

10. Amy Schmitz, *Expanding Access to Remedies through E-Court Initiatives*, 67 BUFF. L. REV. 89, 91 (2019).

11. See Byers, *supra* note 9.

12. See *Statutory and Constitutional Speedy Trial Rights in the Wake of the COVID-19 Pandemic: Missouri*, AEQUITAS (2020), <https://innovativeprosecutionsolutions.org/wp-content/uploads/2020/09/Missouri-Speedy-Trial-and-COVID-19-1.pdf>.

13. *Id.*

14. Sup. Ct. Mo., *Order In re: Response to the Coronavirus Disease (COVID-19) Pandemic*, MO. CTS., (Mar. 22, 2020), <https://www.courts.mo.gov/page.jsp?id=153093>.

courts across the country, Missouri courts shifted to alternative technologies like teleconferencing and video conferencing in light of the court shutdowns.<sup>15</sup>

The Missouri Supreme Court noted several exceptions to the blanket prohibition of in-person proceedings, including “proceedings necessary to protect the constitutional rights of criminal defendants,” “proceedings ... pertaining to juvenile delinquency and abuse, neglect, and termination of parental rights,” emergency child custody orders, and mental health orders.<sup>16</sup> Subject to the discretion of each presiding judge, the court must hold these proceedings in person if alternative technologies were not suitable.<sup>17</sup> The court recognized that certain types of cases were not suitable, or incapable, of resolution through technology-based services like video conferencing.<sup>18</sup>

Ultimately Missouri state courts were able to pivot and successfully utilize technologies like Webex amidst COVID court shutdowns.<sup>19</sup> However, the Missouri state court system was affected immensely, and the court system is continuing to manage the case backlog.<sup>20</sup> For example, criminal defendants detained in Missouri were the most impacted because jury trials were at a standstill—fewer jurors in the courthouse may have mitigated the spread of COVID, but it also hindered the jury trial process.<sup>21</sup> Without jury trials, criminal defendants waited longer for their day in front of a jury. Those against waiting for their jury trial had only two options to accelerate the disposition of their case: proceed with a bench trial or accept a plea offer.<sup>22</sup> Because of COVID and state-wide court shutdowns, Missouri courts became stagnant and increasingly backlogged, more so than before the pandemic.

To alleviate some of the burden on the Missouri state court system, Missouri courts should implement an online dispute resolution platform to resolve traffic violations, warrants and pleas, and misdemeanors.<sup>23</sup> An ODR platform will positively impact the Missouri state court system because it will (1) increase judicial efficiency and accessibility, (2) prevent the issuance of warrants, and (3) directly reduce the backlogged docket problem by quickly moving relatively minor cases through the court system.<sup>24</sup>

This Note proceeds in four parts. Part II discusses various aspects of online dispute resolution, including a brief history and general advantages of supplementing the U.S. court system with online dispute resolution. Part III examines (1) how the U.S. court system is currently using online dispute resolution services; (2) the

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15. See Sup. Ct. Mo., *Order In re: Response to the Coronavirus Disease (COVID-19) Pandemic*, MO. CTS., (Mar. 22, 2020), <https://www.courts.mo.gov/page.jsp?id=153093>; Alexander S. Gillis, *Definition: teleconference*, TECH TARGET, <https://www.techtarget.com/searchunifiedcommunications/definition/teleconference> (last visited Sept. 16, 2022) (teleconferencing generally involves communication between two devices with only an audio component, whereas video conferencing is the communication between two devices with both an audio and a video component).

16. Sup. Ct. Mo., *Order In re: Response to the Coronavirus Disease (COVID-19) Pandemic*, MO. CTS., (Mar. 22, 2020), <https://www.courts.mo.gov/page.jsp?id=153093>.

17. *Id.*

18. See generally *id.*

19. 2020 ~ *Courts Shift to Remote Proceedings During COVID-19 Pandemic*, MO. CTS., <https://www.courts.mo.gov/page.jsp?id=174582> (last visited Sept. 16, 2022).

20. Byers, *supra* note 9.

21. See Byers, *supra* note 9.

22. Byers, *supra* note 9.

23. See *ODR Solutions*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/odr-solutions> (last visited Sep. 16, 2022).

24. Schmitz, *supra* note 10.

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distinction between technology used to support courts and court-related ODR platforms; (3) examples of ODR platforms used to streamline court-related processes; and (4) an example of another state-level jurisdictions using an ODR platform. Part IV addresses the practical implications and challenges that Missouri may face when implementing an ODR platform. This Note argues that the Missouri court system should implement an online dispute resolution (“ODR”) platform to resolve traffic tickets, warrants and pleas, and misdemeanors.

