**Supreme Court No. 103006-1**
**COA No. 39113-2-III**

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,
Plaintiff/Respondent

v.

A.M.W.,
Defendant/Petitioner.

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# ANSWER TO PETITION FOR REVIEW

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## I. IDENTITY OF PARTY

Respondent, State of Washington, was the plaintiff in the trial court and the respondent in the Court of Appeals.

## II. STATEMENT OF RELIEF SOUGHT

A.M.W. has filed a petition for review. The State agrees, as it did below, that this case involves a significant issue of state constitutional law and an issue of substantial public interest that would permit review under RAP 13.4(b)(3) and (4). Nonetheless, the State respectfully requests this Court deny review because the Court of Appeals correctly decided the issue and this Court retains other constitutional means by which it can address juvenile detention pursuant to a bench warrant.

## III. ISSUE PRESENTED

Should this Court review whether the Court of Appeals correctly held that JuCR 7.16's limitation on juvenile courts' ability to effectuate the Juvenile Justice Act, chapter 13.40 RCW, is so extensive that it violates the separation of powers and

therefore must yield to the conflicting provision enacted by the legislature in RCW 13.40.040(1)(a)?

## IV. STATEMENT OF THE CASE

Thirteen-year-old A.M.W. pleaded guilty to fourth degree assault in juvenile court in 2022. CP 1-14. After ongoing noncompliance with the juvenile court's disposition order and evidence A.M.W. had threatened and attempted suicide and was associating with an eighteen-year-old male with gang ties who had also allegedly raped her, the trial court issued a bench warrant, finding A.M.W. presented a serious threat to public safety under JuCR 7.16. CP 15-69; RP 12-16.

A.M.W. appealed the bench warrant order and the State agreed that, while the bench warrant was not appealable as a matter of right under RAP 2.2(a), it was appropriate for discretionary review under RAP 2.3(b)(4) as it involved a controlling question of law as to which there was substantial

ground for difference of opinion. CP 72; Appendix 1-10 (*Comm'r's Ruling* (Sept 29, 2022)). The Court of Appeals granted discretionary review.

On appeal, the State conceded the trial court had insufficient evidence to find A.M.W. was a serious threat to public safety to issue the warrant under JuCR 7.16. Resp. Br. at 17. Instead, the State argued JuCR 7.16 exceeded this Court's rule making authority and violated the separation of powers by undermining the Juvenile Justice Act and essentially transforming it into a voluntary program for all juveniles but those who present serious safety threats to the community. Resp. Br. at 52-73.

A majority of the panel in Division Three of the Court of Appeals agreed with the State, holding JuCR 7.16 is substantive in nature and must therefore yield to the conflicting statutory provisions in RCW 13.40.040(1)(a):

> [W]e deem the court rule substantive. The rule does not merely regulate the manner in which juveniles may be held to account for violation of a court order or failure to appear under the Juvenile Justice Act. It restricts courts from holding juveniles accountable as contemplated by the Juvenile Justice Act unless the juvenile presents a serious threat to public safety. This renders the juvenile court an ineffective tribunal for many of the cases the State is authorized to charge under the Act. And it conflicts with the legislature's policy choice that the Juvenile Justice Act should apply to all juveniles who violate criminal statutes, not just those who pose grave risks to the community.
>
> ...
>
> A summons to appear in court has no meaningful power if it is not backed up by the possibility of a warrant or some other sanction. There may be some juveniles who will appear in response to a summons despite the lack of any adverse consequences for noncompliance. But it would be naïve to think that young people who, for example, are in the throes of addiction, have run away from home, or are under the influence of an abusive relationship, will voluntarily respond to a court's attempt to assert its authority under the Juvenile Justice Act. Instead, the legislature plainly recognized that courts must be able to hold juveniles "accountable for their offenses." RCW 13.40.010(2). Accountability is not possible if courts lack the tools necessary to compel the presence of an unwilling participant.

...

[B]y greatly limiting the ability of juvenile courts to issue warrants, JuCR 7.16 prolongs court proceedings since time for adjudication tolls when a juvenile fails to appear for a hearing. *See* JuCR 7.8(c)(2)(ii). And application of the rule creates increased risks that cases will be decided on the basis of nonparticipation instead of on the merits. JuCR 7.16 is not a rule that facilitates the adjudication of a juvenile court case. It thwarts the State's ability to seek an adjudication altogether. We deem this type of substantive restriction a matter that falls outside the scope of the Supreme Court's rule-making authority.

...

