Date: July 19, 2019

From: Melissa Santos, Crosscut reporter

To: Members of the Judicial Information System Committee

In April, a woman contacted me in desperation. Her son, she said, had just been charged as a child pornographer for exchanging nude selfies with another teenager. The boy was 13 at the time of the offense.

This interested me because, as I had previously written about, the Legislature was in the process of changing state law so that felony charges would no longer apply to teens who exchange nude photos of themselves. This woman's son was charged only weeks before the Legislature passed the new law, House Bill 1742.

However, since the law is not retroactive, it won't help him. He still faces prosecution under the old statute, which lawmakers have overwhelmingly decided is unjust.

I started looking into this case as a means to explore a broader question: What happens to those who are left behind when outdated laws change?

I wanted to know whether the boy was alone, or if other teens are currently in a similar situation. How many other cases are still proceeding through the court system under the old statute, even as the new law is slated to go into effect in July?

In June, I requested data from the Administrative Office of the Courts that could help answer that question. However, despite my commitment to not using any juveniles' individual identifying information in my reporting, the Data Dissemination Committee rejected my request for the data to include case numbers. (I had also requested dates of birth, but frankly, the case numbers are the most crucial.)

I requested the case numbers simply so I could be fair to the prosecutors about whom I am reporting. It is important for me be able to find out whether a child is being charged with a child pornography charge as part of a compassionate plea deal, or whether the child's primary offense was in fact exchanging nude images of himself or herself. If there is substantive evidence of a child raping another child, and the charge was subsequently pleaded down to a child pornography offense, that is very different than the case of the 13-year-old boy whose mother contacted me. It would most likely not be fair to categorize such a case as an example of a child still being charged under a law that has now been determined to be overly harsh.

This information will be crucial to how I conduct my analysis. I need the case numbers to be able to access the case history and ensure my reporting is fair and accurate.

To an extent, I understand why the Data Dissemination Committee denied my request. I am aware that in 2013, the committee changed its policy to disallow bulk dissemination of juvenile court data, including case numbers.

But in so doing, the committee believed that this information would still be accessible at the county clerks' offices, according to meeting minutes from that time. "The juvenile offender records would still be available via JIS-Link subscription and at the court clerk's office," according to the minutes of the Data Dissemination Committee's meeting from Feb. 12, 2013.

I am here to tell you have I have not found that to be the case.

The information I received from the Administrative Office of the Courts has been insufficient for me to follow up with local county clerks and locate the case files I need. Even with information about the date charges were filed, the specific charges levied and the age of the defendant at the time of filing, some counties have said they cannot locate the cases I am looking for without a defendant name or case number.

This is despite individual counties having, at most, three or four cases each that meet my specified criteria, per the data the Administrative Office of the Courts so graciously provided.

Take, for instance, my experience with Whatcom County. I provided specifics about three minors who I knew were charged with specific charges on specific dates, along with their age at the time, based on the data I got from the AOC. However, the clerk's office said the staff could not locate the specific cases without a name or case number.

When I subsequently asked if they could produce case numbers for all cases that met certain criteria (similar to the criteria I gave to the Administrative Office of the Courts) they told me they could not.

"No. We do not have the time or staffing to do research for you," emailed the chief deputy Clerk. "As I said, you are welcome to come into our public viewing room and do your own research." The clerk's office also said I could not look up cases myself using the dates they were filed, or by type of charge.

When I then asked, "Can you cite to me on what portion of GR 31 or other law you are basing your denial of my request?" I received a rather curt reply.

"We are NOT denying your request. We are simply telling you that you must do your own research. Once again, we have a public viewing room in our office for you to do your research. We do NOT have the staffing to do your research for you. I don't know how else I can explain this to you."

In short, without case numbers from the AOC, I am unable to complete my work and my research. I am happy to sign a research agreement formally committing to not disseminate or report identifying details of these minors, specifically their names, a promise I previously made in my letter to the Data Dissemination Committee.

