COMMENTS RECEIVED FROM JIS LINK LEVEL 20 USERS

1. My name is Edwin Aralica. I am writing to provide feedback about removing address accessibility for public defenders. The following opinions, impressions, and information reflect my views and not the views of my employer or anyone else.

I am a public defender in Washington state. I have been a public defender in Washington state since 2004. Public defenders should continue to have access to addresses on Odyssey Portal and JIS LINK. Public defenders benefit greatly from having access to addresses. First, our clients (current and former) often update their address without us knowing about it. We learn about the update through JIS. This is important because we often need to contact our clients after the case is finished. For example, we need to contact our clients about restitution hearings, review hearings, and other hearings. The courts (judges) sometimes require us to provide notice to our clients. If our clients fail to appear to court, a bench warrant could be issued. The address database helps us maintain contact with our clients, which in turns benefits the justice system. Second, public defenders use JIS to find information about witnesses. Public defenders acknowledge and understand that address information is sensitive and not subject to disclosure Public defenders only ethically use this information. I would argue that public defenders use this information the same way prosecutors use this information.

The belief that public defenders would be obligated to share address information with our clients from Odyssey Portal and JIS LINK is inaccurate. We are obligated to share information that we receive from the prosecutor's office via the discovery rules, specifically Criminal Rule 4.7. Information that we obtain from Odyssey Portal and JIS LINK is not subject to the discovery rule obligation per Criminal Rule 4.7 because we do not obtain it from the prosecutor's office. We have no obligation to provide this information to our clients. On the flip side, any information, including addresses, that we receive from the prosecutor's office could be released to our clients. If public defenders do not have access to addresses on Odyssey Portal and JIS LINK, then we will need to ask the prosecutor's office for this information. By doing so, ironically, public defenders may then be obligated to release address information to our clients. Hence, a rule prohibiting public defenders from access address information may have the opposite effect that it intended to have in the first place. Furthermore, if public defenders lost access to the addresses via Odyssey Portal and JIS LINK, there could be a resource impact. Public defenders would probably need to expend extra resources on private databases to find address information. This could have a fiscal impact on public defense offices.

The belief that public defenders have or will share address information with our clients from Odyssey Portal and JIS LINK is inaccurate. Based on my experience as a public defender, there is no reason to share this information with our clients. Hypothetically, if public defender clients wanted address information from

Odyssey Portal and JIS LINK, public defenders can properly decline releasing it because there is no ethical obligation to provide this information, and Criminal Rule 4.7 does not mandate releasing this information. Finally, while keeping in mind my ethical obligation to not reveal information per RPC 1.6, generally speaking, I cannot recall an incident in the past twelve years in which this address information was shared.

Public defenders should continue to have access to addresses on Odyssey Portal and JIS LINK. Public defenders acknowledge and understand that address information obtained from Odyssey Portal and JIS LINK is sensitive and not subject to disclosure. This concept does not conflict with our obligation to review discovery with our clients per Criminal Rule 4.7.

Edwin Aralica

2. The Office of Financial Recovery (OFR) collects debts for DSHS, the Health Care Authority (HCA) and the Department of Early Learning (DEL). Attached is a comment from one of our staff who use the JIS.

OFR needs access to address info. The courts do not store an SSN in their system and most of the restitution checks we receive only reference a client's name. We have many clients with similar or identical names and sometimes the only way to verify which client is correct is to compare the address info.

Thank you for letting us have a chance to comment.
BRICE MONTGOMERY/ Office Chief/Division of Finance and Financial Recovery

3. I am an assistant for several attorneys who are currently public defenders in Benton County.
We've used the address information in the following ways for the indigent defendants that the attorneys here represent:

- Initial address. We sometimes receive no contact information from the court and if the defendant fails to contact us, we can't contact them.
- Updated Address. The defendant has moved, updated their address with the courts, hasn't filed a change of address with the post office, and failed to tell us. Calling some of the defendants by phone doesn't always work as some of the defendants have a new phone number every 2 weeks.
- Updated address, part 2. No contact orders. Again, same as before with the updated address, especially when the protected party and defendant have the same address.
- Updated address, part 3. We received a copy of the notice of case setting from the court with an address. We forwarded the notice, it came back as as unable to deliver. Looked at their address with the courts, see that it was updated 2 days after the notice was printed, someone had mistyped

the address (410 vs 401 if I remember). In that case, we resent to the notice to the new address and it did not come back.

