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**SUPREME COURT OF THE  
STATE OF WASHINGTON**

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STATE OF WASHINGTON, RESPONDENT

v.

A.G.S., PETITIONER

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Appeal from the Superior Court of Cowlitz County  
The Honorable James E. Warne

No. 10-8-00130-4  
Court of Appeals No. 41081-8-II

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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 ORIGINAL

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A. ISSUE PERTAINING TO PETITIONER'S ASSIGNMENT OF ERROR.

1. Whether Petitioner's Special Sex Offender Disposition Alternative (SSODA) evaluation should have been filed in the official juvenile court file, where it is open to public inspection, because it was prepared by someone other than his probation counselor.

B. STATEMENT OF THE CASE.

1. Procedure

On March 3, 2010, A.G.S., hereinafter referred to as "Petitioner," pleaded guilty to an amended information charging him with second degree child molestation in counts I and IV and first degree child rape in counts II and III. CP 4-6, 7-16; 06/22/2010 RP 4<sup>1</sup>.

On June 22, 2010, the juvenile court conducted a disposition hearing. 06/22/2010 RP 3-34. At that hearing, the State filed a SSODA evaluation prepared by Vancouver Guidance Clinic, 06/22/2010 RP 3, and Petitioner presented one prepared for him by Pacific Psychological Associates. 06/22/2010 RP 3, 25-28.

The court read both evaluations and noted that both found Petitioner amenable to treatment. 06/22/2010 RP 30. However, it

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<sup>1</sup> Citation to the verbatim report of proceedings, which consists of four non-consecutively paginated volumes, shall be in the following format: [Date of Proceeding] RP [Page Number].

concluded that a SSODA would not be appropriate given the damage done to the victims. 06/22/2010 RP 30-31. Therefore, the court committed Petitioner to a Juvenile Rehabilitation Administration facility for 53 to 76 weeks. 06/22/2010 RP 31; CP 17-24. *See* 06/29/RP 3.

On June 29, 2010, the State requested that the victims' parents be given copies of the SSODA evaluation prepared by Petitioner's expert. 06/29/2010 RP 3. *See* 07/20/2010 RP 3. They had already been given a copy of the evaluation prepared by the State. 06/29/2010 RP 6.

The petitioner objected, arguing that the evaluation was confidential. 06/29/2010 RP 3-5. The State indicated that it would support appropriate redaction. 06/29/2010 RP 7.

After hearing from both parties, the court found that it had considered the SSODA evaluation prepared by Pacific Psychological in making its disposition order, and thus, ordered the release of a redacted copy of that evaluation to the victims' parents. 07/20/2010 RP 6-9; 08/10/2010 RP 3; CP 25-26, 28.

However, Petitioner moved the court to stay release of the evaluation pending appeal, and the court granted that motion. 07/20/2010 RP 7; 08/10/2010 RP 3.

On August 10, 2010, Petitioner filed a timely notice of appeal. CP 27.

In the Court of Appeals, Petitioner “argue[d] that [his] SSODA evaluation is a confidential juvenile court record not open to public inspection.” *State v. A.G.S.*, 176 Wn. App. 365, 369, 309 P.3d 600 (2013).

The Court of Appeals determined that “chapter 13.50 RCW controls the evaluation’s release based on where the evaluation was filed.” *A.G.S.*, 176 Wn. App. at 369. It therefore “remand[e]d for a determination of whether the evaluation is part of the official juvenile court file,” and held that, if it was, “it may be released.” *Id.*

This Court granted discretionary review on April 4, 2014. *State v. A.G.S.*, 180 Wn.2d 1007, 321 P.3d 1207 (2014).

## 2. Facts

The relevant facts are set forth in the State’s Brief of Respondent, p. 2-7, and incorporated herein by reference. Given the issue before the court, it should perhaps be emphasized that the victims of Petitioner’s offenses were his nieces and nephews, 06/22/2010 RP 7-8, 11-12, 18-23, and that Petitioner and the victims’ parents are siblings. 06/29/2010 RP 4.