## II. AN OVERVIEW OF ONLINE DISPUTE RESOLUTION

In courts across the United States, online dispute resolution is an up-and-coming method of resolving certain types of cases that are typically disposed of in the traditional court systems.<sup>25</sup> Various jurisdictions across the country have started using ODR platforms to increase judicial efficiency and accessibility to courts.<sup>26</sup> ODR platforms have the potential to immensely impact U.S. court systems with the number of advantages they provide.<sup>27</sup>

### A. *Brief History of Online Dispute Resolution*

Online dispute resolution “refers to a broad set of technologies meant to either supplement or replace ways in which people have traditionally resolved their disputes.”<sup>28</sup> ODR is a form of alternative dispute resolution (“ADR”).<sup>29</sup> ODR “builds upon the foundational characteristics” of ADR, specifically accessibility and efficiency in resolving conflict and disputes.<sup>30</sup>

The emergence of ODR aligns with the emergence of digital commercial transactions.<sup>31</sup> One looming question for courts in the mid-1990s concerned the jurisdiction and method of resolution for disputes arising from online transactions.<sup>32</sup> A key development in the field of ODR was the website eBay.<sup>33</sup> Founded in 1995, eBay is an e-commerce platform that allows consumers to buy and sell products.<sup>34</sup> In addition to facilitating transactions, eBay offers parties an online platform to quickly and efficiently settle their disputes online.<sup>35</sup> The number of disputes that

25. *Online Dispute Resolution*, RESOL. SYS. INST., <https://www.abourtsi.org/special-topics/online-dispute-resolution> (last visited Sept. 15, 2022).

26. Schmitz, *supra* note 10 at 91, 115, 117. Broadly speaking, states such as Michigan, Ohio, and New York have started to use court-related ODR, *id.* Michigan implemented its pilot program in its state courts at the county level, *id.* Utah and Texas are other examples of states that plan to offer ODR, *id.*

27. *See* Schmitz, *supra* note 10 at 91, 115, 117.

28. *Online Dispute Resolution*, *supra* note 25.

29. *Online Dispute Resolution*, *supra* note 25.

30. Schmitz, *supra* note 10, at 91.

31. Schmitz, *supra* note 10, at 91.

32. Schmitz, *supra* note 10, at 91.

33. Schmitz, *supra* note 10, at 91.

34. *What is eBay? [H]ow Does ebay Work?*, ECOMMERCE PLATFORMS, <https://ecommerce-platforms.com/glossary/what-is-ebay> (last visited Sept. 15, 2022).

35. Schmitz, *supra* note 10, at 91; *Online Dispute Resolution*, *supra* note 25; Louis F Del Duca et al., *eBay’s De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers*, ARB. L. REV. 204, 206–07 (2014). First, eBay asks the buyer to diagnose the specifics of their complaint and to suggest a preferred resolution, then eBay then encourages the buyers and sellers to communicate directly through its messaging platform, *id.* If the matter cannot be resolved through negotiation, the dispute then goes to the Resolution Services team, who evaluates the buyer’s claims and makes the final decision, *id.*

eBay's platform resolves each year—60 million—proves that ODR is capable of efficiently resolving an immense number of cases without the intervention of our traditional court system.<sup>36</sup> Amazon and PayPal are other examples of websites that offer free ODR programs similar to eBay.<sup>37</sup>

Jurisdictions outside of the United States were the first to apply ODR to their court systems.<sup>38</sup> For example, Canada, the United Kingdom, and China have already implemented ODR pilot projects in their court systems.<sup>39</sup> Although ODR is in its early stages in U.S. courts,<sup>40</sup> some state-level jurisdictions across the country have started to implement and embrace ODR to help “manag[e] their caseloads, improv[e] outcomes, and better serv[e] litigants.”<sup>41</sup> ODR is being used in more than 50 county statewide court systems in the U.S., and the number of jurisdictions using court related ODR is predicted to increase from these 2019 statistics.<sup>42</sup> Because of the benefits and success of ODR in state courts,<sup>43</sup> an ODR program will similarly positively impact the Missouri state court system by increasing judicial efficiency and directly reducing the backlogged docket.

### B. *Advantages of Supplementing the U.S. Court System with Online Dispute Resolution*

ODR is advantageous to the traditional U.S. court system and litigants because it will help mitigate the court docket backlog and streamline the court system.<sup>44</sup> Two key benefits of using ODR platforms are efficiency and accessibility.<sup>45</sup> In terms of judicial efficiency, ODR is more efficient than traditional judicial proceedings.<sup>46</sup> The less-complex cases that typically overload dockets<sup>47</sup> and consume numerous judicial resources are best suited for ODR. ODR can push these cases through the system more quickly because ODR platforms can “be accessed anytime, anywhere, and is not reliant upon the parties and the court.”<sup>48</sup> Similarly, in terms of efficiency for litigants, ODR allows litigants to bypass in-person judicial

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36. *Online Dispute Resolution*, *supra* note 25.

37. Schmitz, *supra* note 10, at 101.

38. *Online Dispute Resolution Moves From E-Commerce to the Courts*, PEW CHARITABLE TR. (June 4, 2019), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/06/04/online-dispute-resolution-moves-from-e-commerce-to-the-courts> (“Court ODR was pioneered outside of the United States in places such as Singapore, the Netherlands, and Canada.”); Colin Rule, *Using Online Dispute Resolution to Expand Access to Justice*, OKLA. BAR J. (Aug., 2019) (British Columbia’s ODR handled almost 14,000 small claims cases in its first seven months of operation, and “[g]overnment money and personnel that used to be devoted to small-claims cases – including judges, sheriffs, clerks and others – are being redirected to reduce the backlog of criminal and family law cases.”).

