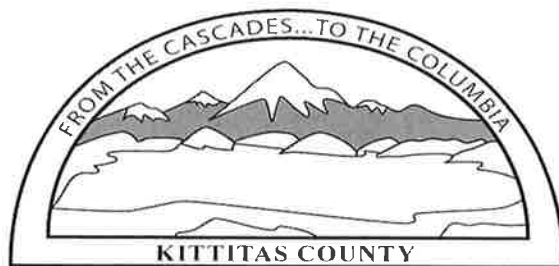


Kittitas County Prosecuting Attorney

GREGORY L. ZEMPEL

Our Mission:

***Seeking Justice; Serving Victims, and
Holding Offenders Accountable***



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September 30, 2020

Clerk of the Supreme Court
P. O. Box 40929
Olympia, WA 98504-0929
(via email)

Madam Clerk:

This court has before it a proposal to add a new rule, to be JuCR 7.16. The proposal purports to be directed at the current Public Health emergency due to the COVID-19 pandemic, alleging without proof that there is a significant public health issue stemming from mere issuance of warrant for juvenile offenders. Mere issuance of such a warrant does not assure that the youth will be located and the warrant served, and the necessary implication of the proposal is that the dedicated judicial employees who staff juvenile court systems in this State will not take appropriate care to address the needs of detained youth and the employees in detention facilities.

I write to oppose proposed JuCR 7.16. I do this in my official capacity as a Deputy Prosecutor in the Civil Division of this office, where among my duties I work with and advise almost all of the entities in the criminal justice system, including our judicial officers and the Juvenile Department. I have been an attorney for over thirty years, in two states. I also served as a part time law enforcement officer for over twenty years in both states. In that time, I have seen many offenders, in both the street and the court room. I prosecuted juveniles and did dependency cases in Illinois as a young attorney, and I have years of experience doing the same here in Washington. Even as a felony prosecutor in another county, I dealt with juvenile court aspects of matters that could have been prosecuted in either the juvenile or adult systems. Because of the breadth of my background, I work with our criminal prosecutors, and have covered a significant number of offender matters in the Juvenile Court. This experience informs my response.

A fundamental issue here is that once probable cause has been established, the reviewing judicial official must order the issuance of the warrant. Once probable cause has been established, the judge reviewing the search warrant application has no authority to refuse to issue the warrant. *See, e.g., In re ex parte United States*, 287 U.S. 241, 53 S. Ct. 129, 77 L. Ed. 382 (1932) (once probable cause has been found by the grand jury that returned the indictment, the

district judge had no discretion in the matter and must issue a warrant of arrest); *State v. Viatical Services, Inc.*, 741 So.2d 560 (Fla. Dist. Ct. App. 1999) (judge erred by refusing to issue a search warrant after finding probable cause to support the warrant, because of concerns that the seizure of the documents might impair the business of the respondent); *State v. Greenetrack, Inc.*, 154 So.3d 940 (Ala. 2014) (surveying cases that hold a judge must grant a warrant when the request for the warrant is supported by probable cause); Abraham S. Goldstein, *The Search Warrant, the Magistrate, and Judicial Review*, 62 N.Y.U.L. Rev. 1173, 1196 (1987) (“The few cases on the issue hold that a judge has a ‘ministerial’ duty to issue a warrant after ‘probable cause’ has been established [by the grand jury's issuance of an indictment]. ... In other settings as well, reviewing courts have ordered warrants to issue when a magistrate refused to do so on a ground that was extrinsic to probable cause, such as his belief that his term of office had expired, or that the statute allegedly violated was unconstitutional.”) The proposal from Washington Defender Association (WDA) and Washington Association of Criminal Defense Lawyers (WACDL) simply disregards the rule of law, makes use of an unrelated public health crisis to support an unfortunate agenda and confuses the system’s duty to the community as a whole with the ability of detention centers to manage potential contagion.