Thank you for taking our comments on this matter.
Sincerely,
Vance Glasscock
Assistant for Benjamin J. Riley & Elisa V. Riley
SAXTON RILEY & RILEY, PLLC

4. Taking away Level 20 access to addresses is amputating an arm to trim your fingernails.

My access is granted as a public defender representing parenting dependency and termination cases as well as contracted conflict counsel on misdemeanors and gross misdemeanors in municipal court. I regularly use address history for both purposes.

The cited purpose of this restriction is "that public defenders may be obligated to share other party, witness or victim address information with their clients." **We already get the information for victims and witnesses in police reports and we are already prevented from sharing that information without further consent or approval.** The relevant rules, CrRLJ 4.7(g)(3) and RCW 10.99.040(1)(c), regarding discovery is as follows:

"(3) Custody of Materials. Any materials furnished to a lawyer pursuant to these rules shall remain in the exclusive custody of the lawyer and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. Further, a defense lawyer shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court."

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location

These rules already allow for protections of victim addresses and presumably could apply to at-risk witnesses as well.

The existence of these rules begs some serious questions when it comes to restricting access to public defenders (who already struggle to get information that is accessible to the other party/parties):

How many times has victim information obtained using the JIS/ADH database been wrongfully passed to a criminal defendant?
Of those times, how many had the same information contained in the police report accessible to the attorney?
And of all the incidents, how many times was a court order sought to preclude provision of the information to the defendant and denied?

My suspicion is that the answer to #2 is none, though I only have my educated guess to go on. If that is the case, then this isn't a problem that needs to be addressed. And even if it does need to be addressed, **the concern here is much better addressed by a rule instead of removing access to address data from JIS**.

The truth is that using JIS address data for me has generally **not** been about finding addresses for witnesses or victims. Typically, those addresses appear in reports or are otherwise discoverable. And witnesses not identified are mostly able to be tracked by my client. **I most commonly use JIS addresses to get updated information for my *own* MIA clients**. This is especially true in my work in dependency and termination cases. A client who has not been around for their kids case can occasionally be found using the updated address system. Criminal clients who have been on warrant status or have a FTC hearing set sometimes have updated addresses, too.

SO – before you take away my colleagues and my access to the database – please ask yourself the following: "Is this an issue that is real and has had real impact on witnesses or victims?" "Is JIS ADH the only way the defense attorney gets this information?" "Is there a less restrictive alternative, such as a rule, that can be implemented to protect this problem?"

I do not know the answer to the first two, but the answer to the third is **yes. There is a less restrictive alternative to denying *all* access to address history to protect information of victims and witnesses**.

Thank you for considering my opinion.
Sincerely,
Neil Weiss, Attorney | ABC Law Group LLP

5. Hello, I have used the JIS link for all of my career. It is invaluable. I have never had a client request anything connected to JIS access. The only question I have ever had from a client was about their own criminal history which is normally provided by the state anyway in the discovery. Limiting my access will force me to ask the state for JIS information which will reveal trial strategy and confidential attorney-client information. I often check criminal history on potential witnesses that may or may not be called for the
defense. Asking the state will reveal the names of those individuals

to the state in some instances and would hinder my ability to adequately represent my clients. If the state is allowed access to this information, it is only fair that the defense be allowed access without going through the state. In my opinion, limiting that access would be a violation of my client's constitutional rights. Again, I have never had a client ask for any information contained in JIS other than their own records. I have been in practice since 1998. Thank you. sg.

I need the ADH for my investigator to find these people. We don't have phone books or much else left anymore because of the internet and that information allows my investigator to contact potential witnesses and see if they have information that is helpful. Again, without that, my trial strategy could be revealed to the state if I have to request addresses from the state. sg.

