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King County Prosecutor
Juvenile Division

NO. 67461-7-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JOSH SANCHEZ,

Appellant.

~~FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 NOV 28 AM 11:09~~

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Helen Halpert, Judge

BRIEF OF APPELLANT

James W. Conroy
Attorney for Appellant
Society of Counsel
Representing Accused Persons
1401 E. Jefferson Ste. # 200
Seattle, WA 98122
206-322-8400



ORIGINAL

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I. IDENTITY OF MOVING PARTY

Josh Sanchez, Appellant, seeks the relief requested in part 2.

II. ASSIGNMENTS OF ERROR

The trial court erred by releasing the Juvenile Sexual Behavior and Risk Assessment (SSODA evaluation) to the King County Sheriff for purposes of conducting a risk assessment, and refusing to find that SSB 5204 is now controlling on the issue of conducting risk assessments.

III. STATEMENT OF THE CASE

On August 4, 2011 the trial court ordered that the SSODA evaluation conducted regarding the Respondent be released to the King County Sheriff for purposes of conducting a risk assessment. SEE *Order On Motion* of the trial court dated August 4, 2011, which is attached to these pleadings as Attachment A. CP at pg 62.

The issue on appeal relates to the propriety and legal authority for releasing the SSODA evaluation to the King County Sheriff for purposes of conducting a risk assessment.

Trial counsel requested the trial courts consideration of SSB 5204 (effective date July 22, 2011), which directly addresses the issue of the release of psychological evaluations to the End-of-Sentence Review Committee for purposes of conducting risk assessments pursuant to

Section 5 thereof at subsections (2) and (4). SEE Attachment B.

The trial court advised counsel that SSB 5204 was not relevant at all. VRP August 4, 2011, at page 19

On August 19, 2011 Commissioner Mary Neel heard argument on the Petitioner's request for a stay of the release of the SSODA evaluation pending the prosecution of this appeal and granted a temporary stay.

On September 14, 2011 Commissioner Neel entered a *Ruling on Motion For Stay*, lifting the stay, without prejudice to renew the request if a change in circumstances warrants a renewed motion. SEE Attachment C.

IV. ARGUMENT

Issue: Is it appropriate for the court to bar disclosure of the Juvenile Sexual Behavior Evaluation and Risk Assessment (SSODA evaluation) to the King County Sheriff because it is "routinely done?"

Answer: Yes, after review of SSB 5204 there is no longer statutory authority to release the evaluation to the King County Sheriff to address the issue of risk classification. Such release is only authorized to the End-of-Sentence Review Committee.

Issue: Should the respondent's right to privacy and rights to a fair trial be forever foreclosed without statutory authority for doing so?

Answer: No.

The trial court advised counsel that it had been advised (by someone) that SSODA evaluations are “routinely” released (by someone) to the King County Sheriff’s Office to “assist” them in their classification of the respondent as a sex offender. VRP August 4, 2011 at page 2.

There has been no showing of any current statutory authority that would support acquiescence to the request made by the King County Sheriff’s Office¹.

The Dispositional Order in Josh’s case requires Josh to remain in the Griffin Home². The Griffin Home (Matsen House) is a Specialized Sexually Aggressive Youth Treatment Program which follows national standards of treatment for adolescent sexual offenders.

Josh is required to remain on probation for 2 years, and follow a very stringent list of requirements summarized in the Addendum to the Disposition Order. In failing to follow these guidelines Josh can be incarcerated at JRA for 36 weeks.

¹ The King County Sheriff never made a formal request for the release of the SSODA evaluation until release by the JPC to the Sheriff was made known to the parties by the trial court.

² Josh actually resides in the Matsen House which is a group home affiliated with the Griffin Home Residential Treatment Center which is turn is operated by the Friends of Youth program.

A. THE LANGUAGE OF SSB 5204 IS CLEAR AND UNAMBIGUOUS.

An analysis of the issues involved must begin with the language of SSB 5204 which became effective July 22, 2011 and is now controlling on the issue of risk classification. SSB 5204 (2) reads:

In order for public agencies to have the information necessary to notify the public as authorized by RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee **for the purpose of assigning risk levels**, reviewing available release plans, and making appropriate referral for sex offenses. Emphasis added.

