

**YAKIMA COUNTY**  
**DEPARTMENT of ASSIGNED COUNSEL: JUVENILE DIVISION**

1728 Jerome Avenue  
Yakima, Washington 98902  
Telephone (509) 574-1150 | Fax (509) 574-1151

Paul Kelley, *Director*  
Jeff Swan, *Juvenile Supervisor*

September 29, 2020

Supreme Court Rules Committee  
Temple of Justice  
415 12th Avenue SW  
Olympia, Washington 98504

Re: Proposed Juvenile Court Rule 7.16

Dear Supreme Court Rules Committee:

I urge you to adopt proposed Juvenile Court Rule 7.16. The new rule would thoughtfully tailor, but not eliminate, the circumstances in which juvenile courts can issue arrest warrants for juveniles, preserving a juvenile court's authority to issue a warrant when a serious threat to public safety exists.

Reducing the number of arrest warrants statewide—and, correspondingly, the number of times that officers arrest juveniles and the number of times that detention officials book juveniles into carceral facilities—is a particularly pressing matter that this court must address in light of three deeply problematic and indisputable realities of Washington's juvenile justice system. First, in disproportionately targeting youth of color, arrest warrants in juvenile court help entrench the racial disproportionality that exists throughout the juvenile and adult justice systems. Second, data and evidence-based studies make clear that secure detention has lasting negative effects on youth that undermine the rehabilitative goal of the juvenile justice system. Third, precautions taken in response to the COVID-19 pandemic have made detention facilities even more isolating and unproductive places to house youth than in ordinary times, further undermining the rehabilitative goal of the juvenile justice system.

**Juvenile Courts Disproportionately Issue Arrest Warrants for Youth of Color.** This court recently observed that “[w]e continue to see racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems.” Wash. Sup. Ct., OPEN LETTER TO THE JUDICIARY AND LEGAL COMMUNITY (June 4, 2020), <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary>

%20Legal%20Community%20SIGNED%20060420.pdf. Indeed, “[y]outh of color in the juvenile justice system face harsher sentencing outcomes than similarly situated white youth, as well as disparate treatment by probation officers.” Research Working Group, Task Force on Race and the Criminal Justice System, *Preliminary Report on Race and Washington’s Criminal Justice System*, 87 Wash. L. Rev. 1, 5 (2012); *see also* Carl McCurley, et al., “Minority Youth in Washington State’s Juvenile Justice System,” WASHINGTON STATE CENTER FOR COURT RESEARCH, <https://www.courts.wa.gov/subsite/wscrr/docs/JuvenileDMCPresentation.pdf>.

This striking disproportionality is present in, and surely fueled by, arrest warrants in juvenile court. Data from King County is revealing. That data, which was obtained and shared by juvenile defenders there, shows that 82-84% of the warrants issued last year in King County were for black youth, indigenous youth and other youth of color. Yet King County’s overall population is approximately two-thirds white. Given what has repeatedly been documented about Washington’s juvenile justice system, there is no reason to believe that such stark disparities are not present throughout the entire state. And it bears emphasizing: These arrest warrants result not only in the over-incarceration of juveniles of color, but also in those juveniles of color having more police contact, which itself fuels additional court involvement above and beyond the matter for which the warrant was issued. One way to remedy this disproportionality is to stop incarcerating youth for normal juvenile misbehavior and limit the issuance of warrants to serious threats to public safety.

**Detention Undermines Rehabilitation.** Washington’s juvenile justice system recognizes children’s capacity to grow and change, and, as a result, its distinctive feature is to help youth chart a positive, pro-social path to their future. *See* RCW 13.40.010(2)(f); *State v. S.J.C.*, 183 Wn.2d 408, 422 (2015). Secure detention undermines this goal. As data and evidence-based studies have shown, “[i]ncarceration harms children.” *State v. B.O.J.*, 194 Wn.2d 314, 332 & n.1 (2019) (González, J., concurring) (citing studies). Indeed, non-carceral outcomes reduce the likelihood of children reoffending. For example, “[d]iversion has been shown to reduce recidivism rates, as data suggests that behavioral or skill-oriented methods delivered within the community are more successful than ‘scared-straight’ or ‘shock incarceration’ deterrence programs.” Tamar R. Birckhead, *Closing the Widening Net: The Rights of Juveniles at Intake*, 46 TEX. TECH L. REV. 157, 163 & n.52 (2013) (citing studies).

