

September 30, 2020

**By Email and 1st Class U.S. Mail**

Susan L. Carlson  
Clerk of the Supreme Court  
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Re: Proposed New Washington State Court Rule JuCR 7.16 —Governing Warrant Quashes  
During COVID-19 Public Health Emergency

Dear Madam Clerk,

Please accept the following comments to the Proposed New Washington State Court Rule JuCR 7.16 — Governing Warrant Quashes During COVID-19 Public Health Emergency (the “Proposed Rule” or “Rule”), published for comment in July 2020. See Washington State Supreme Court (the “Court”) Order No. 25700-A-1303. These comments are jointly made by the undersigned in their official capacity as King County Superior Court Judges assigned to its Juvenile Division, but not on behalf of the King County Superior Court as a whole.

The undersigned strongly support the spirit of this Proposed Rule, whether it is limited to the present public health emergency or is intended to apply indefinitely.<sup>1</sup> However, the Proposed Rule presents at least three legal or operational challenges, which the undersigned respectfully ask this Court to consider before adopting the Rule.

*As to the spirit of the rule:*

Consistent with RCW 13.40.040(2), the King County Superior Court has been committed to minimizing the use of secure detention and maximizing both alternatives to detention and community-based support services for at least two decades.

As detailed by the Zero Youth Detention initiative, in 2019, admissions to secure detention and the average number of youth detained each day “**dropped to their lowest in recorded King County history.**” See <https://zeroyouthdetention.com/2020/05/18/getting-to-zero-2019-king-county-youth-detention-data/> (emphasis in original). The “average daily population” for 2019 -- *i.e.*, the average number of young people who were detained in King County on juvenile charges (ADP) -- was 34.1 youth. *Id.*; see also <https://www.kingcounty.gov/depts/health/zero-youth-detention/dashboard.aspx> (Headlines Metric at a Glance). By the end of the first quarter of 2020 (March 31, 2020), the ADP dropped to 27.1 youth/day. *Id.* Remarkably that represents an **86% decrease** from the ADP of 187.9 detained youth in 1998. See King County Office of Performance, Strategy, & Budget, *Trends in Juvenile Legal System* (copy available upon request). Nonetheless, over the last six months, the ADP has dropped an additional approximately 44% (from 2019’s ADP), and there are now regularly **15** youth in detention in King County per night.

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<sup>1</sup> The Proposed Rule and its cover letter rely heavily on the fact that we are in the midst of a public health emergency for its justification and, in turn, appears to be a proposed emergency order. However, the Proposed Rule appears to be under consideration by this Court as a permanent rule. Thus, we herein provide comments as if the Proposed Rule would govern the use of warrants in the juvenile offender context after the public health emergency subsides.

This did not happen by accident.

In collaboration with our justice system partners and community-based organizations, in King County:

- Warrants, whether for Violations of Court Orders or for Failure to Appear (FTA), are issued against youth as a matter of practice already only in situations involving serious risk to the safety of the youth or the public, and most often only in situations, for example, where the youth's whereabouts are unknown for at least 72 hours. (Discussions are now ongoing with our justice system partners and community-based organizations whether and how to codify this practice.)
- During the pandemic -- instead of recourse to the immediate issuance of warrants and where no immediate threat to personal or public safety is involved -- King County Superior Court has been issuing failure to appear orders. These orders continue the hearing and permit defense counsel several weeks to try to contact the youth. Simultaneously, the presiding judge assigns and orders the Court's Juvenile Probation Counselors to attempt to locate the youth, using a standardized checklist to ensure all efforts have been exhausted. This practice has already contributed to a decrease in the number of warrants issued.
- At the start of the pandemic, our court and its justice systems partners, who regularly meet, inventoried its own outstanding warrants and took action to reduce the number of outstanding stale warrants. We are discussing how to make this a regular part of our practice.
- Where a judicial officer determines a warrant is appropriate, King County has three other long-standing processes to minimize the need for secure detention:
  - In 2011, King County, again in collaboration with its system partners and community, instituted two tiers of warrants. A warrant designated as "Tier 1" requires that the youth be held in detention if arrested on the warrant until released by a judicial officer. A "Tier 2" warrant allows the youth, when contacted by law enforcement, to be given a new court date and screened out of detention. Use of Tier II warrants appears to be growing in the State and allows a youth to avoid even brief detention.
  - More generally, even when a youth is presented to detention without a warrant, King County has a "screen and release" protocol where a judicial officer, who currently is available from 8am to 11pm every day, considers the alleged facts and the information gleaned from the initial screening, including a validated risk assessment tool. The Judge considers that information and, if she so chooses, detention staff do not book the youth into detention, but release the youth to a responsible adult. King County has expanded the types of offenses eligible for this protocol, and it is presently conducting data analyses to determine whether to make that expanded eligibility permanent.
  - The County has created, published and trained law enforcement to its booking criteria, *i.e.*, specifying which alleged crimes are eligible for acceptance to its detention facility. And when a youth is placed on electronic home monitoring in lieu of detention, the detention officers have taken steps to minimize the need for remand.