The objective of statutory interpretation is to ascertain and carry out legislative intent. *State, Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d. 1, 43 P.3d. 4 (2002). If the meaning of a statute is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent. *Campbell & Gwinn*, 146 Wn.2d at 9-10, 43 P.3d 4. Each provision of a statute should be read together with other provisions to achieve a harmonious and unified statutory scheme. *Bennett v. Ruegg, (In re Estate of Kerr)*, 134 Wn.2d 328, 336, 949 P.2d 810 (1998).

SSB 5204 sets forth the new parameters of risk classification.

In the context of risk classification there can be no doubt about the legislative intent. The local Sheriff has been officially displaced as the designee of the risk classification process by the End of Sentence Review Committee which is now charged with making risk classifications in the

future.

We review issues of statutory construction de novo. *State v. Hahn*, 83 Wash.App. 825, 831, 924 P.2d 392 (1996). Our duty is “to ascertain and give effect to the intent and purpose of the Legislature.” *Hahn*, 83 Wash.App. at 831, 924 P.2d 392. But when statutory language is plain and unambiguous, the legislative intent is clear and no further construction is permitted. *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003). A statute is not ambiguous merely because different interpretations are conceivable. *State v. Leyda*, 157 Wash.2d 335, 352, 138 P.3d 610 (2006).

The King County Sheriff has previously argued that RCW 13.50.050 and RCW 4.24.550, compelled disclosure. RCW 13.50.050 actually deals with Records **Not Relating To Commission of Juvenile Offenses**.

As also noted by the defense previously, this latter embolden section is critical because the records the King County Sheriff Office was seeking are strictly relegated to a Juvenile Offender matter and therefore reproduction to third parties was previously prohibited by RCW 13.50.100

RCW 13.50.100 (4)(a) reads in principle part;

(a) Information that may be released shall be limited to information regarding investigations in which: (i) The juvenile was an alleged victim of abandonment or abuse or neglect; or (ii) the petitioner for custody of the juvenile, or any individual aged sixteen or older residing in the petitioner's household, is the subject of a founded or currently pending child protective services investigation made by the department subsequent to October 1, 1998.

Nowhere in this section is there any support for re-dissemination of the SSODA evaluation to the King County Sheriff particularly since

SSB5204 is now controlling. The King County Sheriff is not one of the parties delineated by RCW 13.50.100.

Additionally SSB 5204 specifically amends RCW13.50.050 and RCW 4.24.550 which has delineated the limitations of release, to whom release is authorized, and for what purposes. SEE *SSB 5204 Sec. 4*

The respondent maintains that RCW 42.56.050, the 4th, 5th, 6th and 14th Amendments to the United States Constitution, and comparable sections of the Washington State Constitution, protect the disclosure of SSODA evaluation.

Under RCW 42.56.050:

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

This Court has the authority to restrict disclosure of discovery materials and to order third parties already in receipt of restricted discovery to return it to the court. CrR 4.7(d) and CrR 4.7(h)(3).

**B. STATE AND FEDERAL STATUTES SUPPORT
THE RESPONDENT'S POSITION REGARDING THE
RELEASE OF THE SSODA EVALUATION.**

State recognition for an individual's right to privacy regarding his health, is found under RCW 70.02.005, where the legislature makes the following two findings: "Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests", and "Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers." RCW 70.02.005(1) and (4).

At the federal level, Josh's privacy rights in the evaluation are also protected. SEE: *45 CFR SUBTITLE C §160*

Like a vacated conviction (which Josh has the ability to pursue), a statute that permits sealing is a factor identified in GR 15 that supports a finding of compelling privacy or safety interests that may outweigh the public interest, and a factor the court can consider when determining if sealing is appropriate. In *State v Waldon*, 148 Wn. App. 952, 202 P.3d 325 (2009), Division 1 of the Washington Court of Appeals held

The rule [GR 15] then provides a list of six [s]ufficient privacy or safety concerns that may be weighed against the public interest.

This does not create a presumption that the movant can satisfy the compelling interest standard merely by showing that one or more held of these concerns are present in her case. Rather the rule recognizes that these are important concerns to be considered by the trial court, along with the *Ishikawa* factors, in ruling on a motion to seal....

Accordingly, when a trial court finds that the sealing proponent meets one of the listed criteria, the court can comply with *Ishikawa* by analyzing whether the identified compelling concern also poses a serious and imminent threat.

State v Waldon, 148 Wn.App at 966-967.