39. Schmitz, *supra* note 10, at 125.

40. Schmitz, *supra* note 10, at 104.

41. *Online Dispute Resolution*, *supra* note 25.

42. *Online Dispute Resolution Moves From E-Commerce to the Courts*, *supra* note 38.

43. *See e.g.*, *supra* Section III B(ii).

44. *See* Schmitz, *supra* note 10, at 91; *ODR Solutions*, *supra* note 23.

45. Schmitz, *supra* note 10, at 91.

46. Schmitz, *supra* note 10, at 104.

47. Schmitz, *supra* note 10, at 104.

48. JOINT TECH. COMM., JTC RESOURCE BULLETIN: ODR FOR COURTS (2017) (“For example, the online traffic pleading system implemented in several Michigan district courts has reduced the time to resolution for disputed cases from months to days, though all parties still ‘came to the table’ — the offender, law enforcement, and the judge or magistrate.”).

proceedings for minor cases that may not even require an attorney and could easily be resolved in an online forum.<sup>49</sup>

Furthermore, ODR increases accessibility to remedies and justice.<sup>50</sup> An internet-based platform has the potential to reach a larger number of litigants and give those litigants an easier means to resolve disputes.<sup>51</sup> Although some types of cases require only one court appearance, some individuals with physical barriers may struggle to appear in court.<sup>52</sup> Individuals with low-paying jobs may not be able to take time off of work or afford childcare.<sup>53</sup> Others may live at a significant distance from the jurisdiction or courthouse.<sup>54</sup> Furthermore, some individuals may experience anxiety about appearing in person.<sup>55</sup> ODR would generally resolve many of these issues by increasing accessibility.<sup>56</sup>

### III. HOW THE U.S. COURT SYSTEM IS CURRENTLY USING ONLINE DISPUTE RESOLUTION

Court-related ODR platforms are distinguishable from the support technology that U.S. Courts used during court shutdowns and throughout the COVID pandemic.<sup>57</sup> Support technology, such as Webex and other platforms, provides the court with an interface to accomplish specific tasks, including virtual hearings and preparing and filing court documents online.<sup>58</sup> In contrast, court-related ODR platforms assist litigants in parts of their case or resolve their case entirely.<sup>59</sup> ODR providers offer assistance in different areas of the legal system, including small claims, commercial claims, family law, traffic violations, and warrants and pleas.<sup>60</sup>

#### A. *Court-related ODR Platforms vs. Technology Used to Support Courts*

Court-related online dispute resolution and technology used to support court rooms are distinguishable in several ways. First, court-related ODR is a platform that operates exclusively online without any in-person appearances before the court.<sup>61</sup> Support technology is used to accomplish specific tasks related to

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49. Schmitz, *supra* note 10, at 104.

50. Schmitz, *supra* note 10, at 104.

51. Schmitz, *supra* note 10, at 104.

52. JOINT TECH. COMM, *supra* note 48, at 7.

53. JOINT TECH. COMM, *supra* note 48, at 7.

54. JOINT TECH. COMM, *supra* note 48, at 7.

55. JOINT TECH. COMM, *supra* note 48, at 7 (“ODR also removes much of the anxiety individuals may experience over appearing in person to address any issue, but particularly to address uncomfortable or threatening issues like outstanding warrants, overdue fees, tickets, immigration status, domestic violence, and other legal matters.”).

56. JOINT TECH. COMM, *supra* note 48, at 7.

57. *What is ODR?*, NAT’L CR. FOR STATE CTS., <https://www.ncsc.org/odr/guidance-and-tools> (last visited Sept. 11, 2022).

58. *Id.*

59. *Id.*

60. See AMY J. SCHMITZ & JANET MARTINEZ, *ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE: A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION* 2–11 (Mohamed S. Abdel Wahab et al. eds. 2021).

61. *What is ODR?*, *supra* note 57.

traditional in-court proceedings, e.g., e-filing and video hearings.<sup>62</sup> For example, Turbocourt is used to help prepare and file court documents online (“e-filing”).<sup>63</sup> Another example is Webex, which is an online video and audio conferencing platform that was used by courts during COVID to conduct video hearings.<sup>64</sup> These two platforms were used to accomplish specific tasks related to traditional in-court proceedings—preparing and filing documents and conducting hearings virtually.<sup>65</sup> In contrast, ODR platforms operate exclusively online without any of these connections to traditional court procedures.<sup>66</sup>

A second, related difference between court-related ODR and support technology used in courtrooms is that ODR participants utilize ODR platforms for parts of, or for the entirety of, their case.<sup>67</sup> Support technology merely assist judicial or court staff in conducting procedures and decision-making.<sup>68</sup>

There are many types of ODR providers in the United States.<sup>69</sup> One chart categorizes ODR providers by (1) subject matter, (2) function, and (3) whether it provides ADR or ODR.<sup>70</sup> ODR platforms reach a wide variety of legal matters, including commercial claims, small claims, consumer claims, civil claims, divorce proceedings, family law, traffic violations, and warrants and pleas.<sup>71</sup>