C. ARGUMENT.

1. PETITIONER'S SSODA EVALUATION SHOULD HAVE BEEN FILED IN THE OFFICIAL JUVENILE COURT FILE, WHERE IT IS OPEN TO PUBLIC INSPECTION, BECAUSE IT WAS PREPARED BY SOMEONE OTHER THAN HIS PROBATION COUNSELOR.

The maintenance and release of records by juvenile justice or care agencies is dealt with specifically by RCW 13.50. In fact, this chapter "provides the exclusive process for obtaining juvenile justice and care agency records." *In re Dependency of KB*, 150 Wn. App. 912, 920, 210 P.3d 330 (2009).

A juvenile court is among the entities listed as a "[j]uvenile justice or care agency." RCW 13.50.010(1). See *In re Dependency of J.B.S.*, 122 Wn.2d 131, 856 P.2d 694 (1993)(the definition of "court" as a juvenile justice of care agency "includes only the juvenile or superior court").

"Washington classifies records pertaining to a juvenile's criminal offense into three categories: [1] the official juvenile court file, which includes court filings, findings, orders, and the like; [2] the 'social file,' which contains reports of the probation counselor; and [3] other miscellaneous records." *State v. Sanchez*, 177 Wn.2d 835, 847, 306 P.3d 935, 306 P.3d 935 (2013)(citing RCW 13.50.010(1)). See *State v.*

*Loukaitis*, 82 Wn. App. 460, 467, 918 P.2d 535, 538 (1996); RCW 13.50.010(1)(b)-(d); Appendix A (text of RCW 13.50.010).

RCW 13.50.050(2) provides that “[t]he official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (12).”<sup>2</sup> See Appendix B (text of RCW 13.50.050).

“All records other than the official juvenile court file are confidential and may be released only as provided in [RCW 13.50.050], RCW 13.50.010, 13.40.215, and 4.24.550.” RCW 13.50.050(2).

Hence, as the Court of Appeals found, “chapter 13.50 RCW controls [a SSODA] evaluation’s release based on where the evaluation was filed.” *State v. A.G.S.*, 176 Wn. App. at 369.

However, it also controls where that evaluation should legally be filed. RCW 13.50.010(1)(c) defines “[r]ecords” as “[1] the official juvenile court file, [2] the social file, and [3] *records of any other juvenile justice or care agency in the case.*” (emphasis added). Because a juvenile “court” is referenced explicitly in this provision, such a court cannot be an “other juvenile justice or care agency” for purposes of RCW 13.50.010(c).

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<sup>2</sup> RCW 13.50.050(2) was amended by SSHB 1651, ch. 175 to read: “The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to section 4 of this act.” The amended statute becomes effective June 12, 2014.

Therefore, its records must be filed in either the official juvenile court file or the social file. *See* RCW 13.50.010(c).

RCW 13.50.010(d), however, restricts the documents filed in the social file to “the records and reports of the probation counselor.” RCW 13.50.010(1)(d). *See State v. Loukaitis*, 82 Wn. App. 460, 467, 918 P.2d 535, 538 (1996)(finding that this statute “clearly limits the confidentiality to records and reports of a *probation counselor*.”).

Thus, where SSODA evaluations are prepared by an entity other than the probation counselor, as is the case of SSODA evaluations prepared by defense-retained experts, they may not be filed in the social file, and must be filed in the official juvenile court file. *See State v. Loukaitis*, 82 Wn. App. 460, 918 P.2d 535 (1996).

Although Petitioner relies on language from *Sanchez* to argue that “SSODA evaluations must be filed in the social file and [hence,] kept confidential,” Petition for Review (PFR), p. 4, the law demands otherwise.

