

Editorial: Washington Supreme Court should reject proposal that would allow sealing of more records

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The Washington Supreme Court should reject proposed rules that would allow more court records to be sealed, possibly for eternity.

The changes would violate or compromise the presumption in the Washington Constitution that records be open, and further damage the public's faith that justice has been done, and that its safety has been protected.

The proposal from the Judicial Information Systems Committee also goes to the justices just weeks after Gov. Jay Inslee signed legislation that rewrote the laws regarding the retention of juvenile court records. House Bill 1651 was enacted after nine hearings and multiple rewrites and amendings during two legislative sessions.

Allied Daily Newspapers of Washington, of which The Spokesman-Review is a member, and the Washington Coalition for Open Government were among those opposing the bill. They are also asking the court to reject the changes to General Rule 15 regarding the destruction, sealing and redaction of court records.

Many of the rules address some of the same issues HB 1651 sought to resolve. The law should be given a chance to work, and the court should defer to the Legislature, which worked hard to balance the public's interest in an open judicial process with the rights of juveniles to move on in life free of a paper trail that could lead employers back to the stupid choices of adolescence.

The proposed rule changes go much further, potentially eliminating all trace of a juvenile criminal background, and the record of any adult charging and prosecution that ends without a conviction. As the Washington Association of Prosecuting Attorneys noted in its comments on the rules, "It should be remembered that acquittals often occur under very controversial and politically-charged circumstances."

Their example: officer-involved shootings.

Depending on how accommodating a judge might be to requests for sealing or destroying records and evidence, the public could be left to solve the “Case of the Disappearing Docket” to determine how judges rule in some cases, or how effectively prosecutors are pursuing cases.

Even individuals or organizations not party to a case might have to be notified if someone tries to seal or unseal a record. Would the public be on that mailing list?

The constitutional rule of thumb when considering a request to seal records is that a “compelling” argument must be made for taking that action. The changes would lower the threshold to “good cause” for records that did not figure in a judge’s or jury’s decision in a case. That can be a mighty hard demarcation point to define when hundreds of documents and exhibits are in the balance, one not likely to satisfy the public interest in maximum transparency.

The proposed rules are unnecessarily broad and should be narrowed or discarded.

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