WASHINGTON
COURTS

April 21, 2022

TO: Data Dissemination Committee

FROM: Kevin Cottingham, AOC Data Dissemination Administrator

RE: Changes to GR 31 regarding Juvenile Offender Records

Executive Summary

Supreme Court Order No. 25700-A-1415, dated Mar. 31, makes a significant change to the judicial records rule, GR 31, that impacts the Data Dissemination Committee. This change requires that the committee act to bring the software applications under its purview into greater compliance with both the text and the spirit of the new rule.

A new provision found at GR 31(d)(2) states "Information from an official juvenile offender court record shall not be displayed on a publicly accessible website. The only exception to this rule is if the website is accessed from a physical county clerk's office location." Three systems maintained by AOC are impacted: the new JIS-Link, legacy JIS-Link, and Odyssey Portal[1]. These services are accessed on websites using an internet browser and thus are squarely covered by the new provisions found in the court rule. The new rule, however, exclusively covers websites and a literal interpretation of the rule could allow requestors to use the legacy JIS-Link application to obtain juvenile case information. AOC believes that such an interpretation would not be in keeping with the spirit of the new language in the rule, and recommends that the DDC act by amending the Data Dissemination Policy to bring it into harmony with the intent of the Supreme Court's recent change.

Ultimately, AOC has two recommendations:

1. Amend the Data Dissemination Policy to remove the existing exception for JIS-Link and any applications that are not accessed via websites.
2. Instruct AOC to remove juvenile case information from legacy JIS-Link, new JIS-Link and Odyssey Portal.

[1] The public web search found at https://dw.courts.wa.gov already displays no juvenile offender cases, per the DDC's earlier rule found in Section V of the Data Dissemination Policy.

The DDC should direct AOC to remove juvenile records information from browser-based applications and amend the Data Dissemination Policy in keeping with the text of the new rule.

Analysis with regards to the three browser-based applications is straightforward. They are websites, and they are publicly accessible. There are, admittedly, minor barriers to entry to each system, but these barriers are not so sufficient as to remove them from the realm of public accessibility. JIS-Link, for example, requires a $200 setup fee and that the subscriber pay cost-recovery fees upon each "transaction", which is defined as a search or pulling up a specific record. Such recovery fees are not uncommon in the world of public access, however. Our state's own Public Records Act and GR 31.1 both allow fees for the copying of public records. The fees charged to register for and use JIS-Link and Odyssey are analogous to such fees—they are cost recovery fees as laid out in RCW 2.68.030. While there are no costs associated with using paper in a digital system, the systems required to satisfy digital requests have their own costs, such as electricity, bandwidth and server hardware. Even AOC's intent is that JIS-Link serve as the public's means of access for court cases: the "Overview" section of the JIS-Link landing page states "The Administrative Office of the Courts (AOC) provides a facility that allows the public to access display-only Judicial Information System (JIS) court information through a web-based service called JIS-Link."

The present version of the Data Dissemination Policy contains an exception for JIS-Link: "Juvenile offender court records shall remain publicly accessible on the JIS Link notwithstanding any provision of this section." This exception was previously extended to registered Odyssey Portal use, as the use was determined to most closely resemble JIS-Link use and is not fully public—clerks must manually register each user who requests access.[2] With the new provision in GR 31 in place, this exception runs contrary to the rule and exceeds the scope of the DDC's responsibilities—the new rule has no analogous exception. Per JISCR 12, the JISC, and thus the DDC as a subcommittee, is empowered to "adopt rules, consistent with all applicable law relating to public records, governing the release of information contained within the Judicial Information System." As the Supreme Court is the ultimate authority regarding public judicial records, the exception found in the Data Dissemination Policy has effectively been preempted by the new text of GR 31, and should thus be removed.

The DDC should direct AOC to remove juvenile records information from non-browser-based applications and amend the Data Dissemination Policy in keeping with the spirit of the new rule.