While the Court in *Sanchez* noted that, “[b]ecause it is essentially the SSODA examiner’s report, Sanchez’s SSODA evaluation is part of the

social file and is therefore confidential,” *State v. Sanchez*, 177 Wn.2d 835, 847, 306 P.3d 935 (2013), this was non-binding *obiter dictum* and, if taken normatively<sup>3</sup>, contrary to existing statutory and decisional law.

“Statements in a case that do not relate to an issue before the court and are unnecessary to decide the case constitute *obiter dictum*, and need not be followed.” *State v. Potter*, 68 Wn. App. 134, 150fn7, 842 P.2d 481, 489 (1992) (citing *Bellevue v. Acrey*, 103 Wn.2d 203, 207, 691 P.2d 957 (1984), and *Concerned Citizens v. Coupeville*, 62 Wn. App. 408, 416, 814 P.2d 243, review denied, 118 Wn.2d 1004, 822 P.2d 288 (1991)). See *Pierson v. Hernandez*, 149 Wn. App. 297, 305, 202 P.3d 1014, 1018 (2009); *State ex rel. Lemon v. Langlie*, 45 Wn.2d 82, 273 P.2d 464 (1954).

The specific issue before the Court in *Sanchez*, when it made the statement in question here, was whether release of Sanchez’s “SSODA evaluation to the sheriff’s office would violate statutory controls on the disclosure of juvenile offense records.” *Sanchez*, 177 Wn.2d at 847-48. The discrete issue of whether that evaluation itself should legally be a part of the court file or the social file was never before the Court. See *Sanchez*,

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<sup>3</sup> It is unclear in the context whether the Court meant this statement to be a prescriptive expression of law or simply a presumptive statement of the underlying facts. Given the legal background set forth *infra*, it seems more likely to be the latter, i.e., a presumption about the facts meant to advance the analysis from release of records in the court file to release of those in the social file. See *Sanchez*, 177 Wn.2d at 847-48.

177 Wn.2d 838-50. Hence, the statement that “Sanchez's SSODA evaluation is part of the social file,” *Sanchez*, 177 Wn.2d 847, did “not relate to an issue before the court.” *Potter*, 68 Wn. App. at 150fn7.

Moreover, that statement was not necessary to decide the issue that was before the Court. Regardless of whether Sanchez’s evaluation was actually filed in the court file or the social file, it would have been subject to release to the sheriff’s department under RCW 13.50.050. Indeed, the *Sanchez* Court did not even explicitly state where the SSODA evaluation there at issue was filed<sup>4</sup>. *See Sanchez*, 177 Wn.2d at 842.

If the evaluation had been filed in the court file, it would have been open to the public under RCW 13.50.050(2). If it had been filed in the social file, RCW 13.50.050(3) would have made it subject to release “to local law enforcement for the purpose of making sex offender risk assessments” under RCW 4.24.550(6). *Sanchez*, 177 Wn.2d at 847-48. Thus, it was subject to release in that case regardless of the court’s conclusion that “Sanchez's SSODA evaluation is part of the social file and is therefore confidential.” *Sanchez*, 177 Wn.2d 847. As a result, that

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<sup>4</sup> However, the fact that “Sanchez moved under GR 15 to seal the evaluation,” *Sanchez*, 177 Wn.2d at 842, implies that this evaluation was filed in the court file. GR 15 “sets forth a uniform procedure for the... sealing... of court records.” GR 15(a). Nevertheless, because “[c]ourt record[s] do[] not include... information... to which the court has access but which is not entered into the record,” GR 31(c)(4), such as information contained in a juvenile court “social file,” that social file would not be subject to a GR 15 motion. Thus, it may be inferred from the fact that Sanchez made a GR 15 motion to seal the evaluation, that this evaluation was filed in the court file rather than the social file.

conclusion was “unnecessary to decide the case.” *Potter*, 68 Wn. App. at 150fn7.

It was, therefore, *obiter dictum* and “need not be followed” here.

