74354-6

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No. 74354-6-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

DEPARTMENT OF CORRECTIONS, et al
v.
JOHN DOE , et al

REPLY BRIEF OF APPELLANTS DONNA AND JEFF ZINK

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I. RESPONSE TO INTRODUCTION AND SUMMARY

Although the Public Records Act (PRA) recognizes that government transparency can be restricted, under very limited circumstances (RCW 42.56.070(1); RCW 42.56.360), any limitations or exemptions must be very narrowly construed (RCW 42.56.030) and any "other statute" exemptions under RCW 42.56.070(1) apply only to those exemptions explicitly identified in an "other statute"

The primary issue presented by Respondents (Does) is whether Chapter 70.02 RCW is an "other statute" under the PRA, exempting the blanket release of level I sex offender Special Sex Offender Alternative Sentencing (SSOSA) evaluations used by our courts in the sentencing of those convicted of or pleading guilty to a sex offense. The answer is no, RCW 70.02 does not explicitly enunciate, or even imply, that SSOSA evaluations are mental health or medical records. In order for the court to find that the SSOSA evaluations are exempt as a medical record requires a court to imply or infer language that does not exist in the statutes and to ignore language that does.

Our legislature did not intend to entrust to judges the power to imply extremely broad and protean or implied exemptions (*John Doe A v. Wash. State Patrol*, 185 Wn.2d 363, ¶9-10 (2016)). Our legislature has made it clear, if no exemption is found in the PRA itself, an "other statute" exemption can only be applied if it is explicitly clear that a specific record, or portions of it, are exempt or otherwise prohibited from production in response to a public records request (*Id.*).

The sentencing documents used by the trial court to issue an alternative sentence are of great public concern. How else is the public to know whether our judicial and penal systems are working for the people? For instance, in issuing a SSOSA sentence, the trial court must take into account the recommendations of the victim; giving "great weight" to the victim's opinion (RCW 9.94A.670(4)). The victim's opinion is of such great importance that should the court imposed a sentence that is contrary to the victim's opinion, the court must enter written findings stating its reasons for imposing the sentence given (*Id.*). If these records are not available how is the public to oversee the courts sentencing decisions and whether the law is being appropriately applied?

Does claim this cause of action concerns several statutes requiring the Department of Corrections (DOC) to keep are sensitive health care information about sex offenders and their victims confidential. This is false. The request made by Zink was for sentencing documents used to determine sentencing of convicted sex offenders under the "Sentencing Reform Act" of 1981 and are not health records of sex offenders or their victims. They are public court documents required by RCW 9.94A.475 and .480 to be kept and available to the public in both the court and the prosecutor's office. The fact that DOC also maintains a copy does not transform the record into a medical or mental health record. Furthermore, no victims have come forward requesting the documents be enjoined. Does, as a class of convicted sex offenders, cannot enjoin the production of records based on third party

victims as the victims were not included in the definition of the class. Respondent cannot argue for a party that is not a party to this action.

II. ARGUMENT

1. Statutes Affecting Sex Offender Information and the Recent Decision of Our Supreme Court in *Doe v. WSP*, 185 Wn.2d 363 (2016)

Our Supreme Court recently opinioned RCW 4.24.550 is not an "other statute" exemption and does not exempt the release of either juvenile and adult registration records and information (*Doe v. WSP,* 185 Wn.2d 363 (2016)).[1] This cause of action was put on stay while our Supreme Court made determination concerning RCW 4.24.550. That determination has now been made and the decisions of the Supreme Court is binding on all others. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996).

> Stare decisis means, literally, "[t]o stand by things decided." BLACK'S LAW DICTIONARY 1443 (8th ed. 2004). It involves following rules laid down in previous judicial decisions unless they are found to contravene the ordinary principles of justice.

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[1] The parties listed as Plaintiffs in King County Cause #13-2-41107 SEA are "John Doe A, **a minor** by and through his legal guardians Richard Roe and Jane Roe; and John Doe B, a married man; as individuals and on behalf of others similarly situated."

The parties listed as Plaintiffs in King County Cause #14-2-05984-1 SEA are "John Doe C, **a minor** by and through his legal guardians Richard Roe C and Jane Roe C; and John Doe D, **a minor** by and through his legal guardians Richard Roe D and Jane Roe D, John Doe E and John Doe F; as individuals and on behalf of others similarly situated."

Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, ¶22, 150 P.3d 545 (2007). Does continue to argue that, as Level I sex offenders,[2] their identity as a convicted sex offender should be hidden from the public based on their assigned level (Response of Does (DR) pg. 7). Our Supreme Court clarified that "if the legislature wanted to protect level I sex offenders from harassment—as it protected animal researchers from harassment in PAWS II and abortion service providers from harassment in Planned Parenthood—it would have done so expressly, either through explicit language or by making RCW 4.24.550(3)(a) the exclusive means for obtaining such records" (*Doe v. WSP,* 185 Wn.2d 363, ¶22 (2016). Those convicted of sex offenses, no matter what their assigned level, have no privacy or confidentiality in their identity as a convicted sex offender.

As in *Doe v. WSP*, in this cause of action Does have not identified any explicit language in either Chapter 9.94A RCW (Sentencing Reform Act of 1981) or RCW 4.24.550 (Sex offenders and kidnapping offenders—Release of information to public—Web site) explicitly exempting SSOSA evaluations of sex offenders designated Level I offenders from public disclosure. Our Supreme Court has mandated that SSOSA evaluations are "sentencing" documents and declined to protect documents created to aid a court in its

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[2] The order of the trial court only included SSOSA evaluations of Level I sex offenders. (CP 750 – FOF 2; 752 FOF 18; 753:15-21 Order; 773; 774 FOF 1 and 3; 775 Order 11(a) and (b)).

sentencing decision. *Koenig v. Thurston County*, 175 Wn.2d 837, ¶31, 287 P.3d 523 (2012).

RCW 10.97.050(1) clearly states records of conviction may be disseminated without restriction. RCW 10.97.010(8) mandates that dissemination of information concerning offenders who commit sex offenses as defined by RCW 9.94A.030, is governed by RCW 4.24.550. RCW 9.94A.475 requires the County Prosecutor's office to make and retain as public records "any and all" sentencing agreements or plea agreements and the sentences for any and all felony sex crimes in the County Prosecutor's office as well as in the Court RCW 9.94A.480.

Having exhausted all criminal statutes, Does now argue that SSOSA evaluations are health care records. RCW 70.02.010(14) defines "Health Care" as care used to diagnose, treat or maintain a patient's physical or mental conditions; or that affects the structure or any function of the human body. RCW 70.02.010(31) defines "patient" as an individual who receives or has received health care. RCW 70.02.010(44) defines "Treatment" as "the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another.

Using the above criteria, Does have not provided any evidence that committing a sex crime is a mental health illness, that they were "diagnosed with a mental health illness," that any of the Does were convicted by reason of mental illness or that they were a patient receiving treated from the assigned SSOSA evaluator at the time the evaluation was court ordered. Our legislature made clear that a person assigned by the court to assess a convicted sex offender under the SSOSA program, is prohibited from having treated or treating the convicted sex offender either prior to or after providing the evaluation and assessment to the court.

> The offender's sex offender treatment provider **may not be** the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section...

RCW 9.94A.670(13)(emphasis added). Clearly the evaluator of a convicted sex offender cannot be treating or intend to treat the convicted sex offender by legislative mandate and a convicted sex offender is not a patient as defined by Chapter 70.02 RCW.

Further, our Legislature clearly stated their intent concerning mental health issues associated with those convicted of sex offenses stating:

> The legislature further finds that the **penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety**. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety.

RCW 4.24.550 Legislative Intent [1990 c 3 § 117](emphasis added). The Supreme Court acknowledged this legislative intent in *Doe v. WSP* (2016) when they found that

> Nothing in RCW 4.24.550 indicates a legislative intent to protect level I sex offenders or their victims. RCW 4.24.550(1) and (2) guide an agency in deciding to proactively publish sex offender information. Subsection (5) directs mandatory disclosure. Subsections (7) and (8) provide immunity for both disclosing and not disclosing sex offender information. **Subsection (9) explicitly states that sex offender information is not confidential.** And subsection (3), the relevant portion of the statute at issue here, provides nonmandatory guidelines for dissemination in particular circumstances.

Doe v. WSP, 185 Wn.2d 363, ¶21, (2016)(footnotes omitted)(emphasis added). Does arguments that, as Level I offenders, SSOSA evaluators provide mental health treatment when they evaluate a convicted sex offender to determine amenability to the SSOSA program because a proposed treatment plan must be submitted to the court for use in sentencing entitles them to privacy and confidentiality of their public conviction and sentencing is without merit.

2. **Standard of Review of the Interpretation of Court Rules and State Statutes**

The standard of review of the interpretation of court rules and state statutes is de novo. *Citizens All. for Prop. Rights Legal Fund v. San Juan County*, 184 Wn.2d 428, ¶11 359 P.3d 753 (2015). The same principles used to determine the meaning of statutes also applies to the interpretation of court rules *State v. McEnroe*, 174 Wn.2d 795, 800, 279 P.3d 861 (2012). As in

interpreting statutes, if the plain meaning of a court rule is ambiguous, as is claimed here, the courts are required to turn to the tools of statutory construction. When interpreting Court Rules and State Statutes the Court must be interpreted and construed in such a fashion as to give all the language used effect, and no portion may be rendered meaningless or superfluous in the interpretation. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010)(see also *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). This means that courts must interpret rules so that every paragraph, sentence and word has meaning with no portion rendered meaningless or superfluous in the courts interpretation.

> One such canon of construction is that "we interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous."

State v. Ervin, 169 Wn.2d 815, ¶13, 239 P.3d 354 (2010). Court rules CR 4(b)(1)(i) outlines the mandatory requirements for filing a "summons" summoning a party into an action. CR 4(b)(1)(i) specifically mandates that the summons for personal service **shall contain the names of the parties to the action, plaintiff and defendant** (*Id.*). CR 10(a)(1) mandates that the names of the parties shall be in the title of the complaint unless the name of the defendant is unknown (*Id.*). These rules are plain on their face, not arbitrary or ambiguous and must be read giving each word meaning. The clear meaning of these two statutes is that the name of the plaintiff must be present in the title of the summons and complaint. CR 17(a) requires every action in our judicial system must be prosecuted in the name of the real party

in interest. These mandatory requirements do not contemplate a party using a false identity or false name.