The new text of GR 31 specifically prohibits dissemination of juvenile records via "websites," and such a prohibition does not cover every theoretical means by which juvenile case data can be transmitted, or even every means by which juvenile case data is actually transmitted presently in Washington state. For decades, Washington has

[2] Juvenile records were never shown for anonymous Odyssey Portal users.

made judicial records available via JIS-Link through the use of the Bluezone terminal emulator software, an application that must be installed on a user's computer.

The Supreme Court has stated that "the same rules of construction apply to statutes and court rules," and cases interpreting statutes give two important points of guidance when examining the new rule.[3] First, the "paramount duty is to ascertain and give effect to the intent of the Legislature."[4] Second, one should "avoid a literal reading of a statute if it would result in unlikely, absurd, or strained consequences."[5] The Data Dissemination Committee should modify the Data Dissemination Policy to slightly expand the scope of the new rule found at GR 31, because to do otherwise would certainly be contrary to the intent of the Court and would achieve an absurd result.

While the text of the rule does specify "websites", a reasonable assumption of the Supreme Court's intent would not be to conclude that the Court has any issue with websites in particular. It is probable, however, that the language of the rule was decided upon because court records in Washington are generally accessed by the public through websites. The three newest public-facing applications provided by AOC—the new public web search, JIS-Link and Odyssey Portal—are all accessible exclusively through websites.

Second, to treat legacy JIS-Link accessed through Bluezone differently from the same application accessed through a browser-hosted web emulator would be an absurd result. Legacy JIS-Link must be accessed through a terminal emulator, and terminal emulators are provided by AOC in two ways: the standalone Bluezone application and a web-browser-based application found at https://www.courts.wa.gov/jislinkweb/. It is the same application, just with essentially different window dressing—they access the same database, have the same commands available, and disseminate records along the same lines. Each record disseminated, then, can have the same impact whether it was accessed using the browser-based version or the Bluezone version, so to govern the applications differently when the impact is the same would be absurd.

Conclusion

In conclusion, AOC recommends that the DDC take two actions to better disseminate juvenile records in keeping with the new language found at GR 31(d)(2):

1. Amend the Data Dissemination Policy to remove the existing exception for JIS-Link and any applications that are not accessed via websites.
2. Instruct AOC to remove juvenile case information from legacy JIS-Link, new JIS-Link and Odyssey Portal.

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[3] *Jafar v. Webb*, 177 Wash. 2d 520, 527, 303 P.3d 1042, 1045 (2013)

[4] *Washington Pub. Power Supply Sys. v. Gen. Elec. Co.*, 113 Wash. 2d 288, 292, 778 P.2d 1047, 1049 (1989), citing *Addleman v. Board of Prison Terms & Paroles*, 107 Wash.2d 503, 509, 730 P.2d 1327 (1986)

[5] *State v. Elgin*, 118 Wash. 2d 551, 555, 825 P.2d 314, 316 (1992), citing *State v. Neher*, 112 Wash.2d 347, 351, 771 P.2d 330 (1989).

AOC specifically suggests the following changes to the Data Dissemination Policy:

V. LIMITATION ON DISSEMINATION OF JUVENILE OFFENDER COURT RECORDS

The dissemination of juvenile offender court records maintained in the Judicial Information System shall be limited as follows:

A. Juvenile offender court records shall be excluded from any bulk distribution of JIS records by the AOC otherwise authorized by GR 31(g), except for research purposes as permitted by statute or court rule.

B. Information from an official juvenile offender court record shall not be displayed on a publicly accessible website or application. The only exception to this rule is if the website or application is accessed from a physical county clerk's office location. ~~The AOC shall not display any information from an official juvenile offender court record on a publicly-accessible website that is a statewide index of court cases.~~

~~* Juvenile offender court records shall remain publicly accessible on the JIS Link notwithstanding any provision of this section. (Section added September 6, 2013.)~~