*Id.*

Given the state of the law, it should not be. Both the statutory and decisional law requires that a SSODA evaluation prepared by a juvenile offender’s expert be filed in the official juvenile court file rather than the social file.

RCW 13.50.010(1)(d) restricts the documents filed in the social file to “the records and reports of the probation counselor,” and thus, “clearly limits the confidentiality [of the social file] to records and reports of a *probation counselor*,” *State v. Loukaitis*, 82 Wn. App. 460, 467, 918 P.2d 535, 538 (1996) (emphasis added). A defense-retained expert is not a probation counselor.

Indeed, the Court of Appeals has specifically held that “[i]nformation from the juvenile’s own mental health expert” as opposed to that from an expert “supplying opinions pursuant to court order,” *see State v. Holland*, 30 Wn. App. 366, 635 P.2d 142 (1981), *aff’d*, 98 Wn.2d 507, 656 P.2d 1056 (1983), “is not part of that social file.” *Loukaitis*, 82 Wn. App. at 467. Hence, under *Loukaitis*, the SSODA evaluation of a

defense-retained expert is not part of the social file, and if before the court, must be filed in the official juvenile court file.

The Constitution is in accord with this result. This Court has “already rejected the principle that a statute can mandate privacy where the constitution requires openness.” *State v. Chen*, 178 Wn.2d 350, 309 P.3d 410 (2013).

The Washington State Constitution requires that “justice in all cases shall be administered openly,” Cont. Art. I, § 10, and hence, that “documents considered by a judge to make a decision in a court proceeding are presumptively open to public review.” *State v. DeLauro*, 163 Wn. App. 290, 291, 258 P.3d 696 (2011), *See Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982); *State v. Bone-Club*, 128 Wn.2d 254, 258-59, 261, 906 P.2d 325 (1995); *Dreiling v. Jain*, 151 Wn.2d 900, 93 P.3d 861 (2004); *State v. Chen*, 178 Wn.2d 350, 357, 309 P.3d 410, 414 (2013). *Cf.* GR 31(a). Only documents that never become part of judicial decision-making are held exempt from this constitutional requirement. *See, e.g., Bennet v. Smith Bunday Berman Britton, P.S.*, 176 Wn.2d 303, 291 P.3d 886 (2013); *State v. McEnroe*, 174 Wn.2d 795, 279 P.3d 861 (2012); *Tacoma News, Inc. v. Cayce*, 172 Wn.2d 58, 61, 256 P.3d 1179 (2011).

Thus, this Court has held that

[T]he public's right to the open administration of justice... is not concerned with merely whether our courts are generating legally-sound results. Rather, we have interpreted this constitutional mandate as a means by which the public's trust and confidence in our entire judicial system may be strengthened and maintained. *To accomplish such an ideal, the public must—absent any overriding interest—be afforded the ability to witness the complete judicial proceeding, including all records the court has considered in making any ruling, whether “dispositive” or not.*

*Rufer v. Abbot Laboratories*, 154 Wn.2d 530, 549, 114 P.3d 1182 (2005)

(internal citation omitted)(emphasis added).

No type of record considered by a trial court, not even those concerning sensitive matters, is categorically exempt from the requirements of Art. I, § 10. *See Allied Daily Newspapers*, 121 Wn.2d 205 (finding a statute unconstitutional where it required courts to redact identifying information of child victims of sexual assault made public during the course of trial or contained in court records); *In re Detention of D.F.F.*, 172 Wn.2d 37, 256 P.3d 357 (2011) (court rule for involuntary commitment proceedings found unconstitutional to the extent it presumed closure instead of openness); *State v. Chen*, 178 Wn.2d 350, 357, 309 P.3d 410, 414 (2013) (notwithstanding statutory provisions that arguably suggest a competency report is private, “once a competency evaluation becomes a court record, it also becomes subject to the constitutional

presumption of openness, which can be rebutted only when the court makes an individualized finding that the *Ishikawa* factors weigh in favor of sealing.”); *State v. DeLauro*, 163 Wn. App. 290, 258 P.3d 696 (2011)(competency reports relied upon by court are presumed open).

