

1. Meeting Minutes



JISC DATA DISSEMINATION COMMITTEE
Friday, December 3, 2021, 9:00 a.m. – 10:00 a.m.
Zoom Teleconference
URL: provided via invite

MEETING MINUTES

Members Present:

Judge John Hart, Chair
Judge Scott Ahlf
Judge Kathryn Loring
Ms. Barbara Miner
Judge Robert Olson
Ms. Paulette Revoir
David Reynolds
Judge Lisa Worswick

AOC Staff Present:

Phil Brady, Contracts Manager
Spencer Cearns, Vendor Relations
Coordinator
Kevin Cottingham, Data Dissemination
Administrator
Michael Keeling, ISD Operations Manager
Jan Nutting, Public Records Officer
Maureen Roberts, MSD Administrative
Secretary

Guests Present:

Jonica Couweleers, AEJG
Kim Gordon, AEJG
Kate Sigafos, AEJG
Anthony Powers, Seattle Clemency Project
Heidi Percy, Snohomish County Clerk

0. Call to Order

Judge Hart called the meeting to order at 9:00 a.m. on December 3, 2021. All present were welcomed. Judge Hart needed to temporarily excuse himself and requested that Judge Ahlf preside over the meeting in his absence.

1. August 27, 2021, Meeting Minutes

It was moved and seconded that the August 27, 2021, meeting minutes be approved as written. The motion passed unanimously.

2. Request from American Equity & Justice Group

Data Dissemination Administrator Cottingham presented a request from American Equity & Justice Group in conjunction with the Seattle Clemency Project regarding the contract used for the annual hackathon run by the groups. In the Hackathon, statisticians and other professionals analyze bulk data to determine trends in criminal justice. Only public, non-sealed criminal data is used, and all participants have signed confidentiality agreements.

Ms. Gordon stated that the request is open to proposals and modifications. The goal of the project is to understand what happens with shared data and how it affects the system at large. The dashboard portion of the request has already been approved and it is agreed that personal identifiers will not be disseminated.

DDA Cottingham stated that the issue at hand arises from Section 6 of the standard data dissemination contract. The current language requires that AOC sign data sharing agreements with every single individual with access to the data outside of AEJG, a requirement that could present issues given the scale of participation. Because the data being provided is public, AOC seeks to determine if the DDC would be amenable to allowing AEJG to submit confidentiality agreements unilaterally signed by participants instead. Ms. Gordon was asked if aggregate data would suffice, but stated that she wants consultants to be able to validate methodology by working with raw data.

Ms. Sigafoos stated that confidentiality agreements are held for each of the volunteers participating in the Hackathon.

DDA Cottingham identified details of the request. This request will cover information from all counties but King County. As of July 15, 2019, King County moved to a new case management system and King County case information is no longer in SCOMIS. King County data is being transferred to AOC, but work is still underway to test and verify the data so it can be reported.

Ms. Gordon outlined the Microsoft checks and balances, as all AEJG volunteers are employed by Microsoft, and said that legal guidance has been provided by Perkins Coie and Davis Wright Tremaine. Results of this research, in the long term, are intended to benefit anyone trying to understand the way court decisions play out.

Judge Worswick asked if identifiers will be stripped before data is made available for the Hackathon. Ms. Gordon replied that the Hackathon volunteers need the raw data to be able to compare and validate the methodology used. Judge Worswick confirmed that Hackathon participants will all presently work under confidentiality agreements managed by Microsoft. Ms. Miner reviewed the date range and data involved, which will be all superior court adult criminal records available back to 1978.

Mike Keeling asked whether this request will be one-time in nature, and Ms. Gordon replied that additional requests will be made to update the dashboard. Researchers will use 21 years of sentencing information from the Caseload Forecast Council to compare with AOC data. Work will be carried out behind the scenes to match person data and be sure the data are validated.

Ms. Miner and DDA Cottingham discussed the way court data would be matched with the CFC data. The defendant's name will be assigned a token so researchers can see if the names/tokens correspond.

After discussion, DDC Cottingham presented three options:

- DDC may allow data access under individual confidentiality agreements rather than requiring individual contracts.
- DDC may allow access under confidentiality agreements but require AOC to provide only data but with personal identifiers removed.
- DDC may disallow modification of the agreement and require AOC approval and contract for every participant.

Judge Loring moved to adopt the first option, and the motion was seconded by Judge Worswick.

Ms. Miner asked for clarification of the second option, and Mr. Cottingham explained that the second option would involve removing identifiers and providing only deidentified information.

Judge Hart called the question, asking the Committee to approve modification of the AEJG contract to allow data access to individuals who have signed confidentiality agreements. All voted in favor, none opposed, no abstentions. The motion passed unanimously.

