June 23, 2020

TO: JISC Data Dissemination Committee

FROM: Kevin Cottingham, AOC Data Dissemination Administrator

RE: Handling sealed juvenile records in JABS

During discussion of sealed cases in AOC applications during the April 2020 DDC meeting, JABS's display of sealed juvenile records drew questions regarding GR 15 and Title 13 RCW's intersection. Specifically, members of the DDC suggested that while RCW 13.50.260 requires that AOC make information on the existence of sealed juvenile records available to prosecutors, these listings in JABS should have less data than what GR 15 requires for display of sealed case information on court indices. This would be in keeping with other provisions of RCW 13.50.260, which states that sealed juvenile records are to be "treated as if they never occurred".

As discussed in detail below, the Court has historically respected the Legislature's decisions regarding the confidentiality of juvenile court records. In this case, the language of the statute mirrors the language used by the Court in GR 15, supporting the assertion that sealed juvenile records are to be displayed to prosecutors as other sealed cases are displayed on public court indices. Legislative history, on the other hand, seems to indicate that the final language was a cost-effective solution for unsealing records upon the initiation of a new criminal trial. This might mean that charges need not be displayed in JABS for compliance under the statute.

Facts

Sealed juvenile records are displayed in JABS only to levels 25 (prosecutors) and 30 (court officials). Sealed cases are bracketed on either end by red text displaying "*** Start/End of Sealed Cases ***" and only the case number, court, and charges are displayed. For example:

AKA	Party	Case Number	Crt	Date	Short Title	DV	Jg	DR	O	CD	W	F	C	BAL
*** Start of Sealed Cases ***														
*	—	[redacted]	S31	--/--/----	ASSAULT-4	-	-		-	-	-		-	---------
				--/--/----	SEXUAL MOTIVATION SPECIAL ALLEG	-	-							
				--/--/----	ASSAULT-4	-	-							
				--/--/----	ASSAULT-4	-	-							
				--/--/----	SEXUAL MOTIVATION SPECIAL ALLEG	-	-							
				--/--/----	INDECENT EXPOSURE	-	-							
*** End of Sealed Cases ***														

For lower levels of access, nothing is displayed that indicates the presence of sealed cases.

Relevant Laws and Court Rules, excerpted

RCW 13.50.260:

> (6)(a) If the court enters a written order sealing the juvenile court record pursuant to this section, it shall, subject to RCW 13.50.050(13), order sealed the official juvenile court record, 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.
>
> . . .
>
> (8)(c) 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.

GR 15:

> (4) Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, section (d) shall apply. The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

Analysis

In any discussion regarding juvenile cases and records, statutes are generally given priority over court rules. Washington's Supreme Court has stated that the Court "has always given effect to the legislature's judgment in the unique setting of juvenile court records"[1] and "has always respected the legislature's judgment as to the openness of juvenile court records."[2] As such, RCW 13.50.260 should be given weight when determining how these sealed cases should be displayed in JABS. When discerning the meaning of a statute, the "fundamental objective is to ascertain and carry

[1] *State v. S.J.C.*, 183 Wn.2d 408, 417 (2015).
[2] *Id*.

out the Legislature's intent, and if the statute's meaning is plain on its face, then the [reader] must give effect to that plain meaning as an expression of legislative intent."[3]

Interpretation of RCW 13.50.260 in light of GR 15 is difficult when the overall text of the statute alone points in multiple directions. While the law requires that sealed juvenile records be "treated as if they never occurred", it specifically also mandates that AOC make information regarding the existence of the sealed records available to prosecutors. To add to the confusion, the statute unseals the juvenile records upon the charging of a felony or adjudication of a juvenile crime. This makes their visibility when sealed a moot point, as in many circumstances the cases are unsealed by the time a prosecutor needs to use them.

The Supreme Court made sweeping changes to GR 15 in 1997. Of interest here, the 1997 version of the rule is the first version in which Washington's language regarding the visibility of the existence of sealed cases on court indices appears. This language has had some minor changes over the years, but the relevant text is essentially the same: the rule requires the visibility of the existence of sealed cases on indices, and goes on to limit the visible information to "case number, names of the parties, the notation 'case sealed', the case type in civil cases and the cause of action or charge in criminal cases." See the attached copy of the Supreme Court's order no. 25700-A-601 effecting the changes.

