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July 3, 2013

Honorable Thomas J. Wynne
Data Dissemination Committee Chair
Snohomish County Superior Court
3000 Rockefeller Ave, MS 502
Everett, WA 98201-4046

Dear Judge Wynne:

Thank you for the opportunity to comment on the proposed Data Dissemination Committee Policy which was distributed on June 6, 2013. The District and Municipal Court Judges' Association (DMCJA) Board of Governors and Technology Committee reviewed the retention schedule as a part of presentations given by the IT Governance #41 project team. Subsequently, the proposed policy was discussed informally at the DMCJA Spring Conference and this letter represents a compilation of comments and feedback collected during those times.

1. Proposed Retention Schedule

Generally, it is agreed that the proposed retention schedule reflects a reasonable attempt to strike a balance between the needs of judges to have complete sentencing data and the impact that non-conviction data can have on a person's ability to gain employment, housing, and other opportunities. However, consulted members felt very strongly about one set of non-conviction data that should be kept for a longer period of time – domestic violence offenses.

Domestic violence cases represent a unique type of crime and public safety challenge. As many legal practitioners know, these cases are often dismissed due to the inability to proceed on a case from the victim's lack of participation in the case. This reason for dismissal is often distinctly different from other cases that are dismissed by the prosecuting authority for lack of evidence. Also, these relationships can often be long-term and the cycle of violence can surface at different times within a long span of time. Access to non-conviction data for more than ten years in these cases is very valuable when making sentencing decisions and provides a more complete picture of criminal history related to these specific types of crimes.

There were also several practical scenarios under this retention schedule which could lead to inconsistent sentencing. Currently, prosecutors in courts of limited jurisdiction use non-statutory vehicles to defer and settle cases. The most common of these is the Stipulated Order of Continuance (SOC) where an offender stipulates to the facts and is given a set of conditions and terms to comply with for a period of

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time. At the end of the time, the criminal charge is ordinarily dismissed. With the proposed retention period, you very likely could have recurring offenders who have completed an SOC and then re-offends with the same partner or another partner outside of the ten year look-back window. Because there would be no record of the case, the judicial officer could see nothing in the history when, in fact, the person completed an SOC.

Another practical example under that scenario is when the victim then interviews or testifies about the previous incident but there is no record in the Judicial Information System (JIS) that the incident existed. Since the record is purged, and not archived, at the very least it would call the victim's credibility into question at the worst, it could destroy the record of existence of previous behavior with the victim.

The proposed retention schedule plans to never purge all civil anti-harassment, sexual protection and domestic violence protection orders. We would ask that you contemplate this for criminal domestic violence protection orders also. Assuming that these orders are not maintained in the Judicial Information System apart from the criminal case, we would ask that you never purge the domestic violence criminal case, or alternatively, keep the cases for at least 20 years.

Other comments on the retention schedule included the request to extend retention of non-conviction data for criminal traffic cases for a longer period of time as it lends to more complete sentencing information and its purging may exclude some people from chronic offender DUI courts where admission criteria includes charges without convictions.

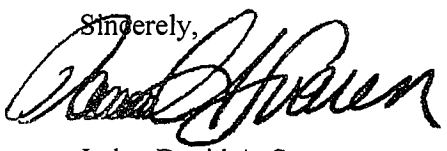
2. Impact of purging some data in the calculation of the Judicial Needs Estimate (JNE)

Board members expressed their concern about purging cases that have case types with no dispositions after three years when the judicial needs estimate uses five years of data to make its calculations. Since this question was never answered, we include it here as feedback for the Committee to consider.

3. Concern regarding implementation of individual record retention

V. (D) A judge may order that a specific record shall not be purged. The court shall enter specific findings on the record supporting decisions is problematic and should not be adopted unless there is a corresponding policy or set of criteria that is the basis for retention. One of the initial purposes of this change was to not keep two sets of records and to eliminate archives. Instead of a system-based archiving system based on business rules, this provision creates a subjective ability to retain individual information that can have a disproportionate impact on individual's employment, housing, and other opportunities.

Sincerely,



Judge David A. Svaren
DMCJA Board President

cc: Justice Mary Fairhurst, JISC Chair
Judge Veronica Alicea-Galvan, DMCJA President-Elect
Judge James Heller, DMCJA Data Dissemination Committee
Judge Steve Rosen, DMCJA Data Dissemination Committee
Judge Kimberly Walden, DMCJA Technology Committee Chair
Ms. Stephanie Happold, AOC (by e-mail)
Ms. Shannon Hinchcliffe, AOC (by e-mail)