The rules associated with sealing of court records is found at GR 15. The definition of a court record is found at GR 31. CR 4, 10 and 17. Each of these court rules contain language stating that the party initiating legal action against another person must provide their legal name and be identified as the true party of interest and that party must be identified in the complaint and summons as well as the declarations, affidavits and other court records.

RCW 42.56.540 requires that an affidavit be submitted to the court in order for the party to prove they have right to bring action in the court to enjoin the release of specific records they are named in or pertain to them. A declaration or affidavit of an unknown party is not sufficient evidence of verifiable fact upon which a court can determine whether the party is named in the record or the record pertains to that party. It is not enough to say it is so without the ability to verify the facts provided. Our courts don't operate on supposition and unverifiable evidence and by doing so, the trial court abused its discretion and Zink was prejudiced. Furthermore, the trial court violated both the State and Federal constitutions prohibiting secrecy in our judicial system without applying a test to determine whether secrecy in our courts outweighed the public interest as required by court rules.

Likewise, in order to certify a class of persons to be represented by any particular litigant in a class action, the court has need to know the true identity of the party seeking to be class representative. Specifically, the trial

court, based on the declaration or affidavit on file in the court must determine whether the party initiating action has shown that questions of law or fact are common to the class; 2) the claims or defenses of the representative party(ies) are typical of the claims or defenses of the class; and 3) the representative party(ies) will fairly and adequately protect the interests of the class. CR 23(a)(2-4). Again, it is not enough for the courts to simply state a thing is true. The statement or findings must be supported by evidence. In this cause of action, the main evidence submitted is the declaration or affidavit of the party seeking to enjoin the records while representing a class of other similarly situated without the court knowing the true identity of the class representative. Again, the trial court must be able to verify the evidence submitted and the failure to do so is error and an abuse of the trial courts discretion.

Further, as the trial court's decision and orders concerning RCW 4.24.550 as an exemption and the sole means of obtaining public records containing sex offender information has been overturned on appeal, any further use of RCW 4.24.550 is moot. None-the-less Does continue to claim that the identity of Level I sex offenders is private and confidential in their argument for use of a false identity. This is error. Does have no privacy or confidentiality in the public knowledge of their conviction and therefore the only thing Does gain by continuing to be allowed to file court documents under a false name is that no one knows they filed suit to prevent release of their SSOSA evaluation. Does claim of need does not rise to the level of

allowing secrecy in our judicial system. If the records are to continue to remain sealed, the proper remedy is for this court to remand the issue back to the trial court for proper application of GR 15 and the Ishikawa Factors in order to establish their continued need.

3. <u>Use of Pseudonym in Place of True Identity is Sealing of Court Records Requiring Application of GR 15 and the Ishikawa Factors to Determine Need for Secrecy in Our Judicial System</u>

Does, argue that allowing a Plaintiff to an action in the courts to proceed pseudonymously is not sealing of court documents since the parties merely used false names and identities; which is not precluded by court rule. Does argue that although Civil Rule (CR) 10(a)(1) requires the names of all the parties, it is silent about whether parties may use false names to initiate litigation in our judicial system (DR) pg. 50). In support of this argument, Does turn to *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1069 (9th Cir. 2000) claiming no appellate case law in Washington speaks to when and how parties may proceed in pseudonym (DR pg. 51). This is incorrect. There is a plethora of cases concerning sealing of court records and the mandatory requirements. In a recent decision our Supreme Court mandated that:

> An order to redact a court record is treated as an order to seal. GR 15(b)(4).

Hundtofte v. Encarnación, 181 Wn.2d 1, ¶9, 330 P.3d 168 (2014). Despite all of the case law and everything our courts have said about the proper sealing

of court records, Does present three legal theories in support of their claims that the redacted records are not sealed.

1. A party initiating action has the right to submit the summons, complaint and declarations under a false name and identity (DR pg. 50);
2. The identities of parties are "information surfacing during pretrial discovery that does not otherwise come before the court" *Rufer v. Abbott Labs*, 154 Wn.2d 530, 114 P.3d 1182 (2005) (DR pg. 49); and
3. Documents submitted under a false identity do not abridge the public's right to access anything that passed before the trial court and it did not deprive the public of any information that the trial court possessed or prevent the public from scrutinizing the trial court's decision (DR pg. 49).

All of these documents filed under false identities are considered "court records" and require the true identity of the litigant bringing action to provide their true names. Both CR 4(b)(l)(i) and CR 10(a) requires a summons and complaint contain the names of the parties to an action: plaintiff and defendant. *Lafranchi v. Lim*, 146 Wn. App. 376, ¶20, 190 P.3d 97 (Div. I, 2008). CR 17(a) requires the true identity of a Plaintiff to be known by the court in order to verify the party is the true party of interest. Clearly the records are sealed through use of pseudonym or redaction. The Court uses the complaint and summons to identify whether the true party has right to bring action in the court? The trial court must use the declarations submitted under false identities to determine whether the party is named in the record pursuant to RCW 42.56.540 and whether the party truly represented a class of individuals similarly situated under CR 23 in order to allow Does to be representatives of the class. In this cause of action, the trial court determined that since there are sex offenders, the parties filing this cause must be sex

offenders. This was error. An unsigned declaration or affidavit is not verifiable or factual evidence that the persons bringing this action are actually sex offenders or that they represent a class of other sex offenders who are similarly situated. Furthermore, in arguing to be allowed to proceed in pseudonym, Does stated that they would Plaintiffs agree to disclose their names to the Court and other necessary persons pursuant to an agreed protective order (CP 26:4-9). This did not happen.

4. Recent Decision in *Doe v. WSP*, 1085 Wn.2d 363 (2016) on Sealing of Court Records

In a footnote, Does argue that our Supreme Court did not reach the issue and declined to express an opinion as to whether the records were sealed indicating that Does in this cause of action "showed good cause for pseudonymity" (DR pg. 50, *fn.* 20). This is an incorrect, absurd reading and interpretation of the decision of our Supreme Court in *John Doe A v. Wash. State Patrol*, 185 Wn.2d 363 (2016).

In *Doe v WSP,* our Supreme Court clearly stated that the issue of sealing of the records was moot because trial courts order only allowed Plaintiffs to hide their identity through use of pseudonym until the case was concluded (*Id.* ¶36) (see order in cause #13-2-41107-5 SEA at CP 153-154). The trial court's order on review by the Supreme Court in *Doe v. WSP* clearly states that "Plaintiffs be allowed to proceed in pseudonym throughout the pendency of this action." (CP 154). Once our Supreme Court rendered its final decision concerning whether RCW 4.24.550 was an "other statute" exemption under

the PRA, the pendency of the hearings was over and the records were to be unsealed.

This is made clear when our Supreme Court stated" "Zink will receive the records—and the names of the parties—and even if this court were to hold that proceeding in pseudonym was in error, we would be unable to offer any further relief, as it has already been granted (*Id.* ¶36) adding "[w]ere we to find that Ishikawa applied to proceeding in pseudonym—an issue on which we express no opinion—the remedy would be to remand to the trial court to apply the Ishikawa factors, a remedy Zink rejects" (*Doe v. WSP*, *fn.* 6). The exact remedy Zink requests this Court to make in this cause of action.

Just as our Supreme Court refused to address the issues of whether the permanent injunction was overbroad or whether the class was properly certified as those issues were rendered moot once the underlying issue of whether RCW 4.24.550 is an exemption was determined so too was the issue of access to the true names of the party (Id. ¶36) since the true names of the parties were to be provided once the injunction was dismissed.

If the Court find RCW 70.02 is an "other statute" exemption exempting SSOSA evaluations held by the DOC, the issue of sealing the court records needs to be remanded back to the trial court for proper application of GR 15 and the Ishikawa Factors as required by State states, court rules and our constitution.

5. **Class Action Certification is Prohibited Under RCW 42.56.540**

RCW 42.56.540 specifically requires the person named in the record or to whom the record pertains **must file a motion and affidavit** in the court. Class action certification would make this requirement superfluous, creating a judicially created exemption; a violation of the separation of powers doctrine.

> The legislature's response to our opinion in Rosier makes clear that it does not want judges any more than agencies to be wielding broad and mal[l]eable exemptions. The legislature did not intend to entrust to ... judges the [power to imply] extremely broad and protean exemptions ... .125 Wn.2d at 259-60. Therefore, if the exemption is not found within the PRA itself, we will find an "other statute" exemption only when the legislature has made it explicitly clear that a specific record, or portions of it, is exempt or otherwise prohibited from production in response to a public records request.

Doe v. WSP, 185 Wn.2d 363, ¶10 (2016)(emphasis added). By certifying a class of persons to enjoin any and all records of a specific classification and type the trial court is creating an exemption where an exemption does not exist. Under the plain meaning of the legislative intent in RCW 42.56.540, the trial court erred in not identifying which records at issue in this cause of action contain the name(s) of the parties filing complaint, summons and affidavit.

Instead the trial court determined that it has the authority to create a judicial exemption through class certification; exempting all Level I under the guise of a class action without even knowing whether the purported

representatives were members of the class being enjoined. This is an absurd reading of the plain meaning of RCW 42.56.540. The trial court abused its discretion when it determined and ordered that anonymous, completely unknown persons could enjoin the records of other persons under the strict requirements of RCW 42.56.540 and the trial court's order certifying a class of sex offenders whose identities are protected from disclosure to the public must be reversed.

Does claim that Zink misunderstand the purpose of a class action. This is false. It is Does who misunderstand that class action certification is not appropriate in all civil action initiated in the court. RCW 42.56.540 includes specific language and requirements in order to enjoin public records. None of those requirements were followed in this cause of action. In fact, RCW 42.56.540 was barely mentioned if it was mentioned at all.