Thus, once a document “becomes a court record, it also becomes subject to the constitutional presumption of openness, which can be rebutted only when the court makes an individualized finding that the *Ishikawa* factors weigh in favor of sealing.”<sup>5</sup> *Chen*, 178 Wn.2d 350, 352, 309 P.3d 410, 411 (2013).

The rationale for this result is simple and often repeated:

[This Court] adhere[s] to the constitutional principle that it is the right of the people to access open courts where they may freely observe the administration of civil and criminal justice. Openness of courts is essential to the courts' ability to maintain public confidence in the fairness and honesty of the judicial branch of government as being the ultimate protector of liberty, property, and constitutional integrity.

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<sup>5</sup> The *Ishikawa* factors state that “ ‘[t]he proponent of closure [of the courtroom or sealing of a record]... must make some showing [of compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a “serious and imminent threat” to that right’ ”; “ ‘[a]nyone present when the closure motion is made must be given an opportunity to object to the closure’ ”; “ ‘[t]he proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests’ ”; “ ‘[t]he court must weigh the competing interests of the proponent of closure and the public’ ”; and “ ‘[t]he order must be no broader in its application or duration than necessary to serve its purpose.’ ” *Chen*, 178 Wn.2d at 355fn8 (quoting *D.F.F.*, 172 Wn.2d 37, 41 n. 5 (quoting *State v. Momah*, 167 Wn.2d 140, 149, 217 P.3d 321 (2009))).

*Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205, 211, 848 P.2d 1258, 1261 (1993). See, e.g., *Dreiling*, 151 Wn.2d at 908; *In re Detention of D.F.F.*, 172 Wn.2d 37, 256 P.3d 357 (2011) (noting that “[t]he open administration of justice assures the structural fairness or the proceedings, affirms their legitimacy, and promotes confidence in the judiciary.”).

The *Sanchez dictum* should not change the result demanded by such Constitutional, statutory and decisional law.

Because SSODA evaluations prepared by someone other than the probation counselor must, under RCW 13.50.010, be filed in the official juvenile court file, they are, pursuant to RCW 13.50.050(2) and Article I, § 10, “open to public inspection,” and may be released to victims or their parents.

In the present case, the SSODA evaluation was prepared by an entity retained by A.G.S.: Pacific Psychological Associates. 06/22/2010 RP 26-28. Pacific Psychological is a private firm, not a probation counselor. See 06/22/2010 RP 26-28. Its evaluation should, therefore, have been filed in the official juvenile court file, not the social file<sup>6</sup>. RCW

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<sup>6</sup> Given that SSODA evaluations prepared by an entity other than the probation counselor must, under RCW 13.50.010, be filed in the official juvenile court file, there is no need to remand, as ordered by the Court of Appeals below, A.G.S., 176 Wn. App. at 369-70, to the juvenile court for determination of where this evaluation was actually filed.

13.50.010(1)(b)-(d); *Loukaitis*, 82 Wn. App. at 467.

Indeed, Pacific Psychological's SSODA evaluation appears to have been actually filed in the "official juvenile court file," as defined in RCW 13.50.010(1)(b). *See* 06/22/2010 RP 3, 25-28.

While the evaluation's release was stayed pending this appeal, it was not sealed pursuant to RCW 13.50.050(12) at the time of the underlying request for inspection. 07/20/2010 RP 7; 08/10/2010 RP 3. Nor, given the classification of the crimes to which Petitioner pled guilty, could it have been. *Compare* CP 17-24 (disposition order), RCW 9A.44.086(2)(making second degree child molestation a class B felony), RCW 9A.44.073(2)(making first degree child rape a class A felony) *with* RCW 13.50.050(12)(a)(i), (iv), & (vi) & RCW 13.050(12)(b)(iv)&(v) <sup>7</sup>.

