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February 26, 2014

Supreme Court of Washington State
PO Box 40929
Olympia, WA. 98504-0929

RE: Proposed JuCR 1.6

Dear Clerk of The Supreme Court:

Proposed JuCR 1.6 provides a standard procedure for determining when removal of shackles from a youth prior to his or her appearance in juvenile courts is appropriate. It does not provide a procedure for removing shackles, which courts will likely need prior to being required to hold hearings whether such removal is appropriate. The proposed rule does not state precisely when courts are to have special hearings to determine whether to shackle juveniles, and if so, whether the juvenile should appear at that hearing in shackles or not.

Considerations of removing restraints are typically only at issue during trial. *State v. E.J.Y.*, 113 Wn. App. 940, 55 P.3d 673 (2002). The issue in *E.J.Y.* was “whether E.J.Y. was denied a fair trial when he was held in restraints throughout his fact finding hearing.” *Id.* at 951. The court there recognized that appearing before a judge shackled was less prejudicial than if there were a jury. *Id.* However, conduct that was held to be non-prejudicial there seems to be interpreted here to require increased judicial oversight not only at trial, but potentially at every non-trial situation. Under Proposed JuCR 1.6, the suggested language goes beyond the protections generally enjoyed by defendants and potentially requires additional hearings before every single court appearance.

Proposed JuCR 1.6(a)(1)(A) seems to give judges the discretion how to maintain order in the courtroom, but the ability to control court proceedings is already well established. *E.g.*, RCW 2.28.010. Further, Proposed JuCR 1.6(a)(1)(C) looks to “present behavior” indicating “a substantial risk of flight from the courtroom.” Since the mere statements of intent to flee may not be “substantial” enough to rise to the level required under the proposed court rule, the court will need to witness some physical conduct revealing the juvenile’s imminent desire to flee. If the court is weighing whether the juvenile’s conduct is “substantial” enough, then the court may not be giving the underlying proceedings the due concentration called for.

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The proposed rule would also present difficulties in implementation in Walla Walla County. Here, juveniles must be transported by van from the detention center to the superior court, during which time the juveniles must be shackled for safety and security purposes. Also, there is no antechamber in which juveniles can be safely detained while they are unshackled before appearing before the court. There is also already a color scheme ranging from red, orange, yellow, blue, and green, with decreasing levels of restraint. However, this system is implemented through the Juvenile Justice Center. This makes sense, though, since JJC staff members interact with the juveniles on a regular basis and can recognize whether a juvenile is in a good or bad mood and whether the juvenile is likely going to act out in court.

For the foregoing reasons, proposed JuCR 1.6 goes beyond the protections enumerated in *State v. E.J.Y.* and potentially creates a burden that overcomplicates a process effectively managed by the Juvenile Justice Center.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicholas A. Holce". The signature is written in a cursive, flowing style.

Nicholas A. Holce
Deputy Prosecuting Attorney