I believe that the committee's intention in adopting the 2013 rule was to prevent bulk sale of juvenile case data and to protect children. I do not believe it was intended to thwart the ability of members of the public to hold our institutions accountable, or to ensure our judicial system is treating children fairly and with compassion.

For this reason, I ask that members of the Judicial Information System Committee reverse the Data Dissemination Committee's decision to deny me case numbers associated with my prior request. My previous request is attached to this letter [Exhibit 2], as is my recent exchange with the Whatcom County Clerk's Office [Exhibit 1].

Sincerely

Melissa Santos

253-970-9436

Melissa.santos@crosscut.com

EXCHANGE WITH WHATCOM COUNTY CLERK'S OFFICE [Exhibit 1]

From: Santos, Melissa [mailto:Melissa.Santos@crosscut.com]
Sent: Wednesday, July 17, 2019 4:01 PM
To: Sandra Kiele
Subject: Locating teen sexting cases

Hello Ms. Kiele,

I am a reporter who has been covering our state's new law regarding teen sexting. It takes effect later this month: https://app.leg.wa.gov/billsummary?BillNumber=1742&Year=2019&Initiative=false

In the process I have been looking at ongoing cases against minors that are still proceeding under the old law or that have been filed recently under the old law. When I did a search with the Administrative Office of the Courts, I saw a few in Whatcom County.

I was hoping you could help me locate the charging papers in these cases or at least the case numbers so I can go find them through other means. I have the date when charges were filed, the charge and the age of the accused.

CASE 1:
Case filed: 1/8/2019
1st charge: 9.68A.050(2) DEAL DEPICT MINOR-SEX CNDCT-2ND DEGREE
2nd charge: 9.68A.050(2) DEAL DEPICT MINOR-SEX CNDCT-2ND DEG
3rd charge: 9A.88.010(2)(A) Indecent exposure
4th charge: 9A.88.010(2)(A) Indecent exposure
5th charge: 9A.88.010(2)(A) Indecent exposure
Guilty plea: 5/22/2019
Defendant age at time of filing: 17

CASE 2:
Case filed: 4/10/2019
1st charge: 9.68A.050(1) DEAL DEPICT MINOR-SEX CNDCT-1
2nd charge: 9.68A.050(2) DEAL DEPICT MINOR-SEX CNDCT-2ND DEG
3rd charge: 9.68A.070(1) POSSESS DEPICT MINOR-SEX CNDCT-1
4th charge: 9A.44.060 RAPE-THIRD DEGREE
5th charge: 9.68A.040 SEXUAL EXPLOITATION OF A MINOR
6th charge: 9.68A.040 SEXUAL EXPLOITATION OF A MINOR
Case appears to still be ongoing
Defendant age at time of filing: 15

CASE 3:
Case filed: 4/30/2019
1st charge: 9A.36.041(2) Assault 4th degree
2nd charge: 9.68A.050(2) DEAL DEPICT MINOR-SEX CNDCT-2ND DEG
3rd charge: 9.68A.050(2) DEAL DEPICT MINOR-SEX CNDCT-2ND DEG
Defendant age at time of filing: 13

Are these case records possible to locate with the above information?

Melissa Santos
Political Reporter, Crosscut
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On Jul 18, 2019, at 7:44 AM, Sandra Kiele <SKiele@co.whatcom.wa.us> wrote:

I guess I'm confused as to how you have the charges and ages of these minors, yet no name or case number. We look up adult and juvenile offender cases by names of defendants.

Sandra L. Kiele
Chief Deputy Clerk &
Assistant Court Administrator
311 Grand Avenue, Suite 301
Bellingham, WA 98225
(360) 778-5566
skiele@co.whatcom.wa.us

From: Santos, Melissa [mailto:Melissa.Santos@crosscut.com]
Sent: Thursday, July 18, 2019 7:58 AM
To: Sandra Kiele
Subject: Re: Locating teen sexting cases

I got it from the Administrative Office of the Courts. They provided me this information and would give case numbers.