Further, Does misunderstand that there is no interplay between CR 81 and CR 23 allowing a court to certify a class in all civil matters brought before it. If that were so, there would be no need for rules governing class certification. Here the language of RCW 42.56.540 is very clear. Only a person named in a record can enjoin that particular exempt record.

The agency has refused to follow the strict requirements of the PRA (see RCW 42.56.050) and claim an exemption despite the fact that they notified third parties without need (RCW 42.56.520). Since the agency refused to claim exemption, the trial court created an exemption where no exemption existed. But even if an exemption exists, the trial court would need to assess

whether the public's right to know was outweighed by each individual's right to privacy and confidentiality and whether any harm had actually occurred to that particular person.

> The burden of proof is on the party seeking to prevent disclosure to show that an exemption applies. Id. at 612; RCW 42.56.540, .550(1); see also Ames v. City of Fircrest, 71 Wn. App. 284, 296, 857 P.2d 1083 (1993). Thus, if an agency is claiming an exemption, the agency bears the burden of proving it applies. RCW 42.56.550(1). If it is another party, besides an agency, that is seeking to prevent disclosure, then that party must seek an injunction. RCW 42.56.540. **In such a case, the party must prove (1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government function.** Id.; see Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 757, 174 P.3d 60 (2007); see also Seattle Times Co. v. Serko, 170 Wn.2d 581, 591, 243 P.3d 919 (2010).

Ameriquest Mortg. Co. v. Office of Att'y Gen., 77 Wn.2d 467, ¶35, 300 P.3d 799 (2013)(emphasis added). Because RCW 42.56.540 requires a "party" must prove they are named in the record or that the record pertains to them and that the party requesting injunction would suffer actual harmed the decision to enjoin exempt records must be on a case by case analysis. To read RCW 42.56.540 otherwise would render the words "the party must prove (1) that the record in question specifically pertains to that party" and release "would substantially and irreparably harm that party" superfluous and meaningless. The requirements of RCW 42.56.540 do not conflict with CR 81. Zink accurately states the requirements set out by our legislature in RCW 42.56.540 mandate that a person named in the record must file action and argue harm to that party and therefore class action certification pursuant to

CR 23 is prohibited. That is not in conflict with CR 81 and does not preclude parties from bringing action to enjoin records as required by statute. But even if RCW 42.56.540's strict mandatory requirements were in conflict with CR 81, RCW 42.56.030 mandates that all conflicts are to be resolved under the PRA as the controlling statute; including any conflicts with the requirements of court rule CR 23.

6. The SSOSA System – Response to Claims of Does

Does claim that use of SSOSA sentences are uncommon and are remarkably effective; claiming that release of SSOSA evaluations will eviscerate the SSOSA program and cause harm to those convicted of sex crimes, their victims and their families. Other than a claim that an evaluator assessing a convicted sex offender must be trained and licensed by the state under RCW 9.94A.670(1)(a), as opposed to a lay person, and therefore must be a treatment provider pursuant to RCW 70.02,[3] Does' "expert" testimony does not speak to the issue of whether an SSOSA evaluation is exempt under the PRA or whether SSOSA evaluations can be enjoined under RCW 42.56.540. This case is not about whether SSOSA evaluations should be exempt. The case is about whether SSOSA evaluations are exempt.

---

[3] "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another. RCW 70.02.010(44).

The "experts" Does cite to, are all involved in defending or treating those convicted of sex offenses and are hardly in a position to render an unbiased opinion. For instance, Does argue that their "experts" clearly state that victims of sex offenders will suffer if the evaluations are made public. Yet no victim has come forward, no victim is a named third party seeking to enjoin the requested records and victim impact statements, identifying both the victim and the sex offender, are not exempt and must be released (*Koenig*, ¶30). Under RCW 42.56.540, Does can only argue the substantially and irreparably damage that will occur to them; not the harm to another; hearsay evidence.

Does claim that the SSOSA evaluation is both a comprehensive psychological assessment and a detailed health care treatment plan. Does argue that since only licensed health care professionals can perform the court ordered evaluation, "those professionals treat SSOSA evaluations the same way they would treat any other evaluation of a patient seeking mental health treatment for a sexual behavior problem" DR pg. 2, 11). This is patently false. The differences between a person seeking treatment and a person receiving a court ordered evaluation to assess for treatment in lieu of prison are glaringly obvious.

The professional treating an individual seeking mental health treatment for a sexual behavior problem would not provide their evaluation and treatment plan to a court for use in sentencing. Further, the evaluator is assessing the individual seeking treatment for a sexual behavior problem to

provide mental health care and treatment to that individual. Whereas the evaluator of a convicted sex offender will not be treated by the SSOSA evaluator as it is prohibited by law. One is requesting help for an identified problem of their own free will, while the other is being forced into choosing between treatment and remaining in the community or prison time of up to eleven years.

Finally, Doe argue that [i]f the SSOSA evaluations are not protected under chapter 70.02 RCW, it is difficult to imagine what medical information could be exempt from the PRA (DR pg. 2, 11). Again this is an irrational argument that Zink narrows to only include those convicted of sex offenses. RCW 70.02 protects medical and mental health records for treatment of patients. Once the convicted sex offender is sentenced to the SSOSA program, they then become a "patient" who is being "treated" and their treatment begins with an intake assessment and treatment plan based on the order of the court and the proposed treatment plan submitted to the court.

While the court approved treatment plan is to be followed and a court ordered SSOSA evaluation may be useful during intake, the professional treating any sex offender sentenced to the SSOSA program must do an initial evaluation of the offender in order to provide care and establish a plan for treatment. Those records would most likely be exempt under RCW 70.02, although that issue is not before the court as no records pertaining to sex offender treatment after sentencing have been requested.

Without access to sex offender sentencing documents showing how any given sex offender was sentence in our judicial system, the public cannot ascertain whether the courts, prosecutors and defense attorneys are following state statutes and appropriately sentencing sex offenders.

Despite Does arguments otherwise, not all sex crimes are equal and not all victims respond in the same manner. None-the-less, victims of a sex crime have been given a voice in the sentencing of person sexually offending against them. The statutory requirements set forth by our legislature in order to receive a lenient sentence under an SSOSA is clear and unambiguous.

> After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. **The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition.** The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

RCW 9.94A.670(4)(emphasis added). While one victim may recommend a lenient sentence under the SSOSA program, another may recommend prison.

Each sex offender conviction is different, has different factors involved and different victims. Each case must be determined on a case-by-case basis. If a trial court deviates from the recommendation of the victim concerning whether to issue a SSOSA sentence, that court is mandated to state in writing the reasons for not following the opinion of the victim.

The information from the studies provided by the "experts" are over ten years old (CP 387, ¶7; 442, ¶37-38) and without access to the SSOSA evaluations the public has no way of determining their reliability or credibility or even whether the statistical data says what the "experts" say it says and/or continues to show the success of SSOSA sentencing. In other words, without any oversight by the people, the "experts" defending, evaluating and treating sex offenders can report anything they like

It is up to our legislature to determine whether SSOSA evaluations are exempt from disclosure and not those who prosecute, defend, evaluate, judge and treat convicted sex offenders. Our Supreme Court has made it abundantly clear that:

> The legislature's response to our opinion in Rosier makes clear that it does not want judges any more than agencies to be wielding broad and mal[l]eable exemptions. The legislature did not intend to entrust to ... judges the [power to imply] extremely broad and protean exemptions ...125 Wn.2d at 259-60. Therefore, if the exemption is not found within the PRA itself, we will find an "other statute" exemption only when the legislature has made it explicitly clear that a specific record, or portions of it, is exempt or otherwise prohibited from production in response to a public records request.

Doe v. WSP, 185, ¶10, Wn.2d 363 (2016)(emphasis added). Regardless, the cause of action involves the PRA and a request for public records. The PRA controls in all questions of exemption of public records regardless of whether an agency or "experts" would like the information or documents withheld. (RCW 42.56.030). Agencies unwilling to release public records are subject to penalties for unreasonable delays (RCW 42.56.550(4)). Absent an exemption neither a court or a private party can enjoin the publics records from a requesting member of the public. In this case the records have already been determined to be not exempt by our Supreme Court. This is evidenced by the dissent by Justice Chambers who stated:

> Like the VIS, serious privacy concerns are implicated by the release of a SSOSA evaluation to the public. These SSOSA evaluations contain, among other things: a detailed sexual history section; **mental health history; medical history**; drug and alcohol history; a social history section, which may contain details of "abuse the individual may have suffered in the past, including physical, sexual, and emotional abuse"; results of a polygraph examination, which may be "extremely detailed" regarding past and current sexual practices; and results of a phallometric test that measures the defendant's arousal response to a variety of pornography. Clerk's Papers at 112 (**Decl. of Amy Muth**). Making public much of this information would be highly offensive to a reasonable person, and the legitimacy of the public's interest in this information is minimal. See RCW 42.56.050.
>
> The problems that arise when we attempt to apply the PRA to ever expanding types of information and documents are well illustrated by the present case. The PRA was a great idea. Unfortunately, too many terms are undefined. This court has followed the legislative command to interpret the PRA liberally and its exceptions narrowly, and the result is that the few protections found in the PRA have been steadily eroded. We have now reached the point where it is not even possible to redact the

> name of a sex crime victim from material provided to the public. **This dissent does not have the force of law. Only the legislature can amend the act and establish appropriate protections. <u>I urge the legislature to do so.</u>**

(*Koenig* at ¶43-44)(emphasis added). The legislature did not address the issue brought forward by Justice Chambers in his dissent from 2012. Clearly our legislature did not intend SSOSA evaluations to be exempt despite the dissents concerns about mental and medical health information contained in SSOSA evaluations our Supreme Court determined SSOSA evaluation are sentencing decisions. *Koenig v. Thurston County*, 175 Wn.2d 837, ¶31, 287 P.3d 523 (2012).

Our Supreme Court's decision is in keeping with our legislatures mandate that SSOSA evaluations must be kept in the court records (RCW 9.94A.480) as well as maintained the Prosecuting Attorney's Office as public records (RCW 9.94A.475 and 480). SSOSA evaluations are public records subject to the PRA and the question before the court of whether the records are exempt from disclosure has already been asked and answered by our Supreme Court.