Our assessment should not be interpreted as an agreement with the legislature's policy preferences embodied by the Juvenile Justice Act ... [B]ut how to strike the correct balance in responding to the issue of juvenile law-breaking is a complex matter of substance and policy. Perhaps the legislature will eventually agree with the balance struck by JuCR 7.16 and adopt legislation similarly circumscribing the availability of warrants. But it could also be that our State's policymakers will conclude an optimal juvenile justice system must allow for warrants for violations of court orders or failure to appear under a variety of circumstances, even if incarceration is restricted. Those of us who have worked in therapeutic courts know that a court's authority to quickly bring someone into court who is on the

> verge of catastrophic drug use or criminal activity can have a beneficial, life-changing impact. Absent constitutional restrictions, we believe courts should not take away a tool that the legislature might find helpful in reimagining our juvenile justice system. Instead, we should give room for legislators to be creative problem solvers. In our opinion, the challenge of fashioning a fairer, more effective and equitable juvenile justice system is a daunting task that must be left in the capable hands of our legislators.

*State v. A.M.W.*, __ Wn. App. __, 545 P.3d 394, 401-04 (2024). The Honorable George Fearing dissented, arguing a procedural rule does not become substantive merely because it has substantive impacts. *See id.* at 404-14.

A.M.W. filed a petition for review.

## V. ARGUMENT

Nobody wants juvenile offenders languishing in long-term detention. In an ideal world, every juvenile would have a healthy, stable home, involved parents, and access to resources to help them develop into productive members of society. But the world

is not ideal. And even if every juvenile offender was amenable to rehabilitation services or treatment, not all juvenile offenders have supportive or sober parents at home, or financial resources or access to limited community and rehabilitative resources. Often the juvenile court system is the only method through which juveniles in crises can access such services.

The State's purpose in opposing JuCR 7.16 is not grounded in the desire for detention, but in its desire for Washington's juvenile courts to retain their legislatively granted authority to call all juvenile offenders into court to effectuate the primary policy goals of the Juvenile Justice Act: to hold juvenile offenders accountable for their actions, to rehabilitate them before they reach adulthood when continued criminal behavior will have more serious and potentially lifelong consequences, and to respond to the needs of the victims of juvenile offenders. RCW 13.40.010(2).

The State does not contest that this case presents a significant question of law under the Washington Constitution or that it involves an issue of substantial public interest such that it satisfies the criteria for review by this Court under RAP 13.4(b)(3) and (4). However, because the Court of Appeals correctly decided the issue and because this Court has alternative means of addressing its concerns within constitutional parameters, the simplest way to resolve this issue is to deny review and amend one or more of this Court's other preexisting juvenile court rules.

1. Overview of Relevant Statutes and Court Rules.

An overview of the relevant statutory provisions and court rules is helpful. Under the relevant portion of RCW 13.40.040(1), a juvenile may be *taken* into custody:

> (a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to believe, that the juvenile has committed an

> offense or has violated terms of a disposition order or release order; or
>
> (b) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection (2) of this section[.]

RCW 13.40.040(1)(a)-(b). Subsection (2) of RCW 13.40.040(1) plainly prohibits a juvenile from being *held* in detention unless there is probable cause to believe that:

> (a) The juvenile has committed an offense or has violated the terms of a disposition order; and
>
> (i) The juvenile will likely fail to appear for further proceedings; or
>
> (ii) Detention is required to protect the juvenile from himself or herself; or
>
> (iii) The juvenile is a threat to community safety; or
>
> (iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or
>
> (v) The juvenile has committed a crime while another case was pending; or
>
> (b) The juvenile is a fugitive from justice; or
>
> (c) The juvenile's parole has been suspended or modified; or

(d) The juvenile is a material witness.

RCW 13.40.040(2).

Under JuCR 7.3(f), the hearing to determine whether post-arrest detention should continue upon an alleged violation of a conditional release order or disposition order "shall" occur "within 72 hours (excluding Saturdays, Sundays, and holidays) after taking the juvenile into custody, or the juvenile shall be released."

Under JuCR 7.14(d), upon a motion to modify a disposition order when a juvenile is alleged to have violated the order and is held in detention, if the motion to modify is contested, the hearing must be held within 7 days of the preliminary hearing if the allegation is not a juvenile offense, and within 14 days if the allegation is a juvenile offense.

At the detention hearing, in recognition of the legislature's authority to determine when detention is authorized, JuCR 7.4(c)

instructs the juvenile court to evaluate "whether continued detention is necessary under RCW 13.40.040."