Thus, under RCW 13.50.050(2), that evaluation was "open to public inspection," and consequently, open to the victim's parents' inspection.

Moreover, while Petitioner objected to its release, by arguing that the evaluation was "confidential," he gave no indication as to why that

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<sup>7</sup> RCW 13.50.050(12) was amended by SSHB 1651, ch. 175, and, effective June 12, 2014, will no longer describe the sealing of juvenile court records. Instead, the new RCW 13.50.050(2) will make an exception for records "sealed pursuant to section 4 of this act." Section 4 will provide: "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 the other participant is assigned the responsibility for supervising the juvenile."

might be. 06/29/2010 RP 3-5. Petitioner failed to make any showing of a compelling interest justifying the evaluation's confidentiality and failed to show that there was "a "serious and imminent threat" to that right," as required by *Ishikawa. Chen*, 178 Wn.2d at 355fn8. See 06/29/2010 RP 3-5.

As a result, the trial court could not have erred in ordering the release of a redacted version of the evaluation, and its decision to do so should be affirmed.

D. CONCLUSION.

The Constitutional, statutory, and decisional law provides that the SSODA evaluation in this case should be a part of the official juvenile court file, and hence, open to public inspection.

Therefore, the juvenile court did not err in releasing it, in redacted form, to the victim's parents, and its ruling doing so should be affirmed.

DATED: May 21, 2014.

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Brian Wasankari  
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Certificate of Service:

The undersigned certifies that on this day she delivered by US-mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5-21-14 Theresa Kar  
Date Signature

## **APPENDIX "A"**

## APPENDIX A

Version of RCW 13.50.010 (effective July 28, 2013 to June 11, 2014)  
in Effect at Time of the Juvenile Court Order Below:

1) For purposes of this chapter:

(a) "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;

(b) "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;

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

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

(10) 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.

(11) 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 13.50.050 (17) and (18) and 13.50.100(3).

(12) 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.

#### CREDIT(S)

[2013 c 23 § 6, eff. July 28, 2013; 2011 1st sp.s. c 40 § 30, eff. Aug. 24, 2011; 2010 c 150 § 3, eff. June 10, 2010; 2009 c 440 § 1, eff. July 26, 2009; 1998 c 269 § 4. Prior: 1997 c 386 § 21; 1997 c 338 § 39; 1996 c 232 § 6; 1994 sp.s. c 7 § 541; 1993 c 374 § 1; 1990 c 246 § 8; 1986 c 288 § 11; 1979 c 155 § 8.]

## **APPENDIX "B"**

## APPENDIX B

Version of RCW 13.50.050 (effective June 7, 2012 to June 11, 2014)  
in Effect at Time of the Juvenile Court Order Below:

13.50.050. Records relating to commission of juvenile offenses--Maintenance of, access to, and destruction--Release of information to schools

- (1) This section governs 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 subsection (12) of this section.
- (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.
- (4) Except as otherwise provided in this section and RCW 13.50.010, 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.
- (6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.
- (7) Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, incident reports may be released unless releasing the records would jeopardize the investigation or prosecution or endanger witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and school property.

(8) The juvenile court and the prosecutor may set up and maintain a central recordkeeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central recordkeeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central recordkeeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(9) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(10) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

(11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(12)(a) The court shall not grant any motion to seal records for class A offenses made pursuant to subsection (11) of this section that is filed on or after July 1, 1997, unless:

(i) Since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in an adjudication or conviction;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;

(v) The person has not been convicted of rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible compulsion; and

(vi) Full restitution has been paid.

(b) The court shall not grant any motion to seal records for class B, C, gross misdemeanor and misdemeanor offenses and diversions made under subsection (11) of this section unless:

(i) Since the date of last release from confinement, including full-time residential treatment, if any, entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense or crime;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and

(v) Full restitution has been paid.

(c) Notwithstanding the requirements in (a) or (b) of this subsection, the court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if restitution has been paid and the person is eighteen years of age or older at the time of the motion.