Despite all this progress, the undersigned acknowledge that racial and ethnic statistical disparities both, in the use of detention and the issuance of warrants, have increased despite the lower ADP, a fact that the County as a whole is committed to confront and redouble our efforts in addressing.

The undersigned respectfully ask this Court to honor the spirit of this Proposed Rule and to provide guidance to all court systems on how to minimize the use of secure detention and, where it still exists in the State, change the underlying presumption away from the unreflective use of warrants and secure detention. This pandemic presents a historic opportunity to not repopulate our juvenile detention spaces.

*As to the legal and operational concerns:*

First, as presently written, there is no exception for the issuance of warrants that seek to ensure the personal safety of the respondent youths themselves. As this Court well knows, the youth who come to juvenile court are often victims themselves -- of serious substance abuse, of undiagnosed mental health challenges, and of commercial sex trafficking -- and often are presented to the juvenile court at personal risk of imminent great harm because of those conditions. As written, the Proposed Rule would not permit a warrant to be issued, for example, where a youth has actively espoused ideation of death or recently overdosed while living on the streets.

To expand on that briefly, the respondent youths are children who have fallen through every crack in every system: familial, educational, health, and, yes, community-based services. These kids cannot wait for improvements to those systems. Brief and meaningful detention may give our community a chance to interrupt destructive behavior and direct services to them, which in some cases they have never been offered or received before.

Moreover, the Rule appears contrary to RCW 13.40.040(2)(a)(ii), which permits detention if “[d]etention is required to protect the juvenile from himself or herself,” and thus puts juvenile courts in *parens patriae*. For this reason, the Court should consider whether juvenile courts should retain the ability to issue such warrants in such circumstances.

Second, as presently written, there is no exception for the issuance of warrants where a youth is willfully flouting participating in the court process. Unlike the warrants addressed by HB 5290, these warrants are issued only after a finding of probable cause that a criminal offense has been committed. One of our primary jobs as judicial officers is to ensure that the matter is litigated uniformly and fairly. The Court may wish to consider implications to timely resolutions and the interests of concerned parents and victims if some youth can willfully and indefinitely neglect or refuse to participate in court proceedings .

Third, a court should not have responsibility for providing notice directly to parties (other than counsel) regarding new hearing dates. This is the role of counsel and the prosecutor’s office.

We ask you to consider these approaches and concerns when considering the Proposed Rule.

Thank you for your consideration.

s/J. Michael Diaz \_\_\_\_\_  
J. Michael Diaz  
Chief Judge  
Children and Family Justice Center  
King County Superior Court

s/Averil Rothrock \_\_\_\_\_  
Averil Rothrock  
Judge  
King County Superior Court

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Linford, Tera](#)  
**Cc:** [Tracy, Mary](#)  
**Subject:** FW: Comment to Ju CR 7.16 Quashing and Issuing Warrants.v4  
**Date:** Thursday, October 1, 2020 8:11:45 AM  
**Attachments:** [Diaz-Rothrock Comment to JuCR 7.16 Quashing and Issuing Warrants-FINAL.pdf](#)

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**From:** Diaz, Michael [mailto:midiaz@kingcounty.gov]  
**Sent:** Wednesday, September 30, 2020 5:04 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Rothrock, Averil <Averil.Rothrock@kingcounty.gov>; Court, Diaz <Diaz.Court@kingcounty.gov>  
**Subject:** Comment to Ju CR 7.16 Quashing and Issuing Warrants.v4

Please find attached our comments to the Proposed New Washington State Court Rule JuCR 7.16 — Governing Warrant Quashes During COVID-19 Public Health Emergency.

Please let me know if you have any troubles opening the attachment or any other issue. We'll drop a copy in the mail too.

Thanks!

Mike Diaz

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