Like RCW 13.40.040(1), JuCR 7.5(b) authorizes the juvenile court to issue a bench warrant instead of a summons upon an information being filed under the following circumstances:

> If the information charges only the commission of a misdemeanor or a gross misdemeanor, the court shall direct the clerk to command the presence of the juvenile by the issuance of a summons or other method approved by local court rule instead of a warrant, unless the court finds probable cause to believe that the juvenile would not appear in response to the command or probable cause to believe that the arrest is necessary to prevent serious bodily harm to the juvenile or another, or serious loss of or harm to property, in which case the court may issue a warrant.

JuCR 7.5(b).

The rule at issue in this case, JuCR 7.16, was initially adopted as a temporary rule in response to the COVID-19 pandemic but became a permanent rule in 2021. Appendix 11-13

(Order, No. 25700-A-1318, *In the Matter of the Proposed New JuCR 7.16—Governing Warrant Quashes* (Wash. Nov. 6, 2020)). Its plain language prohibits juvenile courts from issuing bench warrants for any violation of a disposition order or failure to appear unless the individual circumstances of the violation or failure to appear pose a "serious threat to public safety." JuCR 7.16(a)-(b).

2. JuCR 7.16 irreconcilably conflicts with RCW 13.40.040(1).

As the State argued below, JuCR 7.16 and RCW 13.40.040(1) irreconcilably conflict because JuCR 7.16 limits the juvenile court's broad authority granted by the statute to issue bench warrants for any noncompliant juvenile to only those juveniles who present a serious threat to public safety. An irreconcilable conflict like this raises separation of powers concerns, which are resolved by evaluating "whether the activity of one branch threatens the independence or integrity *or invades*

*the prerogatives of another*." *Hanson v. Carmona*, 1 Wn.3d 362, 388, 525 P.3d 940 (2023) (emphasis added) (internal quotations omitted). The court rule will prevail in procedural matters, and a statute will prevail when the matter is substantive. *Waples v. Yi*, 169 Wn.2d 152, 158, 234 P.3d 187 (2010).

3. JuCR 7.16 is substantive.

The line between what is procedural and what is substantive is often murky at best. *See State v. Gresham*, 173 Wn.2d 405, 431, 269 P.3d 207 (2012). To distinguish between the two, courts look to the following guidelines:

> Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to the essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated.

*Id.*

The State conceded below that bench warrants are typically used as a procedural tool by which trial courts effectuate the substantive law enacted by the legislature. In other words, in criminal settings, trial courts universally use bench warrants to ensure the presence of a defendant in court so that the merits of a matter may be litigated and to ensure compliance with court orders. In doing so, trial courts use bench warrants to *effectuate* the statutory scheme the legislature has enacted to curb problematic "societal conduct and to punish violations thereof." *Gresham*, 173 Wn.2d at 431.

JuCR 7.16, as promulgated, has the opposite effect, *thwarting* the substantive law passed by the legislature in the Juvenile Justice Act. This problem is two-fold. First, JuCR 7.16 affects the ability of the State and court to effectuate the substantive law promulgated by the legislature for unadjudicated offenses for which a juvenile who does not pose a serious threat

to public safety refuses to voluntarily come to court. Second, JuCR 7.16 hamstrings the State and court's ability to effectuate the legislature's intent that the Juvenile Justice Act should be rehabilitative for adjudicated offenders who willfully refuse to comply with a disposition order but do not pose a serious threat to public safety.

In either scenario, unless the juvenile voluntarily participates in court proceedings, poses a serious threat to public safety, or is arrested on a new charge, JuCR 17.6 prevents juvenile courts from compelling their presence in court. This, in turn, eliminates the ability of the State or the court to resolve cases on the merits, to hold all but the most dangerous juveniles accountable for criminal behavior, to require juveniles to participate in treatment or other rehabilitative services, and to ensure justice for the victims of juvenile offenders. This stymies the legislative objectives in both pre- and post-adjudication

proceedings. The notion that juveniles will voluntarily participate in juvenile court proceedings is undermined by the reasons that require issuance of a bench warrant in the first place: the juvenile's noncompliance with the court's existing orders and failure to appear at required hearings.

Thus, while JuCR 7.16 technically addresses only the issuance of bench warrants, as courts do not generally try juveniles or modify disposition orders in absentia, *see State v. Jackson*, 124 Wn.2d 359, 361, 878 P.2d 453 (1994), the rule entirely undermines both the State's ability to prosecute conduct the legislature has criminalized and the juvenile court's ability to reach the point where it can hold a hearing to address a juvenile's noncompliance with its orders, including, for example, a juvenile's continued substance use, ongoing mental health issues that may lead to self-harm, violations of placement orders

imposed for the safety or stability of the juvenile, or failure to attend school.