Judge Hart thanked the Committee and moved to other business.

Other Business

Mr. Brady introduced Maureen Roberts, a new employee of the Administrative Office of the Courts, who will assist in supporting this Committee going forward.

DDA Cottingham is still collecting comments regarding modification to content offered through JABS. The current time estimate is 300 hours for the work required, so the project must be routed through the ITG process.

In addition, DDC Cottingham informed the Committee that discussion related to the Violence Against Women Act will be on a future agenda.

The December 3, 2021 DDC meeting was adjourned at 9:40 a.m. The next DDC meeting will take place in February 2022.

**2. Request from Allison
Osborne for JABS access**

Forensic Social Work Services

Allison Osborne PO Box 742 Clear Lake, WA 98235 | 206-714-2180 | forensicsocialwork@outlook.com

03/28/2022

Administrative Office of the Courts

1112 Quince ST SE

Olympia, WA 98501

To Whom It May Concern:

I am writing to submit a formal appeal regarding my denial to have renewed access to the JABS/JIS system.

I previously worked as a staff social worker for the Snohomish County Public Defender Association. During my time in that role, I had access to the JABS/JIS system. I have since moved on from that role and no longer have access.

I now run my own business providing social work as an expert for the courts. My business is called Forensic Social Work Services. The services I provide now and the services I provided during my time at SCPDA are the same. These services include mitigation and release planning.

Having access to the JABS/JIS system is important to my work for several reasons. Many of my clients have behavioral health challenges and are unable to keep track of court dates. Having access to their court dates helps me to facilitate compliance with attendance. Additionally, I often have clients with no contact orders. It is beneficial for me to see the no contact orders and help clients adhere to their court ordered requirements. Lastly, when providing mitigation, I need a detailed timeline of a client's criminal history. The JABS/JIS system provides the most clear and accurate account of a client's interactions with the courts.

I am requesting a reconsideration for renewed access to the JABS/JIS system. When I had access before, providing the same services it was beneficial to my work and to the clients.

Sincerely,

Allison Osborne MSW, LSWAIC, SUDPT

April 21, 2022

TO: Data Dissemination Committee
FROM: Kevin Cottingham, AOC Data Dissemination Administrator
RE: Request from Alison Osborne for JABS Access

Ms. Alison Osborne is a social worker contracted with the Snohomish County Public Defender Association to provide mitigation and release planning services for court-involved individuals. She contacted AOC to obtain elevated access to JIS-Link, but her request was denied because she does not fit into one of the already-established categories entitling a requestor to elevated access.

AOC recommends that the DDC deny the request from Ms. Osborne, as she would be well-served by JIS-Link's public access or by using any of the other publicly-available applications run by AOC. JABS access allows users to view information generally marked confidential, including juvenile dates of birth and driver's license numbers, and should only be granted where there is specific need. AOC makes this recommendation for two reasons.

First, Ms. Osborne's present request does not currently fit into any established user class of JABS/JIS-Link. Broadly speaking, such access is given to prosecutors, public defenders, private investigators working with conflict attorneys, law enforcement, state agencies, and contracted civil legal aid societies, and these restrictions reflect the real risk that accompanies any application that makes non-public information accessible—each individual with access to the information increases the chance that some pieces of nonpublic information make it out into the world. The DDC has struck a balance that serves justice partners well, meeting statutory obligations to people entitled to receive data while preserving the security of the data in the system.

Second, there is no need for elevated access to court systems in the present request. Ms. Osborne's searches can be performed using Odyssey, JIS-Link or AOC's public case search. All data points specifically mentioned by Ms. Osborne in her appeal letter to the DDC—court dates, no contact orders, and criminal history—are all easily available in a public level search of JIS-Link. AOC concedes that JABS is largely more user-friendly than JIS-Link, but the public application is actively being developed and

convenience should not justify the risk of exposing confidential data. Other people in similar positions are using the public level of JIS-Link access with little to no issue; a brief check of public JIS-Link accounts revealed several accounts with social work specifically called out in their site names, and many more might have less obvious names.