Few ODR providers offer services to resolve traffic violations and minor criminal offenses. One example of such a provider is Judicial Innovations.<sup>72</sup> Judicial Innovations is an online traffic resolution system that focuses entirely on resolving traffic court cases.<sup>73</sup> Instead of an entire court docket devoted to traffic court in each jurisdiction, this online system resolves and disposes of traffic citations in an efficient manner.<sup>74</sup> Another example of this type of ODR provider, discussed in depth in Part III(B), is Matterhorn by Court Innovations (“Matterhorn”).<sup>75</sup> University of Michigan law professor J.J. Prescott and student Ben Gubernick created Matterhorn in 2014.<sup>76</sup> Prescott waited four hours and missed a day of work to appear in court for a traffic ticket.<sup>77</sup> Around this time, the two “brainstorm[ed] an online resolution program to help with the backlog of outstanding warrants in the court system,” and decided to include resolution of traffic tickets and other minor legal offenses in this online resolution program.<sup>78</sup>

62. *What is ODR?*, *supra* note 57.

63. TURBO CT., <https://info.turbocourt.com> (last visited Sept. 11, 2022).

64. *Join a Meeting*, U.S. CTS., <https://us-courts.webex.com/webappng/sites/us-courts/dashboard/home> (last visited Sept. 11, 2022).

65. *See id.*; TURBO CT., *supra* note 63.

66. *What is ODR?*, *supra* note 57.

67. *What is ODR?*, *supra* note 57.

68. *What is ODR?*, *supra* note 57.

69. SCHMITZ & MARTINEZ, *supra* note 60.

70. SCHMITZ & MARTINEZ, *supra* note 60.

71. SCHMITZ & MARTINEZ, *supra* note 60.

72. *Online Traffic Resolution System*, JUD. INNOVATIONS, <https://www.judicialinnovation.com/online-traffic-resolution> (last visited Sept. 11, 2022).

73. *See id.*

74. *Id.*

75. *ODR Solutions*, *supra* note 23.

76. Anna Stolley Persky, *Home Court Advantage Michigan Program Allows People to Contest Traffic Tickets and Handle Other Minor Legal Matters Online Instead of in Court* in 102 A.B.A. JOURNAL 16, 17 (2016); *About Us*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/about-us/> (last visited Sept. 14, 2022).

77. Persky, *supra* note 76.

78. Persky, *supra* note 76.



Matterhorn is now used by more than 150 courts, lawyers, and municipalities in over 20 states.<sup>79</sup> Matterhorn is used to resolve many types of cases, including civil and small claims disputes,<sup>80</sup> traffic citations, minor misdemeanors,<sup>81</sup> warrants, and pleas.<sup>82</sup> Each jurisdiction first implements Matterhorn as a traffic ticket online resolution program, and then the jurisdiction can expand access to a wider variety of cases such as small claims, warrant, and pleas.<sup>83</sup>

B. *A Closer Examination of Matterhorn and an Example of a State-level Jurisdiction Using an ODR Platform*

i. *A Closer Look at Matterhorn*

Matterhorn is a unique ODR platform because it is the only platform that has extended its services into criminal law matters.<sup>84</sup> ODR for warrant prevention, warrant resolution, and pleas is beneficial for the court, the citizens, and the community.<sup>85</sup> Each of these three types of matters is resolved through a step-by-step process, and each offers distinct benefits.<sup>86</sup>

Matterhorn offers online warrant prevention management, which helps individuals “avoid adding to [their] open warrants by notifying people and averting the warrant before it happens.”<sup>87</sup> The warrant prevention program works directly with the court or jurisdiction’s case management system to communicate all relevant information and scheduling about the case.<sup>88</sup> First, the court notifies the individual

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79. *ODR Solutions*, *supra* note 23.

80. *Civil Case Online Resolution*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/odr-solutions/civil/> (last visited Sept. 15, 2022) (examples of civil case types include payments disputes, property management disputes, income and property tax cases, foreclosure, landlord-tenant, licensing, unemployment claims, retirement, benefits, workers compensation, and utilities).

81. *ODR Solutions*, *supra* note 23 (examples include traffic citations, parking citations, minor civil infractions, and minor misdemeanors).

82. *Warrant and Pleas*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/odr-solutions/warrants-pleas/>, (last visited Sept. 15, 2022). Online warrant prevention helps you avoid adding to your open warrants by averting the warrant, *id.* The program notifies the individual before a failure-to-appear warrant is issued and then works with the person to address the issue, *id.* The program also helps those with outstanding warrants to clear their warrant by offering an online way of communicating with the court, *id.* Finally, online plea converts the traditionally slow plea-by-mail process to a quick, digital process, *id.* Plea online is an alternative for those who do not work or live nearby, are incarcerated, or have a significant barrier to attend court, *id.*

83. *Traffic Solutions*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/odr-solutions/traffic/>, (last visited Sept. 15, 2022).

84. *Warrant Prevention*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/odr-solutions/warrants-pleas/warrant-prevention/>, (last visited Sept. 15, 2022); *Warrant Resolution*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/odr-solutions/warrants-pleas/warrant-resolution/>, (last visited Sept. 15, 2022); *Plea Online*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/odr-solutions/warrants-pleas/plea-online/>, (last visited Sept. 15, 2022).