It has long been established that the "'fixing of penalties or punishments for criminal offenses is a legislative function, and the power of the legislature in that respect is plenary and subject only to constitutional provisions against excessive fines and cruel and inhuman punishment.'" *Matter of Forcha-Williams*, 200 Wn.2d 581, 591, 520 P.3d 939 (2022) (quoting *State v. Mulcare*, 189 Wash. 625, 628, 66 P.2d 360 (1937)). And in fact, JuCR 7.4(c) recognizes the legislature's authority to enumerate when continued detention is appropriate, as it states that the need for detention shall be evaluated under RCW 13.40.040.

By preventing juvenile courts from even arriving at the juncture where they can assess whether continued detention is necessary, JuCR 7.16 dramatically invades the legislative prerogative to set policy on that matter.

Envisioning the impact of a rule like JuCR 7.16, were it to apply to adult criminal cases, demonstrates how significantly it infringes on issues within the plenary power of the legislature. If JuCR 7.16 had a corollary in adult court, no criminal justice system would exist, except for those defendants who are either dangerous or voluntarily appear for court, creating an odd system in which non-dangerous, but unwilling defendants may avoid justice unless and until they recidivate.

Even in adult therapeutic court programs, superior courts rely on the ability to issue bench warrants for noncompliant adults, as best practices require immediate intervention and accountability for the alternatives to traditional criminal court to have any efficacy at all. *See* RCW 2.30.010(2) (recognizing the importance of "rapid and appropriate accountability for program violations" to decrease recidivism and improve community safety and the lives of program participants). When juvenile

court is viewed as a rehabilitative setting, like drug court for adults, the necessity of bench warrants to gain the noncompliant or distressed juvenile's immediate attendance in court for swift intervention and assistance is manifest.

JuCR 7.16 also creates illogical inconsistencies with other juvenile court rules. For example, as stated above, JuCR 7.5(b) permits certain cases to be initiated by summons and allows other cases to be initiated by bench warrant where there is probable cause to believe the juvenile will not appear or to prevent serious bodily harm to the juvenile or another or to prevent serious harm to property. If the juvenile fails to appear after a summons, JuCR 7.16 then prevents the issuance of a bench warrant unless the juvenile poses a serious threat to public safety, which means the case will simply linger, unresolved, until the juvenile voluntarily appears in court, is arrested on another charge, or the court loses jurisdiction.

Likewise, if a warrant is initially issued under JuCR 7.5(b), after the initial arrest, JuCR 7.16 would prohibit the juvenile court from issuing a subsequent bench warrant for a failure to appear unless the juvenile then poses a serious threat to public safety, which would again forestall the resolution of the case. It is illogical to provide for the initiation of a case but to nearly eliminate the mechanism by which the case can be litigated or resolved on the merits, and, once resolved, by which the court may enforce its disposition order and afford juveniles the rehabilitative services that might prevent recidivism and provide a pathway to a stable, productive life. Such a rule also does nothing to protect the rights of victims to have their injuries acknowledged and redressed to the extent permitted by law.

It should be noted that it is not a foregone conclusion that detention will occur even where it is authorized by statute; often, as was the case with A.M.W., the juvenile court will impose

detention as a punishment but will afford the juvenile the option to convert the detention to community service hours, or some other alternative. *See* CP 41, 43, 45, 47, 49. The primary goals of the Juvenile Justice Act are accountability and rehabilitation of juveniles in crisis. Allowing the juvenile courts the tools necessary to enforce their orders is the only manner by which they can effectuate those legislative goals.

It is well settled that juveniles are different than adults, lack sound reasoning and frequently display "'immaturity, impetuosity, ... [the] failure to appreciate risks and consequences,'" and susceptibility to negative influences. *State v. Houston-Sconiers*, 188 Wn.2d 1, 19 n.4, 23, 391 P.3d 409 (2017) (quoting *Miller v. Alabama*, 567 U.S. 460, 471-73, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012)). Leaving children in crisis to their own devices, frequently in the company of other individuals who influence them toward the criminal, antisocial,

or self-destructive conduct this Court has recognized they are most susceptible to is not compassionate or rehabilitative justice.