6. My concerns would be less about needing victim/witness address information, as that information is usually contained within the police reports. My concerns would be regarding defendant address and contact information. Typically, all I receive from the courts for contact information for my clients is name/case #/court date. Accessing JIS allows me to get at least some contact information, even if it is not up-to-date so that I can reach out to my client, should I need to speak with them regarding their case. Unfortunately, not all clients are very good about being in contact with their attorney or about providing good contact information. Should access to address information for defendants be removed, I would personally be at a loss regarding how to contact my client in the future should I need to send a letter about the case. As far as victim/witness/other party addresses go. I have not had a time where I accessed their address information via JIS. I have gotten the information from either the police report or the prosecutor when it was missing. Also, I have not been in a position where I have given out that kind of information to another party outside of the court system (via witness lists, etc.).
--Laura Mapes—

7. I think there is no obligation to share that information with the client. How is assisting a client in violating court condition of release or potentially getting a witness tampering charge in the client's interest? On the other hand, our ability to find potential witnesses is an essential aspect to their defense.
Attorney James J. White
Directing Partner, Smith & White, PLLC

8. I believe it would impact my practice considerably to get rid of the address feature. We use it extensively to help locate clients and other witnesses we need to speak to on cases. With budgets already tight, having access to this information considerably helps defend clients to the best of our ability.
Karla K. Hudson

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9. I supervise 8 investigators in the SCRAP division for King County DPD. It is a sad misconception that we share ANY alleged victim information with clients. We are probably more sensitive in handling information than most because we know of the potential dangers for all citizens and are extra careful in sharing ANY information we develop. The addresses in JIS are often the only source of leads to find neutral, state or defense witnesses mentioned in discovery but the police had no time at the moment to track the people down and interview them. Once finished writing up the report, police interest usually ends and it falls on us to develop additional eye witness or circumstantial witness testimony, often exculpatory information the police didn't bother to develop because it didn't fit their 'probable cause' theory.
In the interest of justice, please consider this input in opposition of restricting our access.
Roger Dunn, investigator supervisor
King County Department of Public Defense, SCRAP division

10. I am a felony investigator in the KCDPD (Public Defender) office. It was brought to my attention that the Court Access administrators are considering denying us access to the addresses located on the JIS/SCOMIS website and this is highly concerning to me as someone who uses JIS/SCOMIS all the time! First of all, we need every avenue we can get to be able to locate and get in touch with witnesses on cases we're working. It's a routine part of our job. And we DO NOT disseminate that kind of info to our clients, especially if there is an NCO in place or other reason to be concerned about the privacy of an alleged victim, for example. It's just not something we do.

Please bear in mind that you will only be making all of us public defenders and public defender associates' difficult job even more so.

Thanks for your consideration.
Pandora Eyre
Defense Investigator
King County Dept. of Public Defense SCRAP Division

11. As an investigator I sometimes use the address history to locate witnesses and in the almost 18 years I've been doing this I've never ever had a client ask, approach me about a witness or an alleged victims address. For the most part my investigation of cases does not include contact with the client at all and my investigation is determined by the attorney. My contact with clients is minimal at best.
Regards,

James T. Black
Investigator, King County Department of Public Defense-SCRAP Div.

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12. I wanted to let you know how important it is to have access to the addresses in JIS. I use address information in JIS to help locate witnesses just about every day. I know other investigators in my office also use the address section of JIS much in the same way as I do. I have never and would never share the address information with our clients. Not having access to the address section in JIS will definitely impact our ability to defend our clients. If you have any questions, please contact me by email or at the number below. Thank you.
Chad Cameron
Defense Investigator
King County Department of Public Defense, SCRAP Division

13. I have a public defense contract with the City of Yakima. We have 7 attorney's working on the contract.

My response to your email query regarding Level 20 Access for public defenders is as follows:

In your email you stated "The concern is that public defenders may be obligated to share other party, witness or victim address information with their clients." Frankly speaking, anyone who has this concern doesn't know anything about attorneys' ethical obligations. There is no situation where a public defender would be "obligated" to provide that information to clients.

The reality is, this is a due process issue. In my opinion, due process rights are already being violated by giving prosecutors access to more information (ie driver's license status, etc.) than public defenders. This proposal would create an even larger due process violation. I'm confident the ACLU would not be too keen on this proposal.

Moreover, as a person who has worked as a prosecutor and as a defense attorney, I can say that JIS access is just as valuable, if not more valuable, to the defense than it is to prosecution. Giving the prosecution more resources than the defense gets is a constitutional violation and just plain unacceptable.