85. *Warrant Prevention*, *supra* note 84; *Warrant Resolution*, *supra* note 84; *Plea Online*, *supra* note 84.

86. *Warrant Prevention*, *supra* note 84; *Warrant Resolution*, *supra* note 84; *Plea Online*, *supra* note 84.

87. *Warrant Prevention*, *supra* note 84.

88. *Warrant Prevention*, *supra* note 84.

before the warrant is issued.<sup>89</sup> Second, users take steps to resolve the warrant.<sup>90</sup> The third and final step is the court may reschedule the court date and avert the warrant.<sup>91</sup> Warrant prevention is beneficial to courts because it avoids adding to court backlog by preventing new warrants and saving staff time.<sup>92</sup> Furthermore, warrant prevention is beneficial to law enforcement because it limits the number of active warrants in the jurisdiction and averts transportation and incarceration costs.<sup>93</sup> Finally, it is beneficial to the public because it is mobile, on-demand, and convenient for those who cannot take time off work or travel to the courthouse.<sup>94</sup>

Matterhorn also offers online warrant resolution, which operates similarly to warrant prevention and offers similar benefits to the court and the public.<sup>95</sup> Individuals may not resolve their legal obligations promptly, either by failing to comply intentionally or accidentally.<sup>96</sup> For those who fail to pay, the court may issue a failure-to-pay warrant.<sup>97</sup> Individuals with outstanding warrants fear arrest or may not be able to appear in court due to work, school, childcare, or financial reasons.<sup>98</sup> Because of this, “courts accumulate a backlog of open warrants,”<sup>99</sup> which directly contributes to the court docket backlog problem.

The process of using the warrant resolution program begins when people search Matterhorn for open warrants.<sup>100</sup> Next, if a person has any open warrants, they are given an opportunity to explain to the court why they missed their payment or hearing.<sup>101</sup> In some instances, a person can request a payment plan or a new hearing.<sup>102</sup> The court ultimately reviews each request, accepts or rejects it, and creates a payment plan or schedules a new hearing if applicable.<sup>103</sup> Matterhorn then notifies users of any important dates and changes to the status of their cases.<sup>104</sup> Online

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89. *Warrant Prevention*, *supra* note 84 (“Once the court determines a person has entered “pre-warrant” status, the system notifies them via: SMS (text messages), email messages, and traditional postcard mailings. These messages include instructions on how to resolve a case online and invites the individual the court’s online warrant intervention URL.”).

90. *Warrant Prevention*, *supra* note 84 (“After people become aware of their potential warrant(s), they are able to begin the steps to resolve it. The first step is to enter their case information on the website and answer questions as to why they did not pay their fines or appear in court on their scheduled date. This information has provided valuable insight into barriers to access - including being unable to take time off of work, or to arrange transportation, as well as financial challenges and the ability to pay. In addition, the court staff is able to read through these messages with more efficiency than addressing them in individual in-person meetings or phone calls, and can expedite the court date rescheduling process.”).

91. *Warrant Prevention*, *supra* note 84 (“Once the individual has submitted their case information, the process is mostly finished. The information is forwarded to the senior criminal clerk who is able to reset the show-cause hearing date once if satisfied with the citizen’s explanation. In some instances, the clerk will consult with the judge offline. However, the majority of people receive a new court date and their countdown to a warrant being issued is reset as they work to resolve their case.”).

92. *Warrant Prevention*, *supra* note 84.

93. *Warrant Prevention*, *supra* note 84.

94. *Warrant Prevention*, *supra* note 84.

95. *Warrant Resolution*, *supra* note 84.

96. *Warrant Resolution*, *supra* note 84.

97. *Warrant Resolution*, *supra* note 84.

98. *Warrant Resolution*, *supra* note 84.

99. *Warrant Resolution*, *supra* note 84.

100. *Warrant Resolution*, *supra* note 84 (“From a link on [the court’s] website, people can search online within Matterhorn to check if they have eligible FTA or FTP warrants. People see if they have any open warrants, then learn what they must do to resolve them.”).

101. *Warrant Resolution*, *supra* note 84.

102. *Warrant Resolution*, *supra* note 84.

103. *Warrant Resolution*, *supra* note 84.

104. *Warrant Resolution*, *supra* note 84.

warrant resolution provides similar benefits as warrant resolution as it reduces court backlog by resolving open warrants.<sup>105</sup>

A final example of Matterhorn's criminal law ODR services is its online plea entry.<sup>106</sup> Online plea entry is quicker and more efficient than traditional plea entry by mail or by appearance.<sup>107</sup> Online pleas are particularly beneficial to those with eligible cases that may not live or work nearby the court or jurisdiction, who are incarcerated, or who have a significant barrier to appearing in court.<sup>108</sup> Courts decide whether cases are eligible for online plea and whether to accept or deny your online plea.<sup>109</sup>