If this Court's concern is about the short-term detention that occurs between arrest and the detention hearing, which JuCR 7.3(f) already limits to 72 hours excluding weekends and holidays, it could resolve that issue by amending that rule to reduce the time period allotted for those hearings to occur. Trial courts already have on-call judges to address search warrants and arrests that occur outside of normal business hours and those judges could hold detention hearings as well.

As an alternative solution to continued detention on disposition order modification motions, this Court could amend JuCR 7.14 to reduce the time in which the juvenile court must hear contested motions to modify, reducing the time permitted for the hearing to 3 days and 7 days from the preliminary hearing, depending on whether the State seeks modification of an order

pertaining to a juvenile offense or a lesser charge. Such an amendment would allow the juvenile courts to resolve cases and rehabilitate youth according to the legislative scheme without subjecting them to lengthy detention while awaiting the contested disposition hearing.

However, prohibiting, for all but the most serious juvenile offenders, the ability of the court to obtain the juvenile's in-court presence so it may enforce its orders, infringes so heavily on the legislature's prerogative to define offenses and set accountability and rehabilitative standards that it is unconstitutional. JuCR 7.16 is substantive in purpose and effect because it inhibits, rather than facilitates, the State and juvenile court's ability to effectuate the substantive law enacted by the legislature. The Court of Appeals properly found that the statute must therefore prevail in this conflict.

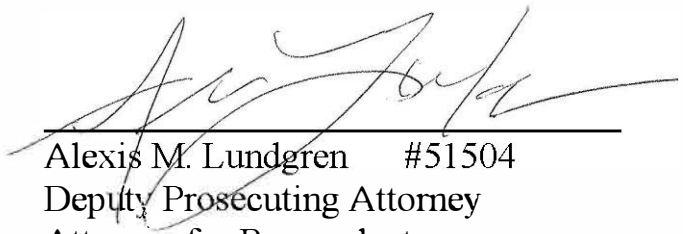
## VI. CONCLUSION

While this case raises constitutional issues and issues of substantial public importance that are subject to review by this Court under RAP 13.4(b), the Court of Appeals correctly decided the issue and this Court retains alternative methods by which it can constitutionally resolve its concerns about prolonged juvenile detention subsequent to arrest without infringing on the legislature's plenary authority to determine when detention may be appropriate as a mechanism for accountability and rehabilitation, or on the State's ability to prosecute conduct the legislature has criminalized. The State therefore respectfully requests the Court deny the petitioner's request for review.

This document contains 3,731 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 29 day of May 2024.

LAWRENCE H. HASKELL
Prosecuting Attorney



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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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| STATE OF WASHINGTON,<br><br>Respondent,<br>v.<br><br>A.M.W.,<br><br>Appellant. | NO. 103006-1<br><br>CERTIFICATE OF MAILING |

I certify under penalty of perjury under the laws of the State of Washington, that on May 29, 2024, I e-mailed a copy of the Answer to Petition for Review in this matter, pursuant to the parties' agreement, to:

Kevin March
marchk@nwattorney.net
sloanj@nwattorney.net

5/29/2024 **(Date)** Spokane, WA **(Place)** **(Signature)**

# APPENDIX

# The Court of Appeals
of the
State of Washington
Division III



| | | |
|---|---|---|
| STATE OF WASHINGTON, | ) | No. 39113-2-III |
| | ) | |
| Respondent, | ) | |
| | ) | |
| v. | ) | COMMISSIONER'S RULING |
| | ) | |
| A.M.W., | ) | |
| | ) | |
| Appellant. | ) | |
| _____ | ) | |

This matter is before the court on the court's motion to determine appealability. As set forth below, this court finds the order at issue, a bench warrant, is not appealable pursuant to RAP 2.2(a) but agrees with the parties that review of this interlocutory order is authorized by RAP 2.3(b)(4).

*Background*

This matter concerns A.M.W., a fourteen year-old who became involved in the Spokane County Juvenile Court system in 2022. In February 2022, the State charged A.M.W. with three separate counts of fourth degree assault against members of her family. Following a temporary detention, A.M.W. was released on February 9, to

electronic home monitoring and was required to reside in a DCYF[1]-approved placement. Approximately a week later, A.M.W. left the facility without authorization. She was located the following day and returned to the juvenile detention facility.

On March 1, A.M.W. pleaded guilty to one count of fourth degree assault. The juvenile court imposed local sanctions and ordered A.M.W. to be supervised for 7 months with a number of conditions of supervision. The court also imposed several community supervision conditions. A.M.W. subsequently left her court-ordered residential placement again.