Ms. Osborne mentions that she already received this access while working at the Snohomish County Public Defender Association. Unfortunately, Ms. Osborne likely should not have been granted such access in that role without specific DDC approval. The JIS-Link Service Agreement for public defender accounts states that the “Access and use of the JIS-Link service by [Subscriber’s] employees are only for the purpose of conducting official public defense business.” AOC and the DDC have historically taken a limited view of such definitions—research into recidivism did not fall into permissible prosecutorial purposes when such access was requested in the March 2016 meeting of this committee. While the work that Ms. Osborne performs is undoubtedly beneficial to the Snohomish County Public Defender Association’s clients, it was not “public defense business.” The role of a public defender is laid out in statute at Chapter 36.25 RCW, and the listed duties are limited—the statute includes duties to represent indigent defendants,¹ and to counsel, defend and prosecute appeals.²

It is, however, well within the authority of this committee to expand the categories of allowed user classes, and the work that Ms. Osborne performs likely benefits her clients as they navigate the judicial system. While the specific statutory role of the public defender does not currently cover the work that Ms. Osborne performs in conjunction with the Snohomish County Public Defender Association, provision of such services outside the traditional role of the defender is certainly part of a broader trend among this state’s judiciary to further assist individuals involved in court actions.³ If the DDC were to ultimately grant access, AOC would recommend establishing a level 20 account as this would minimize the risk of exposure of data. AOC would also recommend that language in the public defender agreement be clarified if the DDC believes the use of JABS accounts for such purposes is proper.

¹ RCW 36.26.070

² RCW 36.26.080

³ See, e.g. <https://kingcounty.gov/courts/clerk/drug-court.aspx> (“KCDDC provides eligible defendants charged with felony drug and property crimes, the opportunity for substance use disorder and mental health treatment and access to other ancillary services such as housing, transportation and job skills training.”)

**3. Update regarding JABS &
Juvenile number**

Cottingham, Kevin

From: Russell Brown <rbrown@waprosecutors.org>
Sent: Tuesday, January 4, 2022 5:39 PM
To: Cottingham, Kevin; 'Ali Hohman'
Cc: Christie Hedman (Defense)
Subject: RE: JABS & the JUVIS Number

External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Hi Kevin,

I've received feedback from various offices across the state, and I'm sharing some of that below. I think the ultimate answer is we believe we need access to the JUVIS number.

"I think prosecutors will need the JUVIS number in order to file new cases with the clerk, who uses that information to link the proper suspect to the case. The issue is limited to sealed cases and since cases can be unsealed, we (WAPA) will need to retain access to the JUVIS information."

"I've seen a bunch of stuff about this and it is somewhat more complicated. I am sure that prosecutors need access because we might need to deal with unsealing some records and related issues. You would have to ask a defense attorney who does a lot of juvenile stuff about their needs; not something of which I am aware. I very much doubt LE needs the access."

"We need access to the JUVIS identifiers as part of our JABS use."

"Myself and some of our DPAs search JABs via the JUVIS # particularly where the juvenile has a common name or various aliases."

"Yes we would still need access to the juvis identifiers as part of our Jabs access."

"We need access to JUVIS numbers in JABS."

"Agreed need."

"We also need access to this as well."

Let me know if you have any follow up questions for us.

Russ

Russell Brown
Executive Director
Washington Association of Prosecuting Attorneys
206 10th Ave SE, Olympia, WA 98501

Cottingham, Kevin

From: Ali Hohman <ali@defensenet.org>
Sent: Wednesday, January 12, 2022 1:44 PM
To: Russell Brown; Cottingham, Kevin
Cc: Christie Hedman
Subject: RE: JABS & the JUVIS Number

External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Hi Kevin,

Thank you again for raising this important issue and allowing us to have a chance to provide input. I have asked members to directly email you with concerns.

The defense is concerned about organizations and entities having access to the JUVIS number that directly frustrating the intent and purpose of the Juvenile Justice Act of 1977. *State v. S.L.C.*, 183 Wn.2d 408, 352 P.3d 749 (2015) (“For as long as there have been juvenile courts in Washington, juvenile court records have been treated as different from adult criminal court records and have been subject to legislation providing increased confidentiality for them...”). Juveniles or former juveniles are entitled to sealing as part of the legislature’s intent to treat children differently so when an organizations and entities to use this number to begin a “hunt” to uncover a sealed case is contrary to the law. While prosecutor offices have a legitimate purpose of needing to know about sealed cases to determine whether a juvenile case becomes unsealed, it is the outside use of the JUVIS number that is problematic.

We strongly urge the DDC to eliminate the JUVIS number for organizations, entities, and individuals that do not have lawful reason of needing access such as a prosecutor’s office.