Under RCW 13.40.160 and HIPAA, the public's right to access to these records is extremely limited and supports the trial court finding that there are sufficient privacy or safety concerns at stake. The court must turn to the remaining issue: whether public access to the report poses a serious and imminent threat to these concerns.

With the adoption of SSB 5204, the legislature also re-instated a juvenile's right to seal sex offense records. If this court accedes to the department's request it will be impossible to recover those records that "someone" has decided to distribute to the King County Sheriff, therefore depriving Josh of the true ability to forever seal his file. In Josh's case the new legislation becomes meaningless.

**C. BLANKET RE-DISSEMINATION OF THE SSODA
EVALUATION TO THE KING COUNTY SHERRIFF
BECAUSE IT IS "ROUTINELY DONE", IGNORES THE
CLEAR LANGUAGE OF SSB 5204 AND POSES A**

“SERIOUS AND IMMINENT” THREAT TO THIS 13 YEAR OLDS RIGHTS TO PRIVACY.

Under GR 15 (c)(2) a court may prohibit re-dissemination to the King County Sheriff of the SSODA evaluation if there are identifiable compelling safety or privacy concerns that outweigh the public interest in access to a document and redacting a document would not adequately address those concerns.

Here the respondent can demonstrate an obvious privacy interest in what is universally understood to be confidential and privileged information: his personal medical and mental health information. He will suffer serious and imminent harm unless the court prohibits re-dissemination of this evaluation to the King County Sheriff. Once that information is made public, it cannot be made confidential again.

D. SSODA PROCEEDINGS TRIGGER A RELEASE OF OTHERWISE PRIVILEGED INFORMATION TO THE EVALUATOR.

In a SSODA context the RCW’s mandate an evaluation to determine if the respondent is amenable to treatment in the community. RCW 13.40.160 and WAC 246-930-320. When an evaluation is undertaken, a defendant’s personal and confidential medical and mental health records become available to the evaluator. The statute provides:

(3) When a juvenile 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 has no history of a prior sex offense, 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.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information. RCW 13.40.160 (3)

In addition, the report must include an opinion as to a Risk Assessment. RCW 13.40.160(3).

Forensic mental health reports often reference details of the personal information contained in the confidential medical and mental health records are not only related to the juvenile but also to a host of third parties participating in the exchange necessary to conduct a meaningful evaluation. They also list any currently observed symptoms of mental illness and list diagnostic findings that under all other circumstances would be confidential and privileged. Evaluators include information in forensic mental health reports indicating whether the defendant has received mental health services in the community, including whether or not the defendant has been compliant with treatment recommendations and history of compliance with taking prescribed medications.

In this case, the evaluation contains a wealth of forensic mental health reports which include sensitive information about Mr. Sanchez, and numerous third parties.

E. RELEASE OF THE REPORT THREATENS THE APPELLANT'S PRIVACY BECAUSE IT MAKES PUBLIC INFORMATION THAT IS OTHERWISE PROTECTED AS HIGHLY CONFIDENTIAL NOT JUST AS TO THE APPELLANT, BUT TO ALL THIRD PARTIES/ COLLATERALS WHO PARTICIPATE IN THE EVALUATION PROCESS.

Both Federal and Washington statutes and the Federal and Washington Constitution recognize a defendant's right to privacy. Article 1 Section 7 of the Washington constitution provides "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." The Washington Supreme Court has recognized that the defendant's right to privacy includes the right to nondisclosure of intimate personal information or confidentiality. See *O'Hartigan v Department of Personnel*, 118 Wn. 2d 111, 821 P.2d 44 (1991). Several statutes govern the confidentiality and limited release of medical and mental health records.³

³ See RCW 70.02.060 governing release of medical records, and RCW 71.05 630 governing release of mental health records, RCW 71.05.390 governing release of information about civil mental commitment proceedings, RCW 70.02.005(1) ("Health care information is personal and sensitive information that if improperly used or released may do

The information contained in forensic SSODA Evaluation is highly sensitive and personal not just as to Josh but to all collaterals involved in the evaluation process. Releasing the SSODA evaluations to the King County Sheriff for purposes of conducting risk assessments is no longer statutorily authorized and violates the Appellant's privacy rights and those of the third parties involved. Once the harm is done making this sensitive information available, it cannot be undone.