A.M.W.'s probation counselor and the State filed several violation reports. A.M.W.'s counselor reported that A.M.W. was "hanging out" downtown with her 17-year-old boyfriend, D.M.H., who is a suspect in a child molestation charge and second degree rape of a child charge (where A.M.W. is the victim), as well as the suspect in three alleged incidents of first degree assault (drive-by shooting). State's Memorandum Regarding Appealability, Att. C at 6. D.M.H. has an extensive criminal history, including convictions for second degree robbery, third degree assault, two counts of fourth degree assault, and two counts of third degree malicious mischief, and is alleged to have gang affiliations.

The court entered an order modifying A.M.W.'s disposition order on March 16, 2022, finding that A.M.W. had failed to: make herself available for school enrollment,

[1] Department of Children, Youth, and Families.



**APPENDIX - 2**

attend mental health counseling, reside in an approved placement for six days, or abstain from drug and alcohol use. The court subsequently entered various modifications based on various violations, including emergency school expulsion, failing to abide curfew, and failing to abstain from drug and alcohol use.

On July 15, 2022, A.M.W.'s probation counsel reported that A.M.W. had violated conditions. On June 1, A.M.W. was alleged to have been under the influence of alcohol with D.M.H., and had attempted to commit suicide on the Monroe Street Bridge in Spokane. On July 13, she again left her court-ordered residential placement. The following day, during a conversation with her mother, A.M.W. again threatened to commit suicide. That same day, the counselor observed A.M.W. downtown, drinking alcohol with D.M.H.

On July 18, 2022, the State moved for the bench warrant for A.M.W.'s arrest pursuant to JuCR 7.16, which provides in part that, "No new warrants shall issue unless a finding is made that the individual circumstances of the alleged "Violation of a Court Order" pose a serious threat to public safety." JuCR 7.16(a). After noting A.M.W.'s behaviors as described above, the State argued in part that:

> The respondent's relationship with [D.M.H.] who has gang ties and is also a suspect in many serious crimes. [D.M.H.'s] criminal history, his other alleged criminal behavior, and the significant age difference existing between he and the respondent not only places the respondent in peril, but creates a situation where she too poses a serious threat to community safety.



**APPENDIX - 3**

> The State asserts that the following information provides a sufficient basis for the court to find that the respondent poses a serious threat to public safety as required by JuCR 7.16….

State's Memorandum, Att. L at 4. The State also moved to modify A.M.W.'s disposition order.

Defense counsel objected, arguing JuCR 7.16 does not permit a court to issue an arrest warrant for a juvenile based upon individual safety concerns and the facts presented by the State did not establish a "serious threat to community safety" under the court rule. In making this argument, counsel noted that: (i) RCW 13.40.040[2] differentiates between a threat to public safety and the individual safety of the juvenile, (ii) the Washington Supreme Court considered and ultimately rejected requests to include individual safety as a basis for a bench warrant when promulgating JuCR 7.16, and (iii) the State's request was based on individual safety concerns rather than threats to public safety.

On July 19, the juvenile court heard the State's motion and ordered the issuance of a warrant pursuant to JuCR 7.16 and RCW 13.40.040, ruling in part:

> Well, frankly, I think that I can make 7.16 as well as 13.40 work together. And 13.40, because this is a post-plea, it's a disposition, she's been found guilty of this. Pled guilty to the charges that include an escape 3rd which would go towards her, frankly, whether she's going to show up to Court or

[2] This statute, governing when a juvenile may be taken into custody, provides in part that "A juvenile may not be held in detention unless there is reasonable cause to believe that:…(ii) Detention is required to protect the juvenile from himself or herself; or (iii) The juvenile is a threat to community safety;…." RCW 13.40.040(2)(a)(ii)-(iii).

> not under 13.40.
>
> In addition to that, as I look at this, the suicide attempt in May of, May 31st, June 1st of 2022, it speaks to, frankly, not only a danger to this child based upon her attempt of suicide as well as the fact that she was intoxicated at the time, but I can a l so make a finding that the community in general is at danger. There is law enforcement. There is fire. There is EMS that responds to suicide situations, and they put themselves at risk every time they do that when making a response to this child's actions. In addition to that, when they are assisting this child, they are not assisting other areas of this community which do need help. So, I can consider that a substantial and significant community safety risk.
>
> In addition, her drug and alcohol use and abuse that is untreated at this time and her mental health issues that are untreated at this time, while are certainly problematic and dangerous to the youth herself, it also puts the community at danger based upon there is no check or balance to her behavior. There are no tools that she is taking advantage of. She is prescribed medication but is not taking that medication. That also puts society as a whole at risk and it is substantial in nature.