Despite our Supreme Court's decision concerning SSOSA evaluation in *Koenig*, Does continue to claim the records must be exempt because the very persons the public should be able to scrutinize, the trial court, the defense and prosecuting attorney and the evaluators ("experts") have determined that SSOSA evaluations are mental and health care records.

Under RCW 42.56.540 if this Court finds the Supreme Court's decision was erroneous or did not consider the health and mental aspects of SSOSA

evaluations records are exempt, then, since the DOC has claimed they are going to release the records absent a court order, the court must decide whether the records are in the public interest. RCW 42.56.540.[4] In this case the answer is yes. SSOSA evaluation are of great importance to the public in determining whether our courts are following our laws and sentencing requirements for sex offenders. Furthermore, a trial court must rely on whether the victim

> (a) The report of the examination shall include at a minimum the following:
>
> > (i) The offender's version of the facts and the official version of the facts;
> >
> > (ii) The offender's offense history;
> >
> > (iii) An assessment of problems in addition to alleged deviant behaviors;
> >
> > (iv) The offender's social and employment situation; and
>
> (v) Other evaluation measures used.

Does claim that Special Sex Offender Alternative Sentencing evaluations are mental health records and are exempt pursuant to Chapter 70.02 RCW because they are confidential treatment records. This is false. Pursuant to

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[4] If it is another party, besides an agency, that is seeking to prevent disclosure, then that party must seek an injunction. RCW 42.56.540. In such a case, the party must prove (1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government function. Id.; see Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 757, 174 P.3d 60 (2007); see also Seattle Times Co. v. Serko, 170 Wn.2d 581, 591, 243 P.3d 919 (2010). *Ameriquest Mortg. Co. v. Office of Att'y Gen*, 177 Wn.2d 467, ¶35, 300 P.3d 799 (2013).

RCW 70.02.010(31) a "patient" is defined as an individual who receives or has received health care. RCW 9.94A.670 (13) clearly and unequivocally states that the SSOSA evaluator cannot be the sex offender's treatment provider or "any person who employs, is employed by, or shares profits with the person who examined the offender." (*Id.*). Although it may be that only a qualified health care professional with special training can evaluate a convicted sex offender for the purpose of sentencing, that evaluator may not be the treatment provider and the convicted offender is not their "patient."

Does claimed SSOSA evaluations must contain a proposed treatment plan (RCW 9.94A.670(3)(b)) so they are most certainly health records. While it is true that a proposed treatment plan must be included in a SSOSA evaluation in order for a court to consider alternative sentencing, the proposed treatment plan is merely a proposal for the trial court to consider in deciding whether to sentence the convicted sex offender under RCW 9.94A.507 or 9.94A.670 and is not the final treatment plan as established by the assigned treatment provider. The treatment provider actually providing psychosexual therapy under a SSOSA sentence must perform a new evaluation and finalize a treatment plan at the time treatment begins.

The SSOSA evaluation and proposed treatment plan submitted to a trial court for a decision on sentencing of a convicted sex offender is required to be maintained as a public record in the official court of record and in the Prosecuting Attorney's Office for public access. RCW 9.94A.475 and .480(1). See RCW 9.94A.030(32) for a definition of a "most serious

offense." SSOSA evaluations are required to be open and available to the public pursuant to statute and cannot be enjoined from release. The trial court's decision otherwise is error of law and must be reversed.

7. Supreme Court Decision in *State v. A.G.S.* 182 Wn.2d 273, 278, 340 P.3d 830 (2014)

In the sentencing of AGS, the court ordered a Special Sex Offender Disposition Alternative (SSODA) evaluation at the behest of the State, *State v. A.G.S.*, 182 Wn.2d 273, ¶2, 340 P.3d 830 (2014). At the same time AGS had a separate SSODA evaluation performed by an independent psychologist (¶2).

> The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. **The evaluator shall be selected by the party making the motion**. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

RCW 13.40.162(2)(c)(emphasis added). The victim received a copy of the State's SSOSA evaluation, paid for by the State,[5] from the Prosecuting Attorney's Office. The parents of the victim requested a copy of the SSODA evaluation ordered and paid for by AGS. The question put before the Supreme Court was in which juvenile file should the SSODA evaluation, bought and paid for by AGS, be placed.

---

[5] If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment. RCW 9.94A.670(14).

> Should a juvenile offender's SSODA evaluation be filed in the official juvenile court file and thus be available to the public?

(¶7). This is abundantly clear since the Court noted the court ordered SSODA evaluation had already been released to the parents. The AGS Court was solely discussing the SSOSA evaluation performed by a psychologist of AGS's choosing and provided independently by AGS to the trial court for consideration during sentencing. The AGS Court clearly identified the difference between the two documents by continually noting that there were two different and separate SSODA evaluations performed.

> The statute does not contain any specific provisions regarding who can conduct the assessment, but in this case, both SSODA evaluations were performed by independent psychologists.

State v. A.G.S., 182 Wn.2d 273, ¶9, 340 P.3d 830 (2014). Our Supreme Court determined that the SSODA evaluation ordered by AGS was not part of the official court file and was therefore exempt. The SSODA evaluation ordered by the State falls under RCW 9.94A.475 and 480 and must be maintained and available to the public in both the court file and the prosecutor's office.

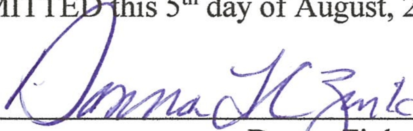
III. CONCLUSION

Does have failed to prove they are in need of secrecy in order to enjoin public records. The question here is whether SSOSA evaluations are exempt, knowing the identity of the party enjoining the records has no bearing on whether the records should be release or not. SSOSA are not performed by professionals treating the offender as a patient and by state statute the evaluator cannot be the treatment provider. Nor are normal clinical methods

used since the intent of the evaluation is not for treatment of a patient it is to determine sentencing of those convicted of a sex offense, not a mental health issue. Furthermore, the strict requirements of RCW 42.56.540 mandates that the only person, other than an agency, must be named in or the record pertains to that person. This mandate by our legislature precludes class action since each request must be assessed on a case-by-case basis to determine if an exemption exists, whether the public has need to know and whether any actual harm will occur to any particular person requesting injunction.

For all the reasons submitted herein and in Zink's opening briefing, this court must reverse the trial court's decision concerning the permanent injunction and class certification and remand back to the trial court for application of GR 15 and the Ishikawa factors in sealing court records.

RESPECTFULLY SUBMITTED this 5th day of August, 2016



By ______________________
Donna Zink
Pro se

IV. CERTIFICATION OF SERVICE

I declare that on the 5th day of August, 2016, I did send a true and correct copy of appellant's "*Reply Brief of Appellants Donna Zink*" via e-mail service to the following addresses as agreed upon by all parties to this matter:

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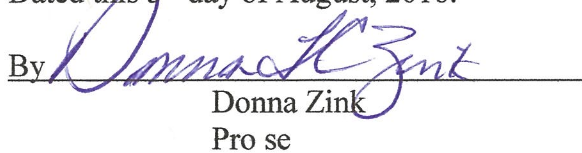
Dated this 5th day of August, 2016.



By ______________________
Donna Zink
Pro se

V. APPENDIX A

Revised Code of Washington (RCW)

1. Chapter 4.24 RCW – Special Rights of Action and Special Immunities

Sex offenders and kidnapping offenders—Release of information to public—Web site – RCW 4.24.550

Finding—Policy—1990 c 3 § 117: "The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sexual predators to public agencies and under limited circumstances, the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

Therefore, this state's policy as expressed in RCW 4.24.550 is to require the exchange of relevant information about sexual predators among public agencies and officials and to authorize the release of necessary and relevant information about sexual predators to members of the general public." [1990 c 3 § 116.]
RW 4.24.550 (Legislative Intent)

2. Chapter 9.94A RCW - Sentencing Reform Act of 1981

Definitions - RCW 9.94A.030(33)

(33) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

. . .
(c) Assault of a child in the second degree;
(d) Child molestation in the second degree;
. . . .
(g) Incest when committed against a child under age fourteen;
(h) Indecent liberties;
. . .
(i) Kidnapping in the second degree;
. . . .
(m) Promoting prostitution in the first degree;
(n) Rape in the third degree;
. . .
(p) Sexual exploitation;
. . . .
(s) Any other class B felony offense with a finding of sexual motivation;
. . .
(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

RCW 9.94A.030(33)(a, c, d, g, h, i, m, n, p, s, u, v(i-ii), w)

Plea agreements and sentences for certain offenders - Public Records - RCW 9.94A.475

Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes *shall be made and retained as public records if the felony crime involves*:

(1) Any violent offense as defined in this chapter;

(2) Any most serious offense as defined in this chapter;

(3) Any felony with a deadly weapon special verdict under RCW 9.94A.825;

(4) Any felony with any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both;

(5) The felony crimes of possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony; or

(6) The felony crime of driving a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.502, and felony physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504.
RCW 9.94A.475 (emphasis added).

Judgment and sentence document - Delivery to caseload forecast council - RCW 9.94A.480

(1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and *the sentences for any and all felony crimes kept as public records under RCW 9.94A.475* shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under RCW 9.94A.475. *Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.*

(2) The caseload forecast council shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section.

(3) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the caseload forecast council as required in subsection (2) of this section, the caseload forecast council shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the caseload forecast council.
RCW 9.94A.480

Special sex offender sentencing alternative - RCW 9.94A.670

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and State v. Newton, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) A term of community custody equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.

(c) Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

(6) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(8) (a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding

termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10) (a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

(11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has

entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.
RCW 9.94A.670 (emphasis added).