The process of resolving pleas online begins when people click a link on the jurisdiction's website and search within Matterhorn to check if their case is eligible for online resolution.<sup>110</sup> If the case is eligible, the user will submit a plea request online.<sup>111</sup> Next, the court initiates judicial review, where a magistrate or judge reviews the request and can either accept or reject the plea.<sup>112</sup> Finally, if the magistrate or judge accepts the plea, all parties can agree, digitally sign, and the hearing or sentencing can occur.<sup>113</sup> Digital plea entry is primarily beneficial to courts and citizens because of its efficiency.<sup>114</sup> Beyond efficiency, online plea entry is useful if there are geographical or access barriers because it allows users to plead and resolve their cases remotely.<sup>115</sup>

In sum, Matterhorn is currently the only ODR provider that extends its services into criminal matters.<sup>116</sup> In regard to warrant prevention, warrant resolution, and pleas, the implementation of an ODR provider such as Matterhorn will be beneficial for the court, the citizens, and the community.<sup>117</sup> Using Matterhorn will directly address the court backlog issue by reducing the number of days that open cases remain in the system<sup>118</sup> and reducing the number of open warrants.<sup>119</sup> Moreover,

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105. *Warrant Resolution*, *supra* note 84.

106. *Plea Online*, *supra* note 84.

107. *Plea Online*, *supra* note 84 (“Cases are resolved in days, not months.”).

108. *Plea Online*, *supra* note 84.

109. *Plea Online*, *supra* note 84.

110. *Plea Online*, *supra* note 84.

111. *Plea Online*, *supra* note 84.

112. *Plea Online*, *supra* note 84.

113. *Plea Online*, *supra* note 84.

114. *See Plea Online*, *supra* note 84 (digital plea entry benefits courts because all parties are able to sign one final document online; the final forms can be printed or sent to document storage or an e-filing system; it saves staff time; and it resolves cases in days instead of weeks or months).

115. *Plea Online*, *supra* note 84 (digital plea entry benefits users because it enables users to connect with courts in a safe and trusted way; those with geographical or access barriers (such as incarceration) can plea and resolve their case; is convenient and free to use; creates a digitally documented case history; and provides text message and email notifications of plea status).

116. *See generally Plea Online*, *supra* note 84; *Warrant Prevention*, *supra* note 84; *Warrant Resolution*, *supra* note 84.

117. *See generally Plea Online*, *supra* note 84; *Warrant Prevention*, *supra* note 84; *Warrant Resolution*, *supra* note 84.

118. *Online Resolution Outcomes*, MATTERHORN BY CT. INNOVATIONS, <https://netcapital.com/files/a0fef576-d983-487f-bf79-e8e7f9c2fab5/court-innovations-white-paper-1.pdf> (last visited Sep. 25, 2022) (“Case closure rates have been significantly reduced for courts using Matterhorn application – from an average of 50 days before Matterhorn to just 14 days after implementation.”); Persky, *supra* note 76, at 18 (“... [A] study of three courts and 17,000 cases revealed a 74 percent reduction in average days to case resolution with online dispute resolution. A court in Washtenaw County using Matterhorn reduced case turnover from one or two months to just over seven days.”).

119. *Warrant Resolution*, *supra* note 84.

after the COVID pandemic forced court closures, Matterhorn, and ODR in general, was an innovation of key importance.<sup>120</sup> When the “physical, brick-and-mortar” courthouse was closed, this platform made legal services accessible.<sup>121</sup>

### *ii. Matterhorn Success in Michigan Jurisdictions*

Michigan was one of the first state jurisdictions to set up ODR services through Matterhorn to facilitate civil matters and criminal infractions.<sup>122</sup> In 2014, Michigan launched Matterhorn to resolve traffic disputes in four counties, removing the need for in-person court appearances.<sup>123</sup> After using Matterhorn to resolve traffic disputes, Michigan implemented Matterhorn in jurisdictions beyond the four original counties and began to use Matterhorn to resolve warrant disputes and misdemeanors.<sup>124</sup>

Matterhorn conducted a case study analyzing pre-warrant intervention in the 61st District Court, Grand Rapids, Michigan.<sup>125</sup> The court sought a solution to the jurisdiction’s significant outstanding warrant problem.<sup>126</sup> Prior to the launch of Matterhorn in this jurisdiction, the 61st District Court issued more than 5,500 bench warrants per year for citizens who failed to appear in court.<sup>127</sup> The primary goal for the Matterhorn launch was to reduce the number of new bench warrants issued, which was predicted to slow the growth of the warrant backlog and save the court time, money, and energy.<sup>128</sup>

The 61st District Court met its warrant prevention goals in its first year using Matterhorn.<sup>129</sup> The court reached out to people who were about to be issued a failure-to-appear warrant and invited them to resolve their cases on Matterhorn.<sup>130</sup> After notification, 9% of those with eligible cases resolved their case online.<sup>131</sup> In its first year of use, Matterhorn averted around 9% of failure-to-appear warrants.<sup>132</sup> This means that 550 people avoided arrests and warrants for failure to appear and were not arrested.<sup>133</sup> In sum, the data from the launches in Michigan jurisdictions

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120. Jeff Karoub, *Online Court Tool That Reduces Disparities, Virus Spread Wins Annual U-M Innovation Award*, MICH. NEWS (Aug. 26, 2020), <https://news.umich.edu/online-court-tool-that-reduces-disparities-virus-spread-wins-annual-u-m-innovation-award>.