State's Memorandum, Att. F at 14-15.[3]

The court entered a written order granting the State's motion, incorporating its oral ruling, and holding that A.M.W.'s suicidal tendencies and her untreated mental health and substance issues put community members at risk. The Order for Bench Warrant issued the same day.

On July 27, A.M.W. was arrested on a new allegation of fourth degree assault, as well as the warrant issued on July 19. The court entered an order modifying A.M.W.'s

[3] The court also noted it took "exception" to the extent the Washington Supreme Court told superior courts they must take an offender's youthful nature into account during sentencing but received no direction to do the same thing under these circumstances when issuing warrants to get juveniles into rehabilitative services. Id. at 16.

disposition order on July 28, finding that A.M.W. failed to abide by curfew, failed to abstain from drug and alcohol use, failed to stay at her approved placement, failed to take her prescribed medications, and failed to remain in contact with her probation counsel. The court imposed 10 days of confinement and did not convert the time to community service as it had done in prior modification orders.

On July 9, 2022, A.M.W. filed a notice of appeal seeking direct review of the order directing issuance of the bench warrant and the "order re: bench warrant." This court set the matter on the court's motion to determine appealability, directing the parties to brief whether these orders are appealable, and if not, whether discretionary review should be taken.

*Analysis*

*a. Appealability*

RAP 2.2(a) identifies those orders of a superior court that are appealable as a matter of right. RAP 2.2(a)(13) provides that "[a]ny final order made after judgment that affects a substantial right" is also an appealable order.

A.M.W. contends the bench warrant is appealable pursuant to RAP 2.2(a)(13). After noting it is beyond dispute that the order affects a substantial right and that it is clearly an order made after judgment, A.M.W. contends it is a final order because it is final as to the legal question of whether the warrant shall issue – nothing is left to do as to the warrant. She acknowledges there may be other proceedings that occur after the bench

warrant issues but contends these are mere potentialities that exist upon the successful execution of the warrant and revolve around separate issues from the legality of the warrant. She cites no authority holding that bench warrants are appealable pursuant to RAP 2.2(a)(13), but contends this situation is analogous to *State v. Gossage*, 138 Wn. App. 298, 301-302, 156 P.3d 951 (2007) (order denying convicted sex offender's petition for discharge, early termination of sex offender registration requirements, and restoration of civil rights was final appealable order because it left nothing else to be done, the court reviewing the petition did not have continuing jurisdiction over the offender, and there was no set review of an offender's eligibility for restoration of rights or relief from registration obligation), and *State v. Ransom*, 34 Wn. App. 819, 664 P.2d 521 (1983) (order denying parents' motion to vacate order forfeiting bond after their son fled prior to being taken into custody was final order affecting substantial right under RAP 2.2(a)(13)).

This court disagrees with A.M.W. that the bench warrant is a final order – it disposed only of the State's request for the issuance of the bench warrant and contemplated further proceedings. Unlike *Gossage*, the court has continuing jurisdiction over A.M.W. until the expiration of her seven-month period of supervision. Moreover, as the State notes, the order is subject to recall by the court, either on the court's own motion or at A.M.W.'s request. Accordingly, it appears the order is not final for purposes of RAP 2.2(a)(13).

*b. Discretionary Review*

Interlocutory review is generally disfavored. *Maybury v. City of Seattle,* 53 Wn.2d 716, 721, 336 P.2d 878 (1959). However, review can be granted in the relatively rare situations posited by RAP 2.3(b), including where the parties to the litigation have stipulated that the order at issue "involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation." RAP 2.3(b)(4).

When the parties submitted their memorandums regarding appealability, they also filed a RAP 2.3(b)(4) stipulation, noting that immediate review of the order may materially advance the ultimate termination of "not only litigation concerning the issuance of juvenile court bench warrants in this case but also concerning the same or similar litigation in other juvenile cases." RAP 2.3(b)(4) Stipulation. A.M.W. argues that review is warranted under the other remaining provisions of RAP 2.3(b) as well.

As an initial matter, the State contends this matter is technically moot where A.M.W. was subsequently arrested on the warrant concurrently on a new allegation of assault. Nonetheless, the State concedes that review of this matter is appropriate because this matter presents issues of continuing and substantial public interest warranting review.