8. Chapter 10.97 RCW – Washington State Criminal Records Privacy Act

Restricted, unrestricted information—Records. RCW 10.97.050

(1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident that occurred within the last twelve months for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

(a) An indication of to whom (agency or person) criminal history record information was disseminated;

(b) The date on which the information was disseminated;

(c) The individual to whom the information relates; and

(d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

(8) In addition to the other provisions in this section allowing dissemination of criminal history record information, RCW 4.24.550 governs dissemination of information concerning offenders who commit sex offenses as defined by RCW 9.94A.030. Criminal justice agencies, their employees, and officials shall be immune from civil liability for dissemination on criminal history record information concerning sex offenders as provided in RCW 4.24.550. **RCW 10.97.050**

9. Chapter 13.40 RCW – Juvenile Justice Act of 1977

Special sex offender disposition alternative - RCW 13.40.162

(1) A juvenile offender is eligible for the special sex offender disposition alternative when:

(a) The offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and

(b) The offender has no history of a prior sex offense.

(2) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The respondent's version of the facts and the official version of the facts;

(ii) The respondent's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The respondent's social, educational, and employment situation;

(v) Other evaluation measures used.

The report shall set forth the sources of the evaluator's information.

(b) The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) The frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(3) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years.

(4) As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(a) Devote time to a specific education, employment, or occupation;

(b) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(c) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(d) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(e) Report as directed to the court and a probation counselor;

(f) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(g) Make restitution to the victim for the cost of any counseling reasonably related to the offense; or

(h) Comply with the conditions of any court-ordered probation bond.

(5) If the court orders twenty-four hour, continuous monitoring of the offender while on probation, the court shall include the basis for this condition in its findings.

(6)(a) The court must order the offender not to attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings.

(b) The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district.

(c) The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the

approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

(7)(a) The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

(b) At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

(c) Except as provided in this subsection, examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW.

(d) A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and (iii) the evaluation and treatment plan comply with this subsection and the rules adopted by the department of health.

(8)(a) If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days confinement for violating conditions of the disposition.

(b) The court may order both execution of the disposition and up to thirty days confinement for the violation of the conditions of the disposition.

(c) The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(9) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(10) A disposition entered under this section is not appealable under RCW 13.40.230.
RCW 13.40.162

10. Chapter 13.50 RCW – Keeping and Release of Records by Juvenile Justice or Care Agencies

Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access. RCW 13.50.010

*** CHANGE IN 2016 *** (SEE 2405-S.SL) ***
*** CHANGE IN 2016 *** (SEE 1999-S4.SL) ***
*** CHANGE IN 2016 *** (SEE 1541-S4.SL) ***

(1) For purposes of this chapter:

(a) "Good faith effort to pay" means a juvenile offender has either (i) paid the principal amount in full; (ii) made at least eighty percent of the value of full monthly payments within the period from disposition or deferred disposition until the time the amount of restitution owed is under review; or (iii) can show good cause why he or she paid an amount less than eighty percent of the value of full monthly payments;

(b) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(c) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(e) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court

grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) The court shall release to the caseload forecast council the records needed for its research and data-gathering functions. Access to caseload forecast data may be permitted by the council for research purposes only if the anonymity of all persons mentioned in the records or information will be preserved.

(10) Juvenile detention facilities shall release records to the caseload forecast council upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(11) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombuds.

(12) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the Washington state center for court research. The Washington state center for court research shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.270 and 13.50.100(3).

(13) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and

other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records.

(14) The court shall release to the Washington state office of civil legal aid records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.53.045. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of civil legal aid. The Washington state office of civil legal aid shall maintain the confidentiality of all confidential information included in the records, and shall, as soon as possible, destroy any retained notes or records obtained under this section that are not necessary for its functions related to RCW 2.53.045.
RCW 13.50.010.

Records Relating to Commission of Juvenile Offenses—Maintenance Of, Access To, and Destruction - RCW 13.50.050

(1) This section and RCW 13.50.260 and 13.50.270 govern records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to RCW 13.50.260.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this chapter, RCW 13.40.215 and 4.24.550.

(4) Except as otherwise provided in this chapter, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.
RCW 13.50.050(1)(2)(3)(4)(emphasis added).

11. Chapter 18.155 RCW - Sex Offender Treatment Providers

Definitions RCW 18.155.020

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Certified sex offender treatment provider" means a licensed, certified, or registered health professional who is certified to examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW and sexually violent predators under chapter 71.09 RCW.

(2) "Certified affiliate sex offender treatment provider" means a licensed, certified, or registered health professional who is certified as an affiliate to examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW and sexually violent predators under chapter 71.09 RCW under the supervision of a certified sex offender treatment provider.

(3) "Department" means the department of health.

(4) "Secretary" means the secretary of health.

(5) "Sex offender treatment provider" or "affiliate sex offender treatment provider" means a person who counsels or treats sex offenders accused of or convicted of a sex offense as defined by RCW 9.94A.030.
RCW 18.155.020.

Certificate required – RCW 18.155.030

(1) No person shall represent himself or herself as a certified sex offender treatment provider or certified affiliate sex offender treatment provider without first applying for and receiving a certificate pursuant to this chapter.

(2) Only a certified sex offender treatment provider, or certified affiliate sex offender treatment provider who has completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, may perform or provide the following services:

(a) Evaluations conducted for the purposes of and pursuant to RCW 9.94A.670 and 13.40.160;

(b) Treatment of convicted level III sex offenders who are sentenced and ordered into treatment pursuant to chapter 9.94A RCW and adjudicated level III juvenile sex offenders who are ordered into treatment pursuant to chapter 13.40 RCW;

(c) Except as provided under subsection (3) of this section, treatment of sexually violent predators who are conditionally released to a less restrictive alternative pursuant to chapter 71.09 RCW.

(3) A certified sex offender treatment provider, or certified affiliate sex offender treatment provider who has completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, may not perform or provide treatment of sexually violent predators under subsection (2)(c) of this section if the treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

(4) Certified sex offender treatment providers and certified affiliate sex offender treatment providers may perform or provide the following service: Treatment of convicted level I and level II sex offenders who are sentenced and ordered into treatment pursuant to chapter 9.94A RCW and adjudicated juvenile level I and level II sex offenders who are sentenced and ordered into treatment pursuant to chapter 13.40 RCW.
RCW 18.155.030.

12. Chapter 42.56 RCW - Public Records Act

PRA Construction – RCW 42.56.030

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.
RCW 42.56.030

Documents and indexes to be made public – RCW 42.56.070(1)

Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.
RCW 42.56.070(1)

Prompt Responses Required – RCW 42.56.520

Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer; (3) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (4) denying the public record request. **Additional time required to respond to a request may be based upon the need** to clarify the intent of the request, to locate and assemble the information requested, **to notify third persons or agencies affected by the request,** or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such

review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.
RCW 42.56.520

Court protection of public records - RCW 42.56.540

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.
RCW 42.56.540

Judicial review of agency actions - RCW 42.56.550

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in

camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.
RCW 42.56.550

13. <u>Chapter 70.02 RCW - Adult Corrections</u>

Definitions (as amended by 2014 c 220) - RCW 70.02.010

(14) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(16) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

(18) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(21) "Information and records related to mental health services" means a type of health care information that relates to all information and records compiled, obtained, or maintained in the course of providing services by a mental health service agency or mental health professional to persons who are receiving or have received services for mental illness. The term includes mental health information contained in a medical bill, registration records, as defined in RCW 71.05.020, and all other records regarding the person maintained by the department, by regional support networks and their staff, and by treatment facilities. The term further includes documents of legal proceedings under chapter 71.05, 71.34, or 10.77 RCW, or somatic health care information. For health care information maintained by a hospital as defined in RCW 70.41.020 or a health care facility or health care provider that participates with a hospital in an organized health care arrangement defined under federal law, "information and records related to mental health services" is limited to information and records of services provided by a mental health professional or information and records of services created by a hospital-operated community mental health program as defined in RCW 71.24.025(6). The term does not include psychotherapy notes.

(27) "Mental health professional" ((has the same meaning as in RCW 71.05.020)) means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary of social and health services under chapter 71.05 RCW, whether that person works in a private or public setting.

(31) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(44) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another.
RCW 70.02.010 (14, 16, 18, 21, 27, 31, 44).

Mental health services, confidentiality of records—Permitted disclosures. (Effective until April 1, 2016.) - RCW 70.02.230

(1) Except as provided in this section, RCW 70.02.050, 71.05.445, 70.96A.150, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or

pursuant to a valid authorization under RCW 70.02.030, the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.

RCW 70.02.230.

Mental health services—Department of corrections. (Effective until April 1, 2016.) - RCW 70.02.250

(1) Information and records related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW must be released, upon request, by a mental health service agency to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request must be in writing and may not require the consent of the subject of the records.

RCW 70.02.250.

Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. (Effective until April 1, 2016.) – RCW 71.05.445

(1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification

is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by email or facsimile, so long as the notifying mental health service provider is clearly identified.

(2) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties.

(3) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in RCW 71.05.020, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(4) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.
RCW 71.05.445.

Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices. - RCW 72.09.345

(1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(6) The committee shall classify as risk level I those sex offenders whose risk assessments indicate they are at a low risk to sexually reoffend within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate they are at a moderate risk to sexually reoffend within the community at large. The committee shall classify

as risk level III those offenders whose risk assessments indicate they are at a high risk to sexually reoffend within the community at large.
RCW 72.09.345(1)(6).

Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies – RCW 72.09.585

(6) The information received by the department under RCW 71.05.445 or 70.02.250 may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in this subsection prevents any person from reporting to law enforcement or the department behavior that he or she believes creates a public safety risk.
RCW 72.09.585(6).

14. Chapter 71.05 RCW - MENTAL ILLNESS

Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. (*Effective until April 1, 2016.*) - RCW 71.05.445

Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. (Effective until April 1, 2016.)

(1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by email or facsimile, so long as the notifying mental health service provider is clearly identified.

(2) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties.

(3) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in RCW 71.05.020, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(4) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(5) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(6) Whenever federal law or federal regulations restrict the release of information and records related to mental health services for any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(7) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(8) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.
RCW 71.05.445

VI. APPENDIX B

1. <u>Washington Administrative Code (WAC) 246-930 Sex Offender Treatment Provider</u>

Requirements for certification - WAC 246-930-065 -

(1) An applicant for certification must:

(a) Be credentialed as a *health professional* as provided in WAC 246-930-020. The credential must be in good standing without pending disciplinary action;

(b) Successfully complete an education program as required in WAC 246-930-030;

(c) Successfully complete an examination;

(d) Be able to practice with reasonable skill and safety; and

(e) Have no sex offense convictions, as defined in RCW 9.94A.030 or convictions in any other jurisdiction of an offense that under Washington law would be classified as a sex offense as defined in RCW 9.94A.030.

