



WHITMAN COUNTY PROSECUTING ATTORNEY

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September 22, 2020

Clerk of Washington State Supreme Court
PO Box 40929
Olympia, WA 98504

And by email: supreme@courts.wa.gov

RE: Comment to Proposed new juvenile court rule JuCR 7.16, as published for comment on July 9, 2020

Dear Clerk of the Washington State Supreme Court:

I write as the current chair of the Washington Association of Prosecuting Attorneys (WAPA) Juvenile Court Committee, to ask the Court to decline the proposed rule, JrCR 7.16, for a number of reasons. The proposal would hobble the juvenile court system state-wide, in a way that would be counter-productive to the Juvenile Justice Act. Although the proponents point to the epidemic as a significant reason for the rule, the rule is not actually limited to the time of the health emergency. The issuance of bench warrants during the COVID epidemic has already been addressed by the Court's emergency orders beginning in March and most recently again September 10, 2020. Finally, as the proponents suggest, arrest and short-term custody may well have a negative effect on some individuals, and the pernicious effects of systemic racism may well infect the entirety of our justice system, as it infects the rest of society; but simply doing away with the juvenile court's ability to enforce its authority in many cases will not result in a better society. Instead, it strikes me as abandoning troubled kids to their own devices.

The effect of this proposal would be to render the juvenile courts powerless to enforce any order, or even require the participation of juvenile offenders in cases which do not pose "a serious threat to public safety." Although the rule does not define what a serious threat to public safety means, presumably juveniles who shoplift, over and over and over, or who use drugs, or engage in behavior that 'only' endangers themselves, would not fall under such a provision. Juveniles engaging in such behavior would

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effectively have a veto over whether to even respond in any fashion to efforts to divert their cases from prosecution, efforts to engage them with counseling services, efforts to provide guidance and supervision that might otherwise be lacking in their lives. While the proponents argue that this upholds the goals of the Juvenile Justice Act, it seems that the opposite is true. The purposes of the act are found at RCW 13.40.010, and include protection of the citizenry (including merchants who fall victim to shoplift), provide for accountability, punishment, rehabilitation, necessary treatment and supervision, community involvement, restitution to victims, provide for victim participation. All of these purposes would be negatively impacted without the court's ultimate ability to enforce its orders.

Many of these goals of the Juvenile Justice Act are already deferred during the current COVID epidemic. The Court has issued emergency rules, beginning in March and most recently on September 10, 2020 that address the safety concerns caused by the epidemic. The Court has obviously already balanced the needs of the juvenile justice system and the safety of the individual juveniles in the emergency orders. The court already has ordered that the juvenile courts (and other courts) should not issue warrants "unless necessary for the immediate preservation of public or individual safety... [nor] for juvenile status offenses or violations." Amended Third Revised and Extended Order Regarding Court Operations, No. 25700-B-626, Paragraph 14, May 29, 2020.

Many counties across the state have already quashed the majority of juvenile bench warrants due to the pandemic and currently have record-low detentions. For instance, Pierce County has only five youths in detention today. King County has adopted a policy of issuing a "Tier 2" type of warrant, which authorizes a youth to be detained only long enough to give them a notice of a next court date. As of today, Whitman County has no active juvenile court warrants at all. These are examples of the system already working to meet the goals of the Juvenile Justice Act in the midst of the epidemic. The proposed rule is unnecessary as juvenile courts state wide have appropriately quashed most juvenile bench warrants, released youth from detention in record numbers, and are already limiting the issuance of warrants in accordance with


the Supreme Court's orders.

While the proponents argue that the proposed JuCR 7.16 is needed due to the COVID epidemic, that is not correct. This court's orders have already addressed the issues presented by the epidemic. And the proposed rule itself is not grounded in the epidemic. There is nothing in the proposed rule which actually limits its application to the time of the epidemic. In short, the proposal is not needed to address the concerns of the epidemic (which have already been addressed by the Supreme Court and the trial courts) and is instead a very far-reaching and apparently permanent change to the juvenile court system.

In addition to the problems listed above, I note that one of the main purposes of the juvenile justice system is to intervene in a kid's life in a positive way, to try to get the juvenile to turn things around. That can involve a certain amount of 'coercing' the juvenile to engage with services, to monitor them, to provide some accountability in their lives. The juvenile's own limited maturity and ability to make responsible choices makes this approach necessary and effective in some cases. It's this approach of intensive supervision of kids at the start of their involvement with the system which can be a great tool to get them out of the system, rather than have them slide further into trouble – trouble for themselves and society. If there is nothing to back up a "requirement" that a juvenile participate in the process, it is very likely that the juvenile will repeat the kind of wrong choice that got them into trouble in the first place – they will just ignore the issue and the juvenile court system will not have the ability to intervene until the juvenile eventually commits a much more serious offense. Leaving a kid in trouble to their own devices is not the best choice for society or for the juvenile.

I urge the court to not adopt proposed JuCR 7.16.

Sincerely,



Denis Tracy, Whitman County Prosecutor
Chair, WAPA Juvenile Court Committee

Cc: Russ Brown, WAPA

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