121. *Id.*

122. Amy Schmitz, *Measuring “Access to Justice” in the Rush to Digitize*, 88 FORDHAM L. REV. 2381, 2391 (2020); Persky, *supra* note 76.

123. Schmitz, *supra* note 10, at 105; Persky, *supra* note 76 at 18 (“Michigan courts began using Matterhorn in 2014, as part of a pilot program approved by the Michigan Supreme Court. According to John Nevin, communications director for the court, the online dispute resolution platform fit right into the supreme court’s “strategic objectives” of efficiency, accessibility and innovation.”).

124. Schmitz, *supra* note 10, at 106.

125. *See Warrant Prevention, supra* note 84; *Online Resolution Outcomes, supra* note 118.

126. *See generally, Warrant Resolution, supra* note 84; *Online Resolution Outcomes, supra* note 118.

127. *Online Traffic Court Platform Provides Lifeline to California Court and the Public*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/tag/results/> (last visited Sept. 25, 2022).

128. *Online Resolution Outcomes, supra* note 118.

129. *Warrant Prevention Results*, MATTERHORN BY CT. INNOVATIONS, <https://getmatterhorn.com/get-results/warrant-prevention-results/> (last visited Sept. 25, 2022).

130. *Id.*

131. *Id.*

132. *See id.*

133. *Id.*

indicates that the use of an ODR provider like Matterhorn made judicial processes more efficient and accessible.<sup>134</sup>

#### IV. IMPLEMENTING ODR IN MISSOURI AND AN ANALYSIS OF THE CHALLENGES

The COVID pandemic only exacerbated the case and court docket backlog problem that exists in Missouri state courts.<sup>135</sup> Implementation of an ODR provider like Matterhorn will directly combat the accumulation of unresolved, open cases that currently inhibit judicial efficiency.<sup>136</sup> Matterhorn will positively impact the Missouri state court system because it will (1) increase judicial efficiency and accessibility, (2) prevent the issuance of warrants, and (3) directly reduce the backlogged docket problem by quickly moving relatively minor cases through the court system.<sup>137</sup>

The successful implementation of Matterhorn in Michigan jurisdictions indicates that this form of ODR is likely to be successful in Missouri state courts. The state populations of Missouri and Michigan are similar.<sup>138</sup> The largest cities in each state are also close in population size, which is a relevant factor considering the size of the largest possible jurisdiction in each state.<sup>139</sup> Following the largest cities in each state, the next most populous jurisdictions in each state are also of similar sizes.<sup>140</sup> Matterhorn's success in a state with a similar general demographic composition as Missouri likely indicates that implementing Matterhorn in Missouri will yield similar benefits of judicial efficiency and expanding accessibility.<sup>141</sup>

As in Michigan jurisdictions, using Matterhorn in Missouri will directly address the court backlog issue by reducing the number of days that open cases remain in the system<sup>142</sup> and by reducing the number of open warrants.<sup>143</sup> For example, in

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134. Schmitz, *supra* note 10, at 106; J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 2023 (2017) (Matterhorn also “has the potential to improve access to justice by dramatically reducing the costs of accessing courthouses and ... the decisionmakers who traditionally do their work at courthouses.”).

135. Byers, *supra* note 9.

136. *Online Resolution Outcomes: Putting Court Access Technology to Work*, *supra* note 118.

137. Schmitz, *supra* note 10.

138. *Michigan Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/MI> (last visited Sept. 25, 2022) (2021 population estimation: 10,050,811); *Missouri Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/MO> (last visited Sept. 25, 2022) (2021 population estimation: 6,168,187).

139. *Michigan Cities by Population*, CUBIT, [https://www.michigan-demographics.com/cities\\_by\\_population](https://www.michigan-demographics.com/cities_by_population) (last visited Sep. 25, 2022) (Detroit population: 632,464); *Missouri Cities by Population*, CUBIT, [https://www.missouri-demographics.com/cities\\_by\\_population](https://www.missouri-demographics.com/cities_by_population) (last visited Sep. 25, 2022) (Kansas City population: 508,294).

140. *Michigan Cities by Population*, *supra* note 141 (St. Louis population: 293,310); *Missouri Cities by Population*, *supra* note 141 (Grand Rapids City population: 197,416).

141. See *supra* Part III(B)(ii).

142. *Online Resolution Outcomes: Putting Court Access Technology to Work*, *supra* note 120 (“Case closure rates have been significantly reduced for courts using Matterhorn application – from an average of 50 days before Matterhorn to just 14 days after implementation.”); Persky, *supra* note 76 at 18 (“The program has increased the efficiency of Michigan courts. For example, a study of three courts and 17,000 cases revealed a 74 percent reduction in average days to case resolution with online dispute resolution. A court in Washtenaw County using Matterhorn reduced case turnover from one or two months to just over seven days.”).

143. *Warrant Resolution*, *supra* note 84.