Despite this evidence of harm, Washington’s juvenile courts continue to issue warrants that command officers to arrest and incarcerate juvenile respondents. This practice is particularly problematic when an arrest warrant targets a juvenile respondent whose proceedings are in the pretrial stage and who has not been convicted. My experience representing these juveniles confirms an unsurprising truth: Incarcerated youth are more likely to forgo their right to trial and accept an unfavorable or unremarkable guilty plea offer just to get out of detention. In other words, because many

kids are so desperate to get out of custody, the arrest that results from a warrant cuts short defense counsel's investigative process and the adversarial testing of evidence that are the hallmarks of a healthy justice system. *See State v. A.N.J.*, 168 Wn.2d 91, 111-12 (2010). This is harmful to the child and harmful to the system. The way to ameliorate these harms is by limiting the issuance of warrants to when they are truly necessary—when a serious threat to public safety exists.

**COVID-19 Has Made Detention Even Worse.** Beyond the well-documented significant risks of transmission of COVID-19 in carceral settings, *see, e.g.*, Hal Bernton, *COVID-19 Spread at Yakima Jail While Some Guards Went Without Masks*, SEATTLE TIMES (June 25, 2020), <https://www.seattletimes.com/seattle-news/health/covid-19-spread-at-yakima-jail-while-some-guards-went-without-masks/>, the ongoing pandemic has had numerous other negative effects on youth in juvenile detention. In Yakima County, family visitation in juvenile detention has been suspended since March. This keeps youth in detention separated from their most important support systems. Now, all that the youth in detention reportedly get are “two free phone calls”—which is no substitute for a family's in-person affection (and, in some cases, reconciliation). Additionally, youth who are booked into detention in Yakima County now experience a longer isolation “orientation” period where they are kept away from the rest of the juvenile population and monitored for symptoms of COVID-19. Even after “orientation” is over, youth are not able to avail themselves of potentially constructive programming opportunities that were offered before the pandemic struck—because that programming is simply no longer offered. Moreover, youth must appear for court from a computer terminal in detention during their first 14 days in custody in Yakima County, depriving them of personal interactions with the court at critical stages of the supposedly youth-centered proceedings. In short, detention is even more isolating and dire as a result of the pandemic, and kids should not be in detention unless a serious threat to public safety exists.

Finally, it is no solution, as the Superior Court Judges' Association has noted, that “some courts utilize a two-tiered warrant system.” Yakima County Juvenile Court does not utilize such a system. Rather, Yakima County's single-tier system means that an arrest warrant functions as a straight-to-detention system, regardless of the seriousness or recency of the underlying allegations. To discount the urgency underlying JuCR 7.16 based on the existence of some potentially good practices that exist only in certain counties would essentially mean that the youth of Yakima County are not as worthy of this court's concern as youth elsewhere in Washington. Such geographically-driven outcomes have proven problematic in other contexts. *See State v. Gregory*, 192 Wn.2d 1, 43-46 (2018) (Johnson, J., concurring).

Thank you for your considering these comments alongside the proposed rule. I urge the court to adopt JuCR 7.16.

Sincerely,

Kevin Michael Flannery

Juvenile Public Defender, WSBA #54890  
Yakima County Department of Assigned Counsel

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**From:** Kevin Flannery [mailto:Kevin.Flannery@co.yakima.wa.us]  
**Sent:** Tuesday, September 29, 2020 5:27 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment re JuCR 7.16

To the Clerk of the Supreme Court:

Please find attached my comment regarding proposed Juvenile Court Rule 7.16. Will you kindly confirm receipt of the comment?

Thank you,  
Kevin

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**Kevin Michael Flannery** | he/him/his  
Juvenile Public Defender  
Yakima County Department of Assigned Counsel  
1728 Jerome Avenue | Yakima, Washington 98902  
509.574.1150 | [kevin.flannery@co.yakima.wa.us](mailto:kevin.flannery@co.yakima.wa.us)