It is correct that settings such as juvenile detention centers could present a risk to the youth, their families, and staff due to the possible spread of viruses. This can be a risk at any time, especially at those times when seasonal colds or flu are more prevalent. Only the most complacent would deny that the consequences of similar spread of COVID-19 are likely to be far worse. However, such risks can be mitigated, and there is no evidence of which this writer is aware that the risks have not been mitigated. Detention facilities can be operated as relatively closed systems, and most if not all such facilities are working hard to reduce the risk of contagion by strenuous efforts to screen the youth and employees, promptly isolate and test anyone potentially exposed or symptomatic, and to understand and apply best practices in terms of hygiene. While my county does not have a detention center and contracts for detention space, I have been informed by credible sources that the counties around the state have taken their own steps to manage the problem. (Data collected by the Administrative Office of the Courts and routed to me by our Juvenile Court Administrator shows a marked departure downward in detention admissions starting in mid-March, and I was also provided with information indicating that there have been no incidents of the type predicted by WDA/WACDL in detention facilities.) As counsel to our Sheriff’s Office, I am aware that sound practices can be implemented in these settings; the Kittitas County Corrections Center has also been very successful in preventing such contagion.

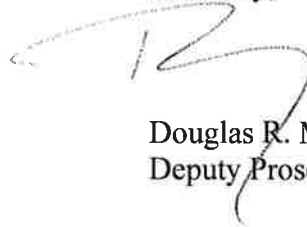
Juvenile Court staff who work with these youth in the community are contributing their judgment to the risk reduction. They do not seek warrants on an ill-considered or whimsical basis; they are working to implement the orders of the court and seek both accountability and safety for the kids under their supervision. Alternatives to detention are being used with the best interests of the youth and the rest of the community in mind, but some of these youth will not be adequately controlled or safe if not first taken into custody on the order of the trial court. The juvenile court judges and the staff who must carry out their orders to work with these youth are

familiar with local conditions and the youth themselves. Many of the youth under their supervision have significant dysfunctions and disadvantages in their lives. Some of them are vulnerable to predation due to the age, judgment, and lack of skills. Using the tools available to the juvenile court to assist and protect them is not a misdeed or abuse – it is an obligation. While the percentage of truly dedicated and dangerous offenders is relatively small, it is not zero.

In addition, WDA and WACDL disregard the stated objectives of the positions of the Superior Court Judges' Association (SCJA) and Washington Juvenile Court Administrators (WJCA) to take their own steps to address reductions and control over the use of warrants and detention. These organizations represent the people most able to make informed decisions about the circumstances of the communities in which they live and work, and most able to perceive the very different conditions that may impact youth in this state. What may work in the most populous areas of western Washington may well be a complete failure in the more rural parts of the state. The spread and risk of COVID-19 vary depending on where one is, and the responses must have that same flexibility.

There is a legitimate societal expectation that the youth who enter the juvenile offender population will be treated fairly and with as much regard as possible for their individual needs. The "one size fits none" proposal for this rule does not serve a legitimate purpose for these youth, or for the communities in which they (and we) live. It does not allow those best suited to take appropriate action and is insulting to those who have chosen and been allowed to work with the youthful offender population. Please do not enact it but give it due consideration and then reject it as both unnecessary and based upon improper motives.

Sincerely,

A handwritten signature in dark ink, appearing to be "DM", with a long horizontal stroke extending to the left.

Douglas R. Mitchell, JD, MPA
Deputy Prosecuting Attorney

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Cc: [Tracy, Mary](#)
Subject: FW: Submitted response to Proposed JuCR 7.16
Date: Wednesday, September 30, 2020 3:49:29 PM
Attachments: [Response To Proposed JuCR 7.16.pdf](#)
Importance: High

From: Doug Mitchell [mailto:doug.mitchell@co.kittitas.wa.us]
Sent: Wednesday, September 30, 2020 3:43 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Submitted response to Proposed JuCR 7.16
Importance: High

Please find attached this office's response to the above mentioned proposed rule.

* _ _ *

Douglas R. Mitchell, JD, MPA
Deputy Prosecuting Attorney, Civil Division
Public Records Officer, KCPAO
doug.mitchell@co.kittitas.wa.us

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