Missouri, 64.8% of misdemeanor cases were disposed of by guilty pleas in 2021.<sup>144</sup> Because a vast number of misdemeanor cases are resolved through guilty pleas, Matterhorn could dispose of those cases amenable to ODR, thereby reducing the number of cases moving through the court system. In terms of warrants, there were 238,339 pending warrants statewide in Missouri as of June 30, 2021.<sup>145</sup> Using Matterhorn would help combat recurring issuances of failure-to-appear warrants, thereby slowing the growth of, and possibly even mitigating, the warrant backlog.<sup>146</sup>

Adoption of Matterhorn in Missouri state courts will not come without challenges.<sup>147</sup> First, not all cases are appropriate for ODR because they may be too complex or otherwise inappropriate for online resolution.<sup>148</sup> Complexity and due process concerns largely govern whether the type of case is eligible for ODR.<sup>149</sup> At a broad level, jury trials and bench trials are not suitable for ODR. In another example, the court's determination of parental custody based on a child's best interests is complex and not appropriate for online resolution.<sup>150</sup> However, in this same child custody case, ODR may be appropriate to assist parents in complying with their parenting plans pursuant to the court's determination of custody.<sup>151</sup> Safeguarding users' due process rights is of key importance when dealing with ODR and e-courts.<sup>152</sup> Courts must "ensure that all parties have an adequate opportunity to participate in the process and that parties can make voluntary and informed choices surrounding the procedures and outcome."<sup>153</sup> Thus, ODR should remain a voluntary, alternative avenue of pursuing case resolution in addition to traditional in-court resolution. Additionally, a case may be inappropriate for ODR if participants are uncomfortable using technology.<sup>154</sup> Some individuals may perceive ODR as impersonal or believe that it enables parties to avoid emotional, important conversations.<sup>155</sup>

A second, slippery-slope argument is that increasing judicial efficiency and accessibility through digitizing resolution of eligible cases may completely eliminate access to in-person processes for those eligible cases.<sup>156</sup> One concern is that widespread digitization is problematic because it threatens access to traditional means of case resolution.<sup>157</sup> However, ODR is adopted to supplement, rather than to replace, traditional in-person court proceedings. Critics are particularly concerned about individuals who cannot navigate technology and who do not have access to

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144. Table 24 (illustration), *in* MO. JUD. REP. SUPPLEMENT, MO. CTS. (2021)(64.8% of misdemeanor cases were disposed of by guilty pleas), <https://www.courts.mo.gov/file.jsp?id=185481>.

145. MO. JUD. REP. SUPPLEMENT, MO. CTS. (2021) at 232–33, <https://www.courts.mo.gov/file.jsp?id=185481>.

146. Schmitz, *supra* note 10, at 161.

147. *See* Schmitz, *supra* note 10. *See supra* Part IV.

148. Schmitz, *supra* note 10, at 155–56. Some examples of types of cases that are appropriate for ODR are those cases that Matterhorn offers its services, *id.* *E.g.*, warrant prevention and resolution, online pleas, traffic citations, parking citations, minor civil infractions, and minor misdemeanors, *id.*

149. Schmitz, *supra* note 10, at 155–56. *See supra* Part IV(A).

150. Schmitz, *supra* note 10, at 155.

151. Schmitz, *supra* note 10, at 155.

152. Schmitz, *supra* note 10, at 141.

153. Schmitz, *supra* note 10, at 142.

154. Colin Rule, *Technology and the Future of Dispute Resolution*, DISP. RESOL. MAG., Winter 2015, at 7.

155. *Id.*

156. Schmitz, *supra* note 10, at 156.

157. Schmitz, *supra* note 10, at 156.

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technology.<sup>158</sup> Again, however, this argument is refuted by the fact that ODR is a voluntary process, and individuals can elect to engage in traditional in-person court proceedings if desired.<sup>159</sup>

Despite the challenges to adopting Matterhorn in Missouri state courts, the long-term benefits of increased judicial efficiency and accessibility far outweigh the challenges after examining the trajectory of the Missouri state court system. Furthermore, adoption of ODR in Missouri will prevent the issuance of warrants and directly reduce the court backlog. Missouri courts may look to ODR's success in Michigan jurisdictions as a starting point for ODR in Missouri.

## V. CONCLUSION

Adopting an ODR program like Matterhorn in Missouri state courts will directly address the current accumulation of unresolved, open cases and persistent issuances of warrants, both of which currently inhibit judicial efficiency.<sup>160</sup> The success of Matterhorn in Michigan courts is a positive indication that Matterhorn will produce analogous benefits in Missouri courts.<sup>161</sup> The COVID pandemic and resulting court shutdowns gravely exacerbated the court docket backlog problem that currently exists in Missouri.<sup>162</sup> It is imperative that Missouri courts consider an ODR program able to resolve matters such as traffic tickets, warrants and pleas, and misdemeanors. The sweeping benefits of ODR, including facilitating judicial efficiency and accessibility to justice, far outweigh the potential challenges in its adoption in Missouri courts.

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158. Schmitz, *supra* note 10, at 156–57.

159. Schmitz, *supra* note 10, at 158.

160. *Online Resolution Outcomes*, *supra* note 118.

161. *See supra* Part III(B)(ii).

162. Byers, *supra* note 9.