Melissa Santos
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Cell: 253-970-9463
melissa.santos@crosscut.com
www.crosscut.com

From: Santos, Melissa [mailto:Melissa.Santos@crosscut.com]
Sent: Thursday, July 18, 2019 8:33 AM
To: Sandra Kiele
Subject: Re: Locating teen sexting cases

I meant they would not give case numbers. However in some counties I have been able to get records with the date of filing and the charges filed, as these combinations of charges aren't super common.

Melissa Santos

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From: Sandra Kiele [mailto:SKiele@co.whatcom.wa.us]
Sent: Thursday, July 18, 2019 9:21 AM
To: Santos, Melissa <Melissa.Santos@crosscut.com>
Subject: RE: Locating teen sexting cases

As I stated, we look up cases by name and/or case number. You are welcome to use our public viewing room should you find a case name or number.

Sandra L. Kiele
Chief Deputy Clerk &
Assistant Court Administrator
311 Grand Avenue, Suite 301
Bellingham, WA 98225
(360) 778-5566
skiele@co.whatcom.wa.us

From: Santos, Melissa [mailto:Melissa.Santos@crosscut.com]
Sent: Thursday, July 18, 2019 9:23 AM
To: Sandra Kiele
Subject: RE: Locating teen sexting cases

OK. Can I file a request for all case numbers where the following charges were filed against people under 18 years of age that are either A) still ongoing or B) have been filed or resolved since 01/01/2019?

1) Dealing in depictions of minor engaged in sexually explicit conduct. (RCW 9.68A.050)
2) Possession of depictions of minors engaged in sexually explicit conduct (RCW 9.68A.070)
3) Sending, bringing into state depictions of minor engaged in sexually explicit conduct. (RCW 9.68A.060)
4) Viewing depictions of a minor engaged in sexually explicit conduct. (RCW 9.68A.075)

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From: Sandra Kiele [mailto:SKiele@co.whatcom.wa.us]
Sent: Thursday, July 18, 2019 9:57 AM
To: Santos, Melissa <Melissa.Santos@crosscut.com>
Cc: Dave Reynolds <DReynold@co.whatcom.wa.us>
Subject: RE: Locating teen sexting cases

No. We do not have the time or staffing to do research for you. As I said, you are welcome to come into our public viewing room and do your own research. I am copying Mr. Reynolds, our County Clerk / Court Administrator. He is aware of your request and the answer that I am again giving you.

Sandra L. Kiele
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Assistant Court Administrator
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skiele@co.whatcom.wa.us

From: Santos, Melissa [mailto:Melissa.Santos@crosscut.com]
Sent: Thursday, July 18, 2019 12:13 PM
To: Sandra Kiele
Cc: Dave Reynolds
Subject: RE: Locating teen sexting cases

Is there a function to search by type of charge? Or cases filed on a certain date?

Melissa Santos
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From: Sandra Kiele [mailto:SKiele@co.whatcom.wa.us]
Sent: Thursday, July 18, 2019 12:53 PM
To: Santos, Melissa <Melissa.Santos@crosscut.com>
Cc: Dave Reynolds <DReynold@co.whatcom.wa.us>
Subject: RE: Locating teen sexting cases

Name or case number.

Sandra L. Kiele
Chief Deputy Clerk &
Assistant Court Administrator

311 Grand Avenue, Suite 301
Bellingham, WA 98225
(360) 778-5566
skiele@co.whatcom.wa.us

From: Santos, Melissa [mailto:Melissa.Santos@crosscut.com]
Sent: Thursday, July 18, 2019 12:59 PM
To: Sandra Kiele
Cc: Dave Reynolds
Subject: RE: Locating teen sexting cases

Can you cite to me on what portion of GR 31 or other law you are basing your denial of my request?