(13) The person making a motion pursuant to subsection (11) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(14)(a) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (23) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning

confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(b) In the event the subject of the juvenile records receives a full and unconditional pardon, the proceedings in the matter upon which the pardon has been granted shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events upon which the pardon was received. Any agency shall reply to any inquiry concerning the records pertaining to the events for which the subject received a pardon that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(15) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection (23) of this section.

(16) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW. The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.

(17)(a)(i) Subject to subsection (23) of this section, all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within ninety days of becoming eligible for destruction. Juvenile records are eligible for destruction when:

(A) The person who is the subject of the information or complaint is at least eighteen years of age;

(B) His or her criminal history consists entirely of one diversion agreement or counsel and release entered on or after June 12, 2008;

(C) Two years have elapsed since completion of the agreement or counsel and release;

(D) No proceeding is pending against the person seeking the conviction of a criminal offense; and

(E) There is no restitution owing in the case.

(ii) No less than quarterly, the administrative office of the courts shall provide a report to the juvenile courts of those individuals whose records may be eligible for destruction. The juvenile court shall verify eligibility and notify the Washington state patrol and the appropriate local law enforcement agency and prosecutor's office of the records to be

destroyed. The requirement to destroy records under this subsection is not dependent on a court hearing or the issuance of a court order to destroy records.

(iii) The state and local governments and their officers and employees are not liable for civil damages for the failure to destroy records pursuant to this section.

(b) All records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within thirty days of being notified by the governor's office that the subject of those records received a full and unconditional pardon by the governor.

(c) A person eighteen years of age or older whose criminal history consists entirely of one diversion agreement or counsel and release entered prior to June 12, 2008, may request that the court order the records in his or her case destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that two years have elapsed since completion of the agreement or counsel and release.

(d) A person twenty-three years of age or older whose criminal history consists of only referrals for diversion may request that the court order the records in those cases destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.

(18) If the court grants the motion to destroy records made pursuant to subsection (17)(c) or (d) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(19) The person making the motion pursuant to subsection (17)(c) or (d) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(20) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(21) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(22) Any juvenile justice or care agency may, subject to the limitations in subsection (23) of this section and (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older or pursuant to subsection (17)(a) of this section.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

(23) Except for subsection (17)(b) of this section, no identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

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

#### CREDIT(S)

[2012 c 177 § 2, eff. June 7, 2012. Prior: 2011 c 338 § 4, eff. July 22, 2011; 2011 c 333 § 4, eff. July 22, 2011; 2010 c 150 § 2, eff. June 10, 2010; 2008 c 221 § 1, eff. June 12, 2008; 2004 c 42 § 1, eff. June 10, 2004; prior: 2001 c 175 § 1; 2001 c 174 § 1; 2001 c 49 § 2; 1999 c 198 § 4; 1997 c 338 § 40; 1992 c 188 § 7; 1990 c 3 § 125; 1987 c 450 § 8; 1986 c 257 § 33; 1984 c 43 § 1; 1983 c 191 § 19; 1981 c 299 § 19; 1979 c 155 § 9.]

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, May 21, 2014 3:03 PM  
**To:** 'Therese Nicholson-Kahn'  
**Cc:** Brian Wasankari  
**Subject:** RE: ST. V. AGS, NO. 89689-5

Rec'd 5-21-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Therese Nicholson-Kahn [mailto:tnichol@co.pierce.wa.us]  
**Sent:** Wednesday, May 21, 2014 3:01 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Brian Wasankari  
**Subject:** ST. V. AGS, NO. 89689-5

Please see attached the State's Supplemental Brief for the below referenced matter:

St. v. AGS  
No. 89689-5  
Submitted by: B. Wasankari  
WSB 28945

Please call me at 253/798-7426 if you have any questions.

Therese Kahn  
Legal Assistant to B. Wasankari