With this in mind, the legislature's choice of words could be seen as displaying a clear purpose. RCW 13.50.260(8)(c) specifically calls out "the existence" of sealed juvenile records, mirroring the language used in GR 15 requiring that "the existence" of sealed cases be visible on court indices. Because the parallel wording was codified seven years after the Supreme Court enacted GR 15, the legislature may have intended to mirror GR 15's requirements regarding their visibility as well. If the Court has defined the "existence" of a sealed record as the minimal data listed in GR 15, then "existence" for the purposes of 13.50.260 should be the same.

If the text is dispositive, JABS should continue to display its current data to prosecutors regarding sealed juvenile cases. While this does seem to create a Catch-22 in that prosecutors are specifically provided information they are not allowed to use in juvenile hearings—as the cases would only be unsealed upon adjudication, or the entering of a final disposition, in a juvenile hearing—any attorney familiar with a courtroom setting would also be familiar with striking text from the record, or any number of instances in which known facts or testimony may not be considered. If the text is not considered dispositive, however, legislative history must be examined.

The language requiring AOC to provide prosecutors with sealed case information appeared originally in 2004 House Bill 3078, which added the text to RCW 13.50.050, where it remained until it was moved into RCW 13.50.260 a decade later. Specifically, the relevant portions of the final text appeared as an amendment to the substitute bill.[4]

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[3] *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash. 2d 1, 9–10 (2002)

[4] This amendment actually called for the "justice information system" to display records to prosecutors and was changed later, but it is fair to say this is the beginning of the language at issue.

This substitute bill required that "The Administrative Office of the Courts will ensure that the Superior Court Management Information System will automatically retrieve sealed juvenile records upon the charging of the person with a new felony." AOC's fiscal note was drafted specifically regarding this substitute bill, and has a comment that "The prosecutor filing the new felony can ask the court to unseal a sealed juvenile case if it is necessary . . . Assuming the bill does not require that the filing of a new felony charge would trigger an automatic unsealing of the sealed records in the judicial information system, it will not have a fiscal impact on the administrative office of the courts." Both the fiscal note and prior version of the bill are attached to this memo.

If the effective language is seen as a response to this fiscal note and the substitute bill, requiring that prosecutors have access to sealed cases seems to be merely a cost-effective response to the unsealing issue. All that would be required for AOC's compliance is the court and case number. Prosecutors can then take this information to the court and get the relevant records unsealed, allowing for the information to be used in charging of a felony. This idea is supported by audio testimony from a Senate Children, Family Services & Corrections Committee hearing on February 24, in which this amendment was repeatedly addressed as a solution which eliminates fiscal impact.[5] This would also resolve the aforementioned issue of providing unusable data to prosecutors.

It should be pointed out that, regardless of the approach chosen by the DDC, there is little risk in disseminating this charge information to prosecutors in JABS, as prosecutors are governed by numerous contracts and laws regarding their behavior. Before access to AOC applications is given, an individual with signing authority for the subscribing prosecutorial organization must sign a service agreement stating that:

The Subscriber agrees to ensure that:

- *i. Access and use of the JIS-Link service by its employees is only for the purpose of conducting official prosecutorial business;*
- *ii. Access and use of the JIS-Link service by its employees complies with all current, or as subsequently amended federal and state law, court rules, and administrative rules and policy governing, regulating and/or relating to the dissemination of the information;*
- *iii. Access is available only to authorized employees having a cogent need for such information; and*
- *iv. Use by its employees of the JIS information complies with any applicable laws, court rules, and/or court order;*

Each individual prosecutor must also sign a confidentiality agreement, which includes the provision that they "agree not to divulge, publish, or otherwise make known to unauthorized persons or to the public any confidential information obtained from JIS." These are both in addition to whatever confidentiality agreements particular localities

[5] Senate Children, Fam Svcs & Corr. Cmte Hearing, Feb. 24, 2004, *available at* https://www.tvw.org/watch/?eventID=2004021111 (testimony starts exactly 1 hour in)

might have them sign and even Washington's oath, in which attorneys swear to be "fully subject to the laws of the State of Washington".

In summary, the text of the statute supports the information currently disclosed through JABS, while some of the legislative history behind the statute may support providing less details. The text's use of seemingly-parallel phrasing in referring to "the existence" of sealed cases could be inferred as an intent to mirror GR 15's requirements for displaying them. On the other hand, if the amendment was a fiscally-sound compromise to easily unseal sealed cases, displaying the charges is not necessary, as only case number and court are needed for this.