(2) An applicant for certification as a provider must also complete treatment and evaluation experience required in WAC 246-930-040.
WAC 246-930-065

Standards for assessment and evaluation reports - WAC 246-930-320

(1) General considerations in evaluating clients. Providers and affiliates shall:

(a) Be knowledgeable of current assessment procedures used;

(b) Be aware of the strengths and limitations of self-report and make reasonable efforts to verify information provided by the client;

(c) Be knowledgeable of the client's legal status including any court orders applicable.

(d) Have a full understanding of the SSOSA and SSODA process, if applicable, and be knowledgeable of relevant criminal and legal considerations;

(e) Be impartial;

(f) Provide an objective and accurate base of data; and

(g) Avoid addressing or responding to referral questions which exceed the present level of knowledge in the field or the expertise of the evaluator.

(2) Providers and affiliates must complete written evaluation reports. These reports must:

(a) Be accurate, comprehensive and address all of the issues required for court or other disposition;

(b) Present all knowledge relevant to the matters at hand in a clear and organized manner;

(c) Include the referral sources, the conditions surrounding the referral and the referral questions addressed;

(d) Include a compilation of data from as many sources as reasonable, appropriate, and available. These sources may include but are not limited to:

(i) Collateral information including:

(A) Police reports;

(B) Child protective services information; and

(C) Criminal correctional history;

(ii) Interviews with the client;

(iii) Interviews with significant others;

(iv) Previous assessments of the client such as:

(A) Medical;

(B) Substance abuse; and

(C) Psychological and sexual deviancy;

(v) Psychological/physiological tests;

(e) Address, at a minimum, the following issues:

(i) A description of the current offense(s) or allegation(s) including, but not limited to, the evaluator's conclusion about the reasons for any discrepancy between the official and client's versions of the offenses or allegations;

(ii) A sexual history, sexual offense history and patterns of sexual arousal/preference/interest;

(iii) Prior attempts to remediate and control offensive behavior including prior treatment;

(iv) Perceptions of significant others, when appropriate, including their ability and/or willingness to support treatment efforts;

(v) Risk factors for offending behavior including:

(A) Alcohol and drug abuse;

(B) Stress;

(C) Mood;

(D) Sexual patterns;

(E) Use of pornography; and

(F) Social and environmental influences;

(vi) A personal history including:

(A) Medical;

(B) Marital/relationships;

(C) Employment;

(D) Education; and

(E) Military;

(vii) A family history;

(viii) History of violence and/or criminal behavior;

(ix) Mental health functioning including coping abilities, adaptation style, intellectual functioning and personality attributes; and

(x) The overall findings of psychological/physiological/medical assessment if these assessments have been conducted;

(f) Include conclusions and recommendations. The conclusions and recommendations shall be supported by the data presented in the report and include:

(i) The evaluator's conclusions regarding the appropriateness of community treatment;

(ii) A summary of the evaluator's diagnostic impressions;

(iii) A specific assessment of relative risk factors, including the extent of the client's dangerousness in the community at large; and

(iv) The client's willingness for outpatient treatment and conditions of treatment necessary to maintain a safe treatment environment.

(g) Include a proposed treatment plan which is clear and describes in detail:

(i) Anticipated length of treatment, frequency and type of contact with providers or affiliates, and supplemental or adjunctive treatment;

(ii) The specific issues to be addressed in treatment and a description of planned treatment interventions including involvement of significant others in treatment and ancillary treatment activities;

(iii) Recommendations for specific behavioral prohibitions, requirements and restrictions on living conditions, lifestyle requirements, and monitoring by family members and others that are necessary to the treatment process and community safety; and

(iv) Proposed methods for monitoring and verifying compliance with the conditions and prohibitions of the treatment program.

(3) If a report fails to include information specified in (a) through (e) of this subsection, the evaluation should indicate the information not included and cite the reason the information is not included.

(4) Second evaluations shall state whether prior evaluations were considered. The decision regarding use of other evaluations prior to conducting the second evaluation is within the professional discretion of the provider or affiliate. The second evaluation need not repeat all assessment or data compilation measures if it reasonably relies on existing current information. The second evaluation must address all issues outlined in subsection (2) of this section, and include conclusions, recommendations and a treatment plan if one is recommended.

(5) The provider or affiliate who provides treatment shall submit to the court and the parties a statement that the provider or affiliate is either adopting the proposed treatment plan or submitting an alternate plan. Any alternate plan and the statement shall be provided to the court before sentencing. Any alternate plan must include the treatment methods described in WAC 246-930-332(1). **WAC 246-930-320**.

VII. APPENDIX C

1. Civil Court Rules (CR)

Process – CR 4

(a) Summons--Issuance.

(1) The summons must be signed and dated by the plaintiff or the plaintiff's attorney, and directed to the defendant requiring the defendant to defend the action and to serve a copy of the defendant's appearance or defense on the person whose name is signed on the summons.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve a copy of the defendant's defense within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or the defendant's attorney, and shall be served upon the person whose name is signed on the summons. In condemnation cases a notice of appearance only shall be served on the person whose name is signed on the petition.

(4) No summons is necessary for a counterclaim or cross claim for any person who previously has been made a party. Counterclaims and cross claims against an existing party may be served as provided in rule 5.

(b) Summons.

(1) Contents. The summons for personal service shall contain:

(i) the title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

(ii) a direction to the defendant summoning the defendant to serve a copy of the defendant's defense within a time stated in the summons;

(iii) a notice that, in case of failure so to do, judgment will be rendered against the defendant by default. It shall be signed and dated by the plaintiff, or the plaintiff's attorney, with the addition of the plaintiff's post office address, at which the papers in the action may be served on the plaintiff by mail.

CR 4(a)(b)

Forms of Pleadings and Other Papers - CR 10(a)(1)

(a) Caption. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number if known to the person signing it, and an identification as to the nature of the pleading or other paper.

(1) Names of Parties. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(2) Unknown Names. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in the plaintiff's pleading, and such defendant may be designated in any pleading or proceeding by any name, and when the defendant's true name shall be discovered, the pleading or proceeding may be amended accordingly.
CR 10(a)(1)(2).

Parties, Plaintiffs and Defendants; Capacity - CR 17(a)

(-) Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in the party's own name without joining the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.
CR 17(a).

Class Actions – CR 23

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action To Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subsection (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subsection (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate,

(A) an action may be brought or maintained as a class action with respect to particular issues, or

(B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) dealing with similar procedural matters. The orders may be combined with an order under rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) Disposition of Residual Funds.

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses,
litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this
rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Legal Foundation of Washington to support activities and programs that promote access to the civil justice system for low income residents of Washington State. The court may disburse the balance of any residual funds beyond the minimum percentage to the Legal Foundation of Washington or to any other entity for purposes that have a direct or indirect relationship to the objectives of the

underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.
CR 23

Applicability in General – Rule 81

(a) To What Proceedings Applicable. Except where inconsistent with rules or statutes applicable to special proceedings, these rules shall govern all civil proceedings. Where statutes relating to special proceedings provide for procedure under former statutes applicable generally to civil actions, the procedure shall be governed by these rules.
(b) Conflicting Statutes and Rules. Subject to the provisions of section (a) of this rule, these rules supersede all procedural statutes and other rules that may be in conflict.
CR 81

VIII. APPENDIX D

1. General Court Rules (GR)

Destruction, Sealing and Redaction of Court Records – GR 15

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.

(b) Definitions.

(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(2) "Court record" is defined in GR 31(c)(4).

(3) Destroy. To destroy means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.

(4) Seal. To seal means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.

(5) Redact. To redact means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(6) Restricted Personal Identifiers are defined in GR 22(b)(6).

(7) Strike. A motion or order to strike is not a motion or order to seal or destroy.

(8) Vacate. To vacate means to nullify or cancel.

(c) Sealing or Redacting Court Records.

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or

redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

(2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

(A) The sealing or redaction is permitted by statute; or

(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or

(C) A conviction has been vacated; or

(D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or

(E) The redaction includes only restricted personal identifiers contained in the court record; or

(F) Another identified compelling circumstance exists that requires the sealing or redaction.

(3) A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (2) above.

(4) Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, section (d) shall apply. The

order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

(5) Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records;

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the public.

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(6) Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions. In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number,
case type with the notification "DV" if the case involved domestic violence, the adult or juvenile's name, and the notation "vacated."

(e) Grounds and Procedure for Requesting the Unsealing of Sealed Records.

(1) Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record.

(2) Criminal Cases. A sealed court record in a criminal case shall be ordered unsealed only upon proof of compelling circumstances, unless otherwise

provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(3) Civil Cases. A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing no longer exist, or pursuant to RCW 4.24 or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16).

(f) Maintenance of Sealed Court Records. Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

(g) Use of Sealed Records on Appeal. A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

(h) Destruction of Court Records.

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.

(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall;

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Order Destroyed" for the docket entry;

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

(i) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if all parties so stipulate in writing and the court so orders.

(j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks
under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public
auditor, or the Commission on Judicial Conduct in the exercise of duties conferred by statute.
GR 15

Access to Court Records – GR 31

(a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by Article I, Section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with
reasonable expectations of personal privacy as provided by article 1, Section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.

(b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record. Administrative records are not within the scope of this rule. Court records are further governed by GR 22.

(c) Definitions.

(1) "Access" means the ability to view or obtain a copy of a court record.

(2) "Administrative record" means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.

(3) "Bulk distribution" means distribution of all, or a significant subset, of the information in court records, as is and without modification.

(4) "Court record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection

with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

(5) "Criminal justice agencies" are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

(6) "Dissemination contract" means an agreement between a court record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided court records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.

(7) "Judicial Information System (JIS) Committee" is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.

(8) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(9) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency,
however constituted, or any other organization or group of persons, however organized.