Best,

Ali

Ali Hohman

Director of Legal Services

she/her/hers

Tel: 206.623.4321 | Fax: 206.623.5420 | Cell: 425.315.3837

ali@defensenet.org



4. GR 31 Changes & Their Effects

FILED
SUPREME COURT
STATE OF WASHINGTON
March 31, 2022
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED
AMENDMENTS TO GR 31—ACCESS TO COURT
RECORDS AND CrR 2.1—THE INDICTMENT
AND THE INFORMATION

ORDER

NO. 25700-A-1415

The Washington State Office of Public Defense and the Minority and Justice Commission, having recommended the adoption of the proposed amendments to GR 31—Access to Court Records and CrR 2.1—The Indictment and the Information, and the Court having considered the proposed amendments, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

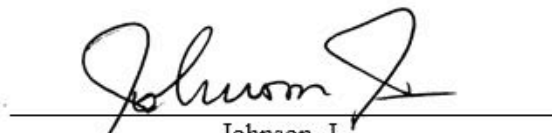
- (a) That the proposed amendments as attached hereto are adopted.
- (b) That pursuant to the emergency provisions of GR 9(j)(1), the proposed amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

ORDER

IN THE MATTER OF THE PROPOSED AMENDMENTS TO GR 31—ACCESS TO COURT RECORDS AND CrR 2.1—THE INDICTMENT AND THE INFORMATION

DATED at Olympia, Washington this 31st day of March, 2022.


González, C.J.

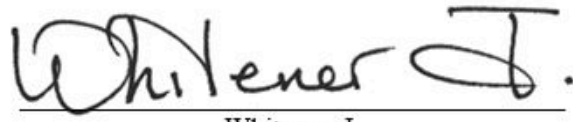

Johnson, J.

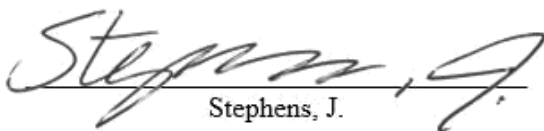

Gordon McCloud, J.


Madsen, J.


Yu, J.


Owens, J.


Whitener, J.


Stephens, J.

SUGGESTED AMENDMENT:

**GR 31
ACCESS TO COURT
RECORDS**

(a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by Article I, Section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, Section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.

(b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record. Administrative records are not within the scope of this rule. Court records are further governed by GR 22.

(c) Definitions.

(1) “Access” means the ability to view or obtain a copy of a court record.

(2) “Administrative record” means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.

(3) “Bulk distribution” means distribution of all, or a significant subset, of the information in court records, as is and without modification.

(4) “Court record” includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

(5) “Criminal justice agencies” are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

(6) “Dissemination contract” means an agreement between a court record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided court records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.

(7) “Judicial Information System (JIS) Committee” is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.

(8) “Judge” means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(9) “Public” includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(10) “Public purpose agency” means governmental agencies included in the definition of “agency” in RCW 42.17.020 and other non-profit organizations whose principal function is to provide services to the public.

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

(2) 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.

(3) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.

(4) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records.

(1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

(A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.

(B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

(C) Driver’s License Numbers.

(D) In a juvenile offender case, the parties shall caption the case using the juvenile's

initials. The parties shall refer to the juvenile by their initials throughout all briefing and pleadings.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

Comment

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court record that was filed prior to the adoption of this rule.

(f) Distribution of Court Records Not Publicly Accessible.

(1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:

(A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.

(B) Determine, in its discretion, that filling the request will not violate this rule.

(C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.

(D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.

(2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.

(3) Criminal justice agencies may request court records not publicly accessible.

(A) The provider of court records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a class may request access.

(B) Agencies requesting access under this section of the rule shall identify the court records requested and the proposed use for the court records.

(C) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted, (ii) specify the uses which the agency will make of the data, and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

(g) Bulk Distribution of Court Records.

(1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.

(2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

(3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

(h) Appeals. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.

(i) Notice. The Administrator for the Courts shall develop a method to notify the public of access to court records and the restrictions on access.

(j) Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

(k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

CrR 2.1
THE INDICTMENT AND THE INFORMATION

(a) Use of Indictment or Information. The initial pleading by the State shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(1) *Nature.* The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(2) *Contents.* The indictment or the information shall contain or have attached to it the following information when filed with the court:

(i) the name, or in the case of a juvenile respondent the initials, address, date of birth, and sex of the defendant

(ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.

(b) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.

(c) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit.

(d) Amendment. The court may permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

(e) Defendant's Criminal History. Upon the filing of an indictment or information charging a felony, the prosecuting attorney shall request a copy of the defendant's criminal history, as defined in RCW 9.94A.030, from the Washington State Patrol Identification and Criminal History Section.

Comment

Supersedes RCW 10.37.020, .025, .026, .035, .180; RCW 10.40.080; RCW 10.46.170. The purpose of section (f) is to ensure that the defendant's criminal history is available when and if the court is required to determine the validity of a plea agreement.

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 Portal¹. 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.

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.)~~