Thank you for your time,
Richard D. Gilliland

14. I only see RPC 1.4(a)(4) as directly on point. However, it only requires counsel respond to “reasonable” requests from clients. I can think of no circumstance in which it would be unreasonable for me to withhold such information from the client.

This position is only emboldened by RPC 1.4(b), which provides “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make

informed decisions regarding the representation." Again, the client's decision making cannot conceivably be improved by knowledge of specific contact information.

Of course, I am only in my third year and on a contract basis.

Thanks for asking,
Jackson Millikan, Attorney

15. As a Public Defense Investigator and a JIS LINK user, the information obtained in JIS is very useful in our investigations in locating involved parties in our cases and in other cases. It becomes vital in also locating these uncooperative witnesses and/or victims. We are also aware of the sensitive nature of not sharing the information in JIMS with the unauthorized parties. I hope this is what you needed. Let me know if you need anything else.

Thanks,
Ricardo Fuentes
Defense Investigator
Department of Public Defense

16. We would NOT go into JIS and look up that information for a client and we are under no obligation to give out victim or witness contact information to anyone.

Currently, we have such limited access to information in JIS that addresses are being used as a unique identifier so we do not add persons multiple times in our case management system. As I'm sure you're aware, adding the same person multiple times in a database can become problematic.

We are required to add defendants and victims in our case management system as to avoid case assignment conflicts, and again addresses are used as a unique identifier in this situation. Without access to addresses, we run the risk of having persons entered multiple times and could potentially impact our ability to perform accurate conflict checks. Those inaccurate conflict checks would then result in loss of money and time for unnecessary case assignments.

Please feel free to contact me if you have any questions,

Susan Taylor
Office Manager
Kitsap County Public Defense

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17. Thank you for inviting comment on this subject. I hope that people are asking a fairly important question:
Why are we so concerned that defense attorneys will breach confidentiality of address information? It seems that an attorney on either side of the aisle may be guilty of indiscretion regarding the handling of private information. I just hope there isn't some concern that defense attorneys are more compromised from a character standpoint.

I don't see any rule which requires me to disclose personal information of third parties to my clients. CrR 4.7(h)(3) and CrRLJ 4.7(g)(3) both already contemplate a rule-driving limitation on an attorney's right to disclose material to his or her client.

I have no doubt that a confidentiality agreement as a prerequisite to access to material obtained through JIS would serve to prevent attorneys from being "compelled" to share third party's information with a client. We would be forced to tell the client, "In order to access this information to do my job, I cannot disclose it to anyone." If a client won't agree to that, then as an attorney I would simply not access JIS to conduct that client's case.

I implore the committee not to create a special "defense attorney" rule. It creates the perception that defense attorneys need special monitoring and may imply that we are less ethical or responsible.

Thanks
Bret Roberts
Attorney, Jefferson Associated Counsel

18. In response to your proposed amendments to the JISC Data Dissemination Policy (below), I would like to share with you, the value our misdemeanor legal assistants find with the NCC/Address screen:

1. We provide the defendants address and phone number to our conflict/panel attorneys when we give out new conflict cases for client/attorney communication.
2. For our mental health clients that are pending their first competency hearing, the NCC screen shows us the assigned courtroom, whereas it isn’t always available on the CDK screen. This allows us to know which attorney to have present for that hearing and any subsequent hearings.
3. When we request certified records from DOL for our attorneys, we use the NCC screen to provide the Driver’s license information, dob, etc. It’s all there in one location for efficiency and ease.
4. The NCC screen provides us with the most current phone number and address that may not be available other places (i.e. LINX). This is valuable for attorney/client contact.

Essentially, this information is used numerous times throughout the day, each day of the week. Other systems and programs aren't always as complete or updated for misdemeanor cases, thus making all areas of JIS an invaluable source.
Sincerely,
Char Davidson, Legal Assistant
On Behalf of: Jeanne Pardur
Misdemeanor Lead Legal Assistant, IV

19. This would be a horrible amendment to public defender access. We need access to address information in order to complete witness lists. We also need this information in order to be able to send notice of court dates to our clients. I don't know how we are going to provide notices about upcoming court dates if we don't have addresses. This would be a horrible change. Also, out clients never have access to JIS information. Our clients want copies of police reports. I've never had a client want to try to access JIS information.
Sincerely,
Lyliane S. Couture

20. As a Public Defender, I have a need for address information availability in JIS LINK and am hopeful that address accessibility will not be removed, particularly for a defendant's address and contact information. While there are occasions when address information regarding other party, witnesses or victims address information is useful, such as when that information is needed prior to the receipt of discovery from the prosecutor, the larger issue is my ability to quickly obtain defendant's current address.