F. THE RESPONDENT'S DUE PROCESS RIGHTS TO A FAIR TRIAL SUPPORTS THE PROHIBITION OF RE-DISCLOSURE OF THE SSODA EVALUATION TO THE KING COUNTY SHERIFF FOR RISK CLASSIFICATION PURPOSES SINCE THAT TASK IS NOW DELEGATED TO THE END OF SENTENCE REVIEW COMMITTEE.

Releasing this SSODA evaluation to the King County Sheriff violates another important right: the right to a fair trial in the future. Even though Josh has pled guilty to Child Molestation, his right to fair trials in the future can none the less still be jeopardized. A defendant may not be able to accurately relay to his counsel a history of the events relevant to his case or to any possible defense. He or she may have difficulty with effective communication resulting in impairment in presenting his theory to the jury particularly since the appellant is 14 years old.

significant harm to a patient's interests in privacy, health care or other interests.")

If trial courts make unsworn exhibits public, it may chill a defendant's (or collaterals) willingness to participate in an evaluation, resulting in a decrease in the accuracy and completeness of the evaluation, which in turn can impact community safety.

Many individuals with mental illness lack insight and are very guarded about their mental condition. Because of the history of stigma associated with mental illness or results such as unwanted treatment that may come from a mental health assessment, many individuals are uncomfortable sharing personal mental health information. Making these reports available to the public (and particularly the King County Sheriff) will only increase reluctance on the part of criminal defendants to share this information.

The interests of the public and of Josh and other residents are adequately protected without releasing the SSODA evaluation to the King County Sheriff for purposes of conducting risk assessments particularly since The End of Sentence Review Committee is now charged with making those assessments. SEE *SSB 5204 Section 5*.

Additionally the King County Sheriff formerly made risk classifications without access to SSODA evaluations where there were no SSODA's, but this practice is now mooted out by SSB 5204.

What would happen to treatment prospects if these evaluations are released to the public?

Is the community better protected without SSODA evaluations and without treatment?

Mr. Sanchez is compelled by statute to participate in a SSODA evaluation if he wants to take advantage of sentencing options. He has not raised a mental health defense. Therefore, the public (and the King County Sheriff) has little if any interest in the protected information contained in the SSODA Evaluation.

Under the circumstances in this case, public access to the SSODA evaluation poses a serious and imminent threat to Mr. Sanchez's privacy rights which clearly outweighs the public right to such reports.

The legislature has stated that individuals have a fundamental interest in protecting the privacy of health care information. The fact that a person has been accused of a crime, or even pled guilty, in and of itself, does not mean that privacy rights are forfeited. The records reviewed by the evaluator and the report itself fit within the definition of "health care information". The legislature recognizes the danger of disclosure of that information except in limited circumstances. SSB 5204 now limits disclosure to the End-of Sentence Review Committee. Privacy concerns

are even more pressing in juvenile court, where the legislature has recognized that materials in an offender's social file are not available to the public. RCW 13.50.050(3)

G. THE ISSUE IS NOT MOOT.

“A case is moot if a court can no longer provide effective relief.” *Orwick v. City of Seattle*, 103 Wash.2d 249, 253, 692 P.2d 793 (1984). The issue of mootness “is directed at the jurisdiction of the court.” *Citizens for Financially Responsible Gov't v. City of Spokane*, 99 Wash.2d 339, 350, 662 P.2d 845 (1983). As such, it “may be raised at any time.” *Citizens*, 99 Wash.2d at 350, 662 P.2d 845.

“The three factors considered essential” for application of the public interest exception “are: (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.” *Hart v. Dep't of Social & Health Servs.*, 111 Wash.2d 445, 448, 759 P.2d 1206 (1988). Applying these criteria, it is apparent that the public interest exception does apply.

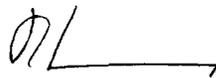
Dozens of SSODA cases are pending in King County. An authoritative determination is clearly needed to provide future guidance to public officers in King County and in counties across the state.

V. CONCLUSION

The respondent respectfully requests that this court require that the King County Sheriff return the SSODA evaluation to the King County Probation Department, only to be released to the End-of-Sentence Review Committee when requested to do so by the Committee.

Given the implementation of SSB 5204 there is no longer statutory support for the release of the SSODA evaluation to the King County Sheriff. The suggestion that it be should done because it is “routinely done” flies in the face of the 4th, 5th, 6th and 14th amendments to the United State’s Constitution, and analogous provisions of the Washington State Constitution, to which Josh and all similarly situated individuals are entitled.

Respectfully submitted this 24th day of November, 2011.