(10) "Public purpose agency" means governmental agencies included in the definition of "agency" in RCW 42.17.020 and other non-profit organizations whose principal function is to provide services to the public.

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

(2) Each court by action of a majority of the judges mayfrom time to time make and amend local rules governing access to court records not inconsistent with this rule.

(3) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records

(1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

(A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.

(B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

(C) Driver's License Numbers.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

COMMENT

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court record that was filed prior to the adoption of this rule.

(f) Distribution of Court Records Not Publicly Accessible

(1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:

(A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.

(B) Determine, in its discretion, that filling the request will not violate this rule.

(C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.

(D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.

(2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.

(3) Criminal justice agencies may request court records not publicly accessible.

(A) The provider of court records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a class may request access.

(B) Agencies requesting access under this section of the rule shall identify the court records requested and the proposed use for the court records.

(C) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted; (ii) specify the uses which the agency will make of the data; and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

(g) Bulk Distribution of Court Records

(1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.

(2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

(3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

(h) Appeals. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.

(i) Notice. The Administrator for the Courts shall develop a method to notify the public of access to court records and the restrictions on access.

(j) Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

(k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.
GR 31

Access to Administrative Records - General Principles – GR 31.1

(a) Policy and Purpose. Consistent with the principles of open administration of justice as provided in article I, section 10 of the Washington State Constitution, it is the policy of the judiciary to facilitate access to

administrative records. A presumption of access applies to the judiciary's administrative records. Access to administrative records, however, is not absolute and shall be consistent with exemptions for personal privacy, restrictions in statutes, restrictions in court rules, and as required for the integrity of judicial decision-making. Access shall not unduly burden the business of the judiciary.

(b) Overview of Public Access to Judicial Records. There are three categories of judicial records.

(1) Case records are records that relate to in-court proceedings, including case files, dockets, calendars, and the like. Public access to these records is governed by GR 31, which refers to these records as "court records," and not by this GR 31.1. Under GR 31, these records are presumptively open to public access, subject to stated exceptions.

(2) Administrative records are records that relate to the management, supervision, or administration of a court or judicial agency. A more specific definition of "administrative records" is in section (i) of this rule. Under section (j) of this rule, administrative records are presumptively open to public access, subject to exceptions found in sections (j) and (l) of this rule.

(3) Chambers records are records that are controlled and maintained by a judge's chambers. A more specific definition of this term is in section (m) of this rule. Under section (m), chambers records are not open to public access.

PROCEDURES FOR ADMINISTRATIVE RECORDS

(c) Procedures for Records Requests.

(1) COURTS AND JUDICIAL AGENCIES TO ADOPT PROCEDURES. Each court and judicial agency must adopt a policy implementing this rule and setting forth its procedures for accepting and responding to administrative records requests. The policy must include the designation of a public records officer and shall require that requests from the identified individual or, if an entity, an identified entity representative, be submitted in writing to the designated public records officer. Best practices for handling administrative records requests shall be developed under the authority of the Board for Judicial Administration.

COMMENT: When adopting policies and procedures, courts and judicial agencies will need to carefully consider many issues, including the extent to which judicial employees may use personally owned computers and other

media devices to conduct official business and the extent to which the court or agency will rely on the individual employee to search his or her personally owned media devices for documents in response to a records request. For judicial officers and their chambers staff, documents on personal media devices may still qualify as chambers records, see section (m) of this rule.

(2) PUBLICATION OF PROCEDURES FOR REQUESTING ADMINISTRATIVE RECORDS. Each court and judicial agency must prominently publish the procedures for requesting access to its administrative records. If the court or judicial agency has a website, the procedures must be included there. The publication shall include the public records officer's work mailing address, telephone number, fax number, and e-mail address.

(3) INITIAL RESPONSE. Each court and judicial agency must initially respond to a written request for access to an administrative record within five working days of its receipt, but for courts that convene infrequently no more than 30 calendar days, from the date of its receipt. The response shall acknowledge receipt of the request and include a good-faith estimate of the time needed to respond to the request. The estimate may be later revised, if necessary. For purposes of this rule, "working days" mean days that the court or judicial agency, including a part-time municipal court, is open.

(4) COMMUNICATION WITH REQUESTER. Each court and judicial agency must communicate with the requester as necessary to clarify the records being requested. The court or judicial agency may also communicate with the requester in an effort to determine if the requester's need would be better served with a response other than the one actually requested.

(5) SUBSTANTIVE RESPONSE. Each court and judicial agency must respond to the substance of the records request within the timeframe specified in the court's or judicial agency's initial response to the request. If the court or judicial agency is unable to fully comply in this timeframe, then the court or judicial agency should comply to the extent practicable and provide a new good faith estimate for responding to the remainder of the request. If the court or judicial agency does not fully satisfy the records request in the manner requested, the court or judicial agency must justify in writing any deviation from the terms of the request.

(6) EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS. If a particular request is of a magnitude that the court or judicial agency cannot fully comply within a reasonable time due to constraints on the court's or judicial agency's time, resources, and personnel, the court or judicial agency shall communicate this information to the requester. The court

or judicial agency must attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the court's or judicial agency's response, which may include a schedule of installment responses. If the court or judicial agency and requester are unable to reach agreement, then the court or judicial agency shall respond to the extent practicable and inform the requester that the court or judicial agency has completed its response.

(7) RECORDS REQUESTS THAT INVOLVE HARASSMENT, INTIMIDATION, THREATS TO SECURITY, OR CRIMINAL ACTIVITY. A court or judicial agency may deny a records request if it determines that: the request was made to harass or intimidate the court or judicial agency or its employees; fulfilling the request would likely threaten the security of the court or judicial agency; fulfilling the request would likely threaten the safety or security of judicial officers, staff, family members of judicial officers or staff, or any other person; or fulfilling the request may assist criminal activity.

(d) Review of Records Decision.

(1) NOTICE OF REVIEW PROCEDURES. The public records officer's response to a public records request shall include a written summary of the procedures under which the requesting party may seek further review.

(2) DEADLINE FOR SEEKING INTERNAL REVIEW. A record requester's petition under section (d)(3) seeking internal review of a public records officer's decision must be submitted within 90 days of the public records officer's decision.

(3) INTERNAL REVIEW WITHIN COURT OR AGENCY. Each court and judicial agency shall provide a method for review by the judicial agency's director, presiding judge, or judge designated by the presiding judge. For a judicial agency, the presiding judge shall be the presiding judge of the court that oversees the agency. The court or judicial agency may also establish intermediate levels of review. The court or judicial agency shall make publicly available the applicable forms. The review proceeding is informal and summary. The review proceeding shall be held within five working days, but for courts that convene infrequently no more than 30 calendar days, from the date the court or agency receives the request for review. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

(4) EXTERNAL REVIEW. Upon the exhaustion of remedies under section (d)(3), a record requester aggrieved by a court or agency decision may

obtain further review by choosing between the two alternatives set forth in subsections (i) and (ii) of this section (d)(4).

(i) REVIEW VIA CIVIL ACTION IN COURT. The requesting person may use a judicial writ of mandamus, prohibition, or certiorari to file a civil action in superior court challenging the records decision.

COMMENT: Subsection (i) does not create any new judicial remedies, but merely recognizes existing procedures for initiating a civil action in court.

(ii) INFORMAL REVIEW BY VISITING JUDGE OR OTHER OUTSIDE DECISION MAKER. The requesting person may seek informal review by a person outside the court or judicial agency. If the requesting person seeks review of a decision made by a court or made by a judicial agency that is directly reportable to a court, the outside review shall be by a visiting judicial officer. If the requesting person seeks review of a decision made by a judicial agency that is not directly reportable to a court, the outside review shall be by a person agreed upon by the requesting person and the judicial agency. In the event the requesting person and the judicial agency cannot agree upon a person, the presiding superior court judge in the county in which the judicial agency is located shall either conduct the review or appoint a person to conduct the review. The review proceeding shall be informal and summary. The decision resulting from the informal review proceeding may be further reviewed in superior court pursuant to a writ of mandamus, prohibition, or certiorari. Decisions made by a judge under this subsection (ii) are part of the judicial function.

(iii) DEADLINE FOR SEEKING EXTERNAL REVIEW. A request for external review must be submitted within 30 days of the issuance of the court or judicial agency's final decision under section (d)(3).

(e) Monetary Awards Not Allowed. Attorney fees, costs, civil penalties, or fines may not be awarded under this rule.

(f) Persons Who Are Subjects of Records.

(1) Unless otherwise required or prohibited by law, a court or judicial agency has the option of notifying a person named in a record or to whom a record specifically pertains, that access to the record has been requested.

(2) A person who is named in a record, or to whom a record specifically pertains, may present information opposing the disclosure to the applicable decision maker under sections (c) and (d).

(3) If a court or judicial agency decides to allow access to a requested record, a person who is named in that record, or to whom the record specifically pertains, has a right to initiate review under subsections (d)(3)-(4) or to participate as a party to any review initiated by a requester under subsections (d)(3)-(4). If either the record subject or the record requester objects to informal review under subsection (d)(4)(ii), such alternative shall not be available. The deadlines that apply to a requester apply as well to a person who is a subject of a record.

(g) Court and Judicial Agency Rules. Each court may from time to time make and amend local rules governing access to administrative records not inconsistent with this rule. Each judicial agency may from time to time make and amend agency rules governing access to its administrative records not inconsistent with this rule.

(h) Charging of Fees.

(1) A fee may not be charged to view administrative records, except the requester may be charged for research required to locate, obtain, or prepare the records at the rate set forth in section (h)(4).

(2) A fee may be charged for the photocopying or scanning of administrative records. If another court rule or statute specifies the amount of the fee for a particular type of record, that rule or statute shall control. Otherwise, the amount of the fee may not exceed the amount that is authorized in the Public Records Act, chapter 42.56 RCW.

(3) The court or judicial agency may require a deposit in an amount not to exceed the estimated cost of providing copies for a request. If a court or judicial agency makes a request available on a partial or installment basis, the court or judicial agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed within 30 days, the court or judicial agency is not obligated to fulfill the balance of the request.