Numerous times my office is directly appointed in open court to represent a defendant, months or even years after the alleged incident has occurred and the defendant is given my office contact information. Often however the defendants loose or misplace that information and fail to contact my office.

Even though I eventually receive discovery, in those cases the police report listed addresses and contact information are often outdated. Without access to the address history and obtaining a mailing address, my office has no way of quickly and directly communicating with the defendant if the defendant fails to make contact with my office.

Additionally, even if the police reports set forth the correct information, it can be weeks after the direct appointment before I receive that information. My practice has always been upon notification of a direct appointment within 24 hours to access the address history for the defendant and advise the defendant by letter of the direct appointment and how they contact my office and provide further

instruction. I also include copies of my Notice of Appearance and Demand for Discovery and set forth the next pretrial court date that they must attend. Without access to the address history I will lose the ability to quickly communicate with my client which will affect my ability to represent the defendant and also affect compliance with the Washington State Bar Performance Guidelines and Standards for Indigent Defense Services. For that reason, it is imperative as a Public Defender I have access to address history for effective representation and ask that the access to that information not be removed.
Regards,
Gregory G. Schrag | Attorney at Law

21. I received the below message about public defense access to addresses in the JIS LINK and Odyssey Portal. The King County Department of Public Defense must continue to have access, at a minimum, to all confidential client information. The databases are unlikely to know if a confidential address belongs to a DPD client, for example. DPD must have access to contact information connected to clients to confirm the court used the correct address in mailing notices to client and to see if the State provided the Court the correct address as required under CrRLJ 2.2()a) (3), which avoids a warrant. Failing to provide client or witness address information to defense is likely to cause many continuances. If the prosecutor seeks a warrant based on information contained in JIS to which defense does not have access, defense will be moving to continue the case until it has had the opportunity to review the full JIS record. In addition, eliminating address information would also interfere with DPDs ability to investigate cases on behalf of its clients. Investigators would be unable to locate and interview witnesses.

The AOC should not block DPD's access to addresses or any other pertinent contact information. If AOC has concerns about information being turned over to defendants, AOC can require that all those who access confidential information not share it with any party other than the case investigator, the prosecutor and/or the court. This is similar to what defense attorneys are required to do when they receive discovery from the prosecutor. Court rules require us to redact victim and witness addresses. Please let me know if you would like more information. I wanted to quickly respond before the deadline to provide feedback.
Thank you for seeking input.
Twyla Carter
Misdemeanor Practice Director
King County Department of Public Defense

22. Good afternoon,
I am writing in response to your request for comments on removing public defender access to address information on JIS. I am requesting that the committee continue to allow access to addresses.

COMMENTS RECEIVED FROM JIS LINK LEVEL 20 USERS

First, the Snohomish County Office of Public Defense requires access to addresses in JIS. We are the county office in charge of screening for indigency and assigning counsel. Our office does not directly represent defendants, rather we assign cases to our main contractor, the Public Defender Association (PDA) and a panel of conflict attorneys. Our office currently uses JIS link addresses for our summons reminder program. We use the address and contact information in JIS Link to contact defendants to remind them of upcoming court dates. Without this access, our ability to successfully contact defendants to reduce failures to appear would be severely hindered at best, and at worst may cause us to have to shut down this program.

Second, both our main contractor (PDA) and our conflict panel attorneys regularly use the address information to contact defendants, particularly those who have missed appointments, or have never scheduled appointments. This will certainly result in additional delays and failures to appear at court dates, where public defender's lack the ability to research and locate contact information for clients.

Perhaps a way to manage this and still allow access would be a confidentiality agreement related to address information, signed by non-court users. This would address confidentiality issues, while still allowing access.

Removing access to address information in JIS LINK will be a barrier to necessary information that will inevitably result in court delays.

Thank you for the opportunity for comment on this decision.
Sara Bhagat
Director/Attorney Administrator
Snohomish County Office of Public Defense