James W. Conroy WSBA # 11563
Attorney for the Appellant

ATTACHMENT "A"

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING JUVENILE DEPARTMENT

STATE OF WASHINGTON,
Plaintiff

v.

Josh Sanchez
Respondent

Case No. 10-8-04493-2

ORDER ON MOTION

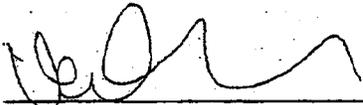
RE: Respondent's Motion to

Bar Release of SSODA Evaluation to the
{ } Clerk's Action Required King County Sheriff.

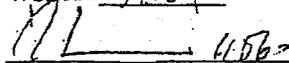
The above-entitled Court, having heard a motion by the defense to bar release
of the juvenile sexual behavior and risk assessment to the
King County Sheriff's office.

IT IS HEREBY ORDERED that the defense motion is denied. The
Order of July 19, 2011 is vacated except that the
Probation Department shall not release the evaluation
to the Sheriff's office until after August 12, 2011
unless that date is extended by this Court or the
Court of Appeals. The court finds disclosure is required by
RCW 4.24.550(6).

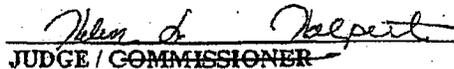
DATED: 8-4-11



Attorney for the Plaintiff
WSBA # 37209

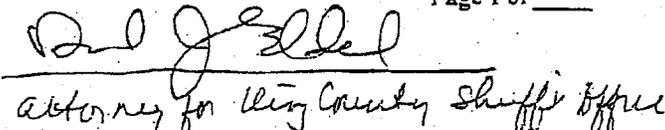
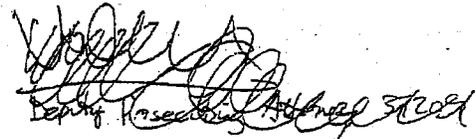


Attorney for the Respondent
WSBA # _____


JUDGE / COMMISSIONER

Juvenile Probation Counselor

Page 1 of _____


Attorney for King County Sheriff's Office
WSBA # 26125

ATTACHMENT "B"

1 physical characteristics, name, birthdate or address, but does not
2 include information regarding criminal activity, arrest, charging,
3 diversion, conviction or other information about a person's treatment
4 by the criminal justice system or about the person's behavior.

5 (24) Information identifying child victims under age eighteen who
6 are victims of sexual assaults by juvenile offenders is confidential
7 and not subject to release to the press or public without the
8 permission of the child victim or the child's legal guardian.
9 Identifying information includes the child victim's name, addresses,
10 location, photographs, and in cases in which the child victim is a
11 relative of the alleged perpetrator, identification of the relationship
12 between the child and the alleged perpetrator. Information identifying
13 a child victim of sexual assault may be released to law enforcement,
14 prosecutors, judges, defense attorneys, or private or governmental
15 agencies that provide services to the child victim of sexual assault.

16 Sec. 5. RCW 72.09.345 and 2008 c 231 s 49 are each amended to read
17 as follows:

18 (1) In addition to any other information required to be released
19 under this chapter, the department is authorized, pursuant to RCW
20 4.24.550, to release relevant information that is necessary to protect
21 the public concerning offenders convicted of sex offenses.

22 (2) In order for public agencies to have the information necessary
23 to notify the public as authorized in RCW 4.24.550, the secretary shall
24 establish and administer an end-of-sentence review committee for the
25 purposes of assigning risk levels, reviewing available release plans,
26 and making appropriate referrals for sex offenders. (~~The committee
27 shall assess, on a case by case basis, the public risk posed by sex
28 offenders who are: (a) Preparing for their release from confinement
29 for sex offenses committed on or after July 1, 1984; and (b) accepted
30 from another state under a reciprocal agreement under the interstate
31 compact authorized in chapter 72.74 RCW.~~)

32 (3) The committee shall assess, on a case-by-case basis, the public
33 risk posed by:

34 (a) Offenders preparing for release from confinement for a sex
35 offense or sexually violent offense committed on or after July 1, 1984;

36 (b) Sex offenders accepted from another state under a reciprocal

ATTACHMENT "C"

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

September 15, 2011

David James Eldred
King Co Admin Bldg
500 4th Ave Ste 900
Seattle, WA, 98104-2316
david.eldred@kingcounty.gov