A case is moot where this court can no longer provide effective relief. *In re Marriage of Horner, 151 Wn.2d 884, 891, 93 P.3d 124 (2004).* This court may take review of a moot case if it presents issues of continuing and substantial public interest. *Id.*

In deciding whether to review a moot matter, this court considers whether the issues are of a public or private nature, whether an authoritative determination is desirable to provide future guidance to public officers, and whether the issues are likely to recur. *Westerman v. Cary,* 125 Wn.2d 277, 286-87, 892 P.2d 1067 (1994). The court may also consider the level of genuine adverseness and the quality of advocacy, as well as the likelihood that the issue will escape review. *Id.*

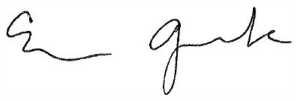
This court agrees that the case presents issues of continuing and substantial public interest. The interpretation of a court rule governing when warrants may be issued for violation of court orders related to juvenile offense proceedings is a public matter, an authoritative determination is desirable given JuCR 7.16's lack of a definition of "serious threat to public safety," and the lack of case law interpreting this relatively new rule,[4] and this issue is likely to recur. Moreover, the level of genuine adverseness on this issue and the quality of advocacy support taking review of this issue.

This court also agrees with the parties that review is authorized by RAP 2.3(b)(4). It appears there is substantial ground for a difference of opinion regarding the juvenile court's interpretation of JuCR 7.16's requirement of "a serious threat to public safety," and whether that requirement was satisfied under these circumstances. Moreover, review of this issue may materially advance the ultimate termination of litigation involving future issuance of bench warrants in this case, an issue that is likely to reoccur given

[4] JuCR 7.16 became effective on February 1, 2021.

A.M.W.'s significant involvement in the juvenile court system over the last seven months.

Accordingly, IT IS ORDERED, this court accepts discretionary review of this matter pursuant to RAP 2.3(b)(4).[5] The Clerk of Court is directed to issue a perfection letter in this matter.



Erin Geske
Commissioner

[5] Since this court agrees that review is authorized under RAP 2.3(b)(4), the court does not reach A.M.W.'s arguments that review is also authorized under RAP 2.3(b)(1)-(3).

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED NEW JuCR 7.16—GOVERNING WARRANT QUASHES

**ORDER**

NO. 25700-A-1318

The Washington Defender Association and TeamChild, et al., having recommended the adoption of new JuCR 7.16—Governing Warrant Quashes, and the Court having considered the proposed amendment, and having determined that the proposed amendment will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the proposed new rule as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9(j)(1), the proposed amendment will be published in the Washington Reports and will become effective on February 1, 2021.

DATED at Olympia, Washington this 6th day of November, 2020.

**APPENDIX - 11**


Stevens, C. J.
Johnson
Madsen, J.
González, J.

**JuCR 7.16**
**QUASHING AND ISSUING WARRANTS**

**(a) Quash Warrants Issued for Violation of Court Order Related to Juvenile Offense Proceedings.** For all juvenile offense proceedings, all outstanding warrants due to an alleged "Violation of a Court Order" shall be quashed by the court within 10 days of this court rule being enacted unless a finding of serious public safety threat is made in the record of the case to support the warrant's continued status. No new warrants shall issue unless a finding is made that the individual circumstances of the alleged "Violation of a Court Order" pose a serious threat to public safety.

(1) Following the quashing of a warrant related to a community supervision matter, the Court may make a finding that community supervision is tolled until the next court hearing where the respondent is present either in person, by phone, or by video.

(2) If a future court date is set, the Superior Court shall make best efforts to provide written notice to the respondent of the new court date.

**(b) Quash Warrants Issued for Failure To Appear for a Court Hearing Related to Juvenile Offense Proceedings**. For all juvenile offense proceedings, all outstanding warrants issued for a Failure to Appear juvenile offense proceeding shall be quashed by the court within 10 days of this court rule being enacted unless a finding of serious public safety threat is made in the record of the case to support the warrant's continued status. No new warrants shall issue unless a finding is made that the individual circumstances of the Failure to Appear poses a serious threat to public safety.

(1) Following the quashing of the warrant, the Superior Court shall make best efforts to provide written notice to the respondent of the new court date.

(2) Pursuant to CrR 3.3(c), the new commencement date shall be the date of the respondent's next appearance in person, by phone, or by video.

## SPOKANE COUNTY PROSECUTOR

## May 29, 2024 - 2:14 PM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | 103,006-1 |
| **Appellate Court Case Title:** | State of Washington v. A.M.W. |
| **Superior Court Case Number:** | 22-8-00037-2 |

**The following documents have been uploaded:**

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