(4) A fee not to exceed $30 per hour may be charged for research and preparation services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.

COMMENT: The authority to charge for research services is discretionary, allowing courts to balance the competing interests between recovering the

costs of their response and ensuring the open administration of justice. The fee should not exceed the actual costs of response.

(5) A court or judicial agency may require prepayment of fees.

APPLICATION OF RULE FOR ADMINISTRATIVE RECORDS

This rule applies to all administrative records, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record.

(i) Definitions.

(1) "Access" means the ability to view or obtain a copy of an administrative record.

(2) "Administrative record" means a public record created by or maintained by a court or judicial agency and related to the management, supervision, or administration of the court or judicial agency.

COMMENT: The term "administrative record" does not include any of the following: (1) "court records" as defined in GR 31; (2) chambers records as set forth later in this rule; or (3) an attorney's client files that would otherwise be covered by the attorney-client privilege or the attorney work product privilege.

(3) "Court record" is defined in GR 31.

(4) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(5) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(5) "Public record" includes any writing, except chambers records and court records, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any court or judicial agency regardless of physical form or characteristics. "Public record" also includes metadata for electronic administrative records.

COMMENT: See O'Neill v. City of Shoreline, 170 Wn.2d 138, 240 P.3d 1149 (2010) (defining "metadata").

(6) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

COMMENT: E-mails and telephone records are included in this broad definition of "writing."

(j) Administrative Records—General Right of Access. Court and judicial agency administrative records are open to public access unless access is exempted or prohibited under this rule, other court rules, federal statutes, state statutes, court orders, or case law. To the extent that records access would be exempt or prohibited if the Public Records Act applied to the judiciary's administrative records, access is also exempt or prohibited under this rule. To the extent that an ambiguity exists as to whether records access would be exempt or prohibited under this rule or other enumerated sources, responders and reviewing authorities shall be guided by the Public Records Act, chapter 42.56 RCW, in making interpretations under this rule. In addition, to the extent required to prevent a significant risk to individual privacy or safety interests, a court or judicial agency shall delete identifying details in a manner consistent with this rule when it makes available or publishes any public record; however, in each instance, the justification for the deletion shall be provided fully in writing.

(k) Entities Subject to Rule.

(1) This rule applies to the Supreme Court, the Court of Appeals, the superior courts, the district and municipal courts, and the following judicial agencies:

(i) All judicial organizations that are overseen by a court, including entities that are designated as agencies, departments, committees, boards, commissions, task forces, and similar groups;

(ii) The Superior Court Judges' Association, the District and Municipal Court Judges' Association, and similar associations of judicial officers and employees;

(iii) The Washington State Office of Civil Legal Aid and the Washington State Office of Public Defense; and

(iv) All subgroups of the entities listed in this section (k)(1).

COMMENT: The elected court clerks and their staff are not included in this rule because (1) they are covered by the Public Records Act and (2) they do not generally maintain the judiciary's administrative records that are covered by this rule.

(2) This rule does not apply to the Washington State Bar Association. Public access to the Bar Association's records is governed by [a proposed General Rule 12.4, pending before the Supreme Court].

(3) A judicial officer is not a court or judicial agency.

COMMENT: This provision protects judges and court commissioners from having to respond personally to public records requests. Records requests would instead go to the court's public records officer.

(4) An attorney or entity appointed by a court or judicial agency to provide legal representation to a litigant in a judicial or administrative proceeding does not become a judicial agency by virtue of that appointment.

(5) A person or entity entrusted by a judicial officer, court, or judicial agency with the storage and maintenance of its public records, whether part of a judicial agency or a third party, is not a judicial agency. Such person or agency may not respond to a request for access to administrative records, absent express written authority from the court or judicial agency or separate authority in court rule to grant access to the documents.

COMMENT: Judicial e-mails and other documents sometimes reside on IT servers, some are in off-site physical storage facilities. This provision prohibits an entity that operates the IT server from disclosing judicial records. The entity is merely a bailee, holding the records on behalf of a court or judicial agency, rather than an owner of the records having independent authority to release them. Similarly, if a court or judicial agency puts its paper records in storage with another entity, the other entity cannot disclose the

records. In either instance, it is the court or judicial agency that needs to make the decision as to releasing the records. The records request needs to be addressed by the court's or judicial agency's public records officer, not by the person or entity having control over the IT server or the storage area. On the other hand, if a court or judicial agency archives its records with the state archivist, relinquishing by contract its own authority as to disposition of the records, the archivist would have separate authority to disclose the records.

Because of this rule's broad definition of "public record", this paragraph (6) would apply to electronic records, such as e-mails (and their metadata) and telephone records, among a wide range of other records.

(l) Exemptions. In addition to exemptions referred to in section (j), the following categories of administrative records are exempt from public access:

(1) Requests for judicial ethics opinions;

(2) Minutes of meetings held exclusively among judges, along with any staff;

COMMENT: Meeting minutes do not always contain information that needs to be withheld from public access. Courts have discretion whether to release meeting minutes, because an exemption from this rule merely means that a document is not required to be disclosed. Disclosure would be appropriate if the document does not contain information of a confidential, sensitive, or protected nature. Courts and judicial agencies are encouraged to carefully consider whether some, or all, of their meeting minutes should be open to public access. Adopting a local rule on this issue would assist the public in knowing which types of minutes are accessible and which are not.

(3) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this rule, except that a specific record is not exempt when publicly cited by a court or agency in connection with any court or agency action. This exemption applies to a record only while a final decision is pending on the issue that is being addressed in that record; once the final decision has been made, the record is no longer covered by this exemption. For purposes of documents related to budget negotiations with a budgetary authority, the "final decision" is the decision by the budgetary authority to adopt the budget for that year or biennium.

(4) Evaluations and recommendations concerning candidates seeking appointment or employment within a court or judicial agency;

COMMENT: Paragraph (4) is intended to encompass documents such as those of the Supreme Court's Capital Counsel Committee, which evaluates attorneys for potential inclusion on a list of attorneys who are specially qualified to represent clients in capital cases.

(5) Personal identifying information, including individuals' home contact information, Social Security numbers, date of birth, driver's license numbers, and identification/security photographs;

(6) Documents related to an attorney's request for a trial or appellate court defense expert, investigator, or other services, any report or findings submitted to the attorney or court or judicial agency by the expert, investigator, or other service provider, and the invoicing of the expert, investigator or other service provider during the pendency of the case in any court. Payment records are not exempt, provided that they do not include medical records, attorney work product, information protected by attorney-client privilege, information sealed by a court, or otherwise exempt information;

(7) Documents, records, files, investigative notes and reports, including the complaint and the identity of the complainant, associated with a court's or judicial agency's internal investigation of a complaint against the court or judicial agency or its contractors during the course of the investigation. The outcome of the court's or judicial agency's investigation is not exempt;

(8) [Reserved];

(9) Family court mediation files; and

(10) Juvenile court probation social files.

(11) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans, the disclosure of which would have a substantial likelihood of threatening the security of a judicial facility or any individual's safety.

(12) The following records of the Certified Professional Guardian Board:

(i) Investigative records compiled by the Board as a result of an investigation conducted by the Board as part of the application process, while a disciplinary investigation is in process under the Board's rules and regulations, or as a result of any other investigation conducted by the Board while an

investigation is in process. Investigative records related to a grievance become open to public inspection once the investigation is completed.

(ii) Deliberative records compiled by the Board or a panel or committee of the Board as part of a disciplinary process.

(iii) A grievance shall be open to public access, along with any response to the grievance submitted by the professional guardian or agency, once the investigation into the grievance has been completed or once a decision has been made that no investigation will be conducted. The name of the professional guardian or agency shall not be redacted from the grievance.

CHAMBERS RECORDS

(m) Chambers Records. Chambers records are not administrative records and are not subject to disclosure.

COMMENT: Access to chambers records could necessitate a judicial officer having to review all records to protect against disclosing case sensitive information or other information that would intrude on the independence of judicial decision-making. This would effectively make the judicial officer a de facto public records officer and could greatly interfere with judicial functions.

(1) "Chambers record" means any writing that is created by or maintained by any judicial officer or chambers staff, and is maintained under chambers control, whether directly related to an official judicial proceeding, the management of the court, or other chambers activities. "Chambers staff" means a judicial officer's law clerk, a judicial officer's administrative staff, and any other staff when providing support directly to the judicial officer at chambers.

COMMENT: Some judicial employees, particularly in small jurisdictions, split their time between performing chambers duties and performing other court duties. An employee may be "chambers staff" as to certain functions, but not as to others. Whether certain records are subject to disclosure may depend on whether the employee was acting in a chambers staff function or an administrative staff function with respect to that record.

Records may remain under chambers control even though they are stored elsewhere. For example, records relating to chambers activities that are stored on a judge's personally owned or workplace-assigned computer, laptop computer, cell phone, and similar electronic devices would still be chambers records. As a further example, records that are stored for a judicial chambers

on external servers would still be under chambers control to the same extent as if the records were stored directly within the chambers. However, records that are otherwise subject to disclosure should not be allowed to be moved into chambers control as a means of avoiding disclosure.

(2) Court records and administrative records do not become chambers records merely because they are in the possession or custody of a judicial officer or chambers staff.

COMMENT: Chambers records do not change in character by virtue of being accessible to another chambers. For example, a data base that is shared by multiple judges and their chambers staff is a "chambers record" for purposes of this rule, as long as the data base is only being used by judges and their chambers staff.

IMPLEMENTATION AND EFFECTIVE DATE

(n) Best Practices. Best practice guidelines adopted by the Supreme Court may be relied upon in acting upon public requests for documents.

(o) Effective Date of Rule.

(1) This rule will go into effect on a future date to be determined by the Supreme Court based upon a recommendation from the Board for Judicial Administration. The rule will apply to records that are created on or after that date.

COMMENT: A delayed effective date is being used to allow time for development of best practices, training, and implementation. The effective date will be added to the rule once it has been determined.

(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test. The Public Records Act, chapter 42.56 RCW, does not apply to judicial records, but it may be used for non-binding guidance.
GR 31.1