James W. Conroy
Attorney at Law
1401 E Jefferson St Ste 200
Seattle, WA, 98122-5570
jim.conroy@scraplaw.org

Prosecuting Atty King County
King Co Pros/App Unit Supervisor
W554 King County Courthouse
516 Third Avenue
Seattle, WA, 98104
paoappellateunitmail@kingcounty.gov

Valiant L Richey
King Co Prosecutor's Office
516 3rd Ave Ste W554
Seattle, WA, 98104-2390
valiant.richey@kingcounty.gov

CASE #: 67461-7-I

State of Washington, Respondent v. Josh Anthony Sanchez, Appellant

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on September 14, 2011, regarding Appellant's emergency motion for stay:

RULING ON MOTION FOR STAY

State v. Sanchez, No. 67461-7-I

September 14, 2011

Jose Sanchez seeks review of an August 4, 2011 trial court order denying his motion to bar release of a juvenile sexual behavior and risk assessment to the King County Sheriff's office. The trial court ruled that disclosure of the assessment is required by RCW 4.24.550(6).

On August 8, 2011, Sanchez filed an emergency motion to stay release of the assessment pending appeal. Respondent King County Sheriff's Office filed an answer objecting to a stay. On August 19, 2011, I heard oral argument and granted a temporary stay to allow further consideration of the parties' arguments. The stay is lifted.

Sanchez seeks a stay pending appeal primarily on the ground that once the assessment is released to the sheriff's office, if someone requests public disclosure, the sheriff's office will release it, citing Koenig v. Thurston Co., 155 Wn. App. 398, 229 P.3d 910 (2010), rev. granted, 170 Wn.2d 1020 (2011).

In Koenig, the court reviewed a trial court order denying partial summary judgment and ruling that a victim impact statement and special sex offender sentencing alternative (SSOSA) evaluation were exempt from disclosure under the Public Records Act (PRA), chapter 42.56 RCW. In a split opinion Division II held that the victim impact statement is exempt from disclosure under the PRA, but the SSOSA evaluation must be disclosed after redacting any identifying information regarding the victim and certain third parties. The Supreme Court will hear oral argument on October 6, 2011.

The sheriff's office argues that read together, RCW 13.50.050(3) and 4.24.550 require release of the assessment to it so that the sheriff may conduct an accurate risk classification and that without the assessment, it risks over-classifying or under-classifying Sanchez. The sheriff's office also argues that Koenig is distinguishable and that it is office policy not to release juvenile sexual behavior and risk assessments to the public. Sanchez argues that the sheriff's internal policy does not provide sufficient protection. The sheriff replies that it is not only an internal policy, but it is also its legal position that it is barred from releasing the assessment.

The parties cite the following statutes:

RCW 13.50.050 provides in part:

- (1) This section governs records relating to the commission of juvenile offenses . . .
- (2) The official juvenile court file . . . shall be open to public inspection unless sealed . . .
- (3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

RCW 4.24.550(6) provides in part:

- (6) . . . The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community

In addition, the following statutes appear to be pertinent:

RCW 13.40.215 provides in part:

- (1)(a) . . . [B]efore release . . . or transfer to a community residential facility, the secretary [of DSHS] shall send written notice . . . to the following
 - (ii) sheriff in the county in which the juvenile will reside[.]

And RCW 13.40.217 provides in part:

- (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 juveniles adjudicated of sex offenses.

Based on the limited materials before me, Sanchez has not demonstrated that a stay is warranted. The parties' arguments regarding the interplay between the statutes are not fleshed out. And although Sanchez apparently will argue that RCW 4.24.550(6) does not require release of the sexual behavior and risk assessment to the sheriff, at this point his true concern is that the sheriff will release it to the public if/when it receives a request under the PRA or some other statute. But the sheriff has stated that it will not do so because it takes the position that it is prohibited from releasing it. If circumstances change, Sanchez is not precluded from again seeking a stay.

I note that at oral argument Sanchez suggested this court certify his appeal to the Supreme Court to be considered along with Koenig. Sanchez has yet to perfect the record and file briefs in his appeal. His request for this court to certify his appeal is premature. Moreover, oral argument is already set in Koenig for early October.

Therefore it is

ORDERED that Sanchez's motion for a stay of the trial court order requiring release of the sexual behavior and risk assessment to the King County Sheriff's office is denied without prejudice to renew if a change in circumstances warrants a renewed motion.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

LAM

cc. The Honorable Helen L. Halpert