Melissa Santos
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253-970-9463 (cell)
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From: Sandra Kiele [mailto:SKiele@co.whatcom.wa.us]
Sent: Thursday, July 18, 2019 1:00 PM
To: Santos, Melissa <Melissa.Santos@crosscut.com>
Cc: Dave Reynolds <DReynold@co.whatcom.wa.us>
Subject: RE: Locating teen sexting cases

We are NOT denying your request. We are simply telling you that you must do your own research. Once again, we have a public viewing room in our office for you to do your research. We do NOT have the staffing to do your research for you. I don't know how else I can explain this to you.

Sandra L. Kiele
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Assistant Court Administrator
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ORIGINAL REQUEST TO DATA DISSEMINATION COMMITTEE [Exhibit 2]

June 24, 2019

To members of the Data Dissemination Committee:

I am a journalist who covers juvenile cases with some regularity. When I talk to families or young people accused of crimes, I have been consistent in protecting their identity and privacy. This is because I understand how including the name of a minor accused or convicted of a crime in a news story can follow them for life, running counter to the juvenile justice system's purpose of rehabilitation.

You can see for yourself how, in writing about some these issues this year, I withheld the names of a young woman and her mother to protect the family's privacy. I did this even though I had access to their names and dates of birth in the court file. I withheld the true name of both the mother and her daughter in these stories, which deal with a teen charged with the same offenses I am looking to write about now:

Example 1: 'Teens caught sexting in WA will no longer be treated as criminals':
https://crosscut.com/2019/04/teens-caught-sexting-wa-will-no-longer-be-treated-criminals
Example 2: 'In Washington, teen sexting is a felony — but that could change':
https://crosscut.com/2019/03/washington-teen-sexting-felony-could-change

This is consistent with my view, shared by most journalists, that it is important not to harm juvenile subjects of our stories.

That said, in order to view specific details of a case that might help illustrate inconsistencies in application of the law or other systemic patterns, case numbers can still matter. In some cases, families don't remember all the details of the case accurately, requiring reporters to access case files to confirm key dates and events; other times, there is nuance to the path that cases take through the criminal justice system, requiring the viewing of case files to ensure that the reporter isn't making an assumption about the issues that were before the prosecutor. This can influence whether a case is included in a larger data analysis, even if the case itself isn't going to be specifically referenced in a story.

With this in mind, I am asking for data on juveniles charged with crimes related to sending/possessing/dealing and viewing depictions of a minor engaged in sexually explicit conduct since Jan. 1, 2019. My intention is to gauge how many young people are being charged under an old version of the law, versus the new one lawmakers just approved. I already am in contact with a family that is in this situation and have promised them that I am not going to put their child's name in the story. The same commitment would apply to any juveniles I encounter in my research using the case numbers associated with similar cases.

I am not requesting the case numbers to share juvenile's names or other identifying information with the public. Instead, I want that information to ensure I am telling the story accurately. That is my only goal.

My request also extends to all instances of those charges filed against minors that are still proceeding through the court system today. I would also like cases resolved and concluded between the dates of April 24 and the present to be included in this data extraction, even if the cases were filed against minors prior to Jan. 1 of this year. (April 24 is the date the new law was signed by Gov. Jay Inslee.)

My request extends to 1) the charge that was filed 2) and the status of those cases 3) dates they were filed 4) the jurisdictions and 5) the case numbers. If possible I would also like the dates of birth to determine the children's ages – not to print or disseminate, but without accurate data on the precise date of their birth it is not possible to indicate their age to the level of precision required for my reporting purposes. This would only be to calculate the ages of those facing charges.

In reviewing only a small sample of these types of cases, I have found that sometimes additional research is necessary to avoid presenting a skewed view of the circumstances surrounding a charging decision. That research can only be accomplished with case numbers that allow a more detailed review of a case's history and progression.

Thank you for considering my request, and for allowing me to explain the caution with which I would wield this information.

Sincerely,
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