November 7, 2013

Honorable David A. Svaren
District and Municipal Court Judges' Association
Skagit County District Court
600 S 3rd Street
PO Box 340
Mount Vernon, WA 98273-0340

Dear Judge Svaren:

Since July, the JISC CLJ workgroup has met regularly to analyze the remaining issues and to provide recommendations to the JISC on the retention of JIS court records for CLJs. At the October 25 JISC meeting, the CLJ workgroup informed the JISC that the workgroup members were unable to unanimously agree on a policy that would satisfy all concerns. The workgroup presented six options and asked the JISC to provide direction so the workgroup could bring back a proposed policy for the December 6 JISC meeting. Instead, the JISC discussed the options and voted on the policy at the October 25 meeting. The JISC decided that the records would be destroyed as originally proposed by the Data Dissemination Committee, with the following exceptions:

- Criminal cases with a Domestic Violence (DV) flag are retained for 15 years; and
- Case data is retained for five years until the Judicial Needs Estimate work is resolved and then the retention for the applicable cases will be three years; and
- Judges are allowed to flag individual cases for permanent retention subject to a set of criteria to be established by the DMCJA and then approved by the DDC and the JISC. The guidelines would be published by the AOC in its Data Destruction Policy.

During the JISC meeting, Judge Rosen and Judge Heller were directed to provide guidance to the DMCJA on the individual case flagging criteria. Therefore, with Court Administrator Aimee Vance, we now provide the following recommendations:

- In flagging individual cases for permanent retention, judges should consider these non–exclusive factors:
    - Defendant criminal history;
    - Nature of the current crime;
    - If the case involves any mental health issues;
    - If the case involves any substance abuse issues;
    - If the Defendant has a high risk of repetitive contact with the court system;
    - If the alleged crime was sexual in nature;
    - If the Defendant has a history of repetitive contact, or has the potential of repetitive contact, with the alleged victim; and
    - If domestic violence was involved.

- Judges should consider these factors with the knowledge that the dismissed record is not a record of conviction and therefore, if retained, it may have negative consequences for the Defendant in acquiring employment or housing.
- Flagging of individual cases, especially those that are dismissed, should be considered the exception and not the norm in judicial proceedings.
- If a judge decides that a case should be flagged, findings supporting the flag must be put on the record and docket entries must show the criteria used in making that decision.
- A flag may be removed from a case upon good cause shown. The record and docket entries must reflect the reasons as to why the case was un-flagged.

The CLJ Workgroup hopes it has provided a good starting point for the DMCJA in establishing the guidelines for judges to use when flagging individual cases. In order to meet all the schedule deadlines and properly vet the proposed criteria per JISC direction, it is requested that the DMCJA provide the individual case flagging guidelines to the Data Dissemination Committee by February 15, 2014. If you have any questions, Judge Heller and Judge Rosen are available to discuss the policy and the proposed criteria presented in this letter.

Sincerely,

Judge James R. Heller	Judge Steven Rosen	Aimee Vance, Administrator
Pierce County District Court	Seattle Municipal Court	Kirkland Municipal Court