

April 29, 2022

Justices of the Washington Supreme Court
P.O. Box 40929
Olympia, Washington 98504-0929
VIA E-MAIL: supreme@courts.wa.gov

RE: Comment Opposing Proposed Changes to General Rule (GR) 22

Dear Justices:

We write to oppose the District and Municipal Court Judges' Association (DMCJA) proposal to amend GR 22 to expand access to records of therapeutic courts. Under the proposal, judges and court personnel in all courts and many state administrative agencies could view personal information about therapeutic court participants past and present.

While therapeutic courts operate collaboratively, and often explicitly on policies of openness and ongoing disclosure, more traditional criminal courts rely on an adversarial process. The constitutional rights to remain silent and to hold the government to its burden of proof are necessary protections for the accused in traditional criminal court. Importing information from a collaborative context to an adversarial one would be dangerous, counterproductive, and patently unfair.

The success of participants in therapeutic courts is dependent upon people following treatment guidelines and self-reporting setbacks. Under the current proposal, a participant who did so would risk punishment in other courts, which would likely lessen faith and participation in therapeutic courts.

Making therapeutic court records widely accessible would violate the privacy of past, current and future participants in therapeutic courts. A person wishing to participate in therapeutic court must sign a release of information allowing access to their confidential treatment records. Participants who have already signed releases have allowed only those in treatment court access to their records. People considering therapeutic court in the future may not participate if doing so results in a wide release of their personal records.

If enacted, the proposal would cause violations of due process. It does not alter GR 22(h) and (i) to give people accused of crimes or their lawyers in cases outside of therapeutic court access to therapeutic court records. Due process requires the accused and their lawyer have access to documents a court considers when deciding conditions of pretrial release, probation sanctions or a criminal sentence.

In the future, expanding access to therapeutic court records may benefit both people charged with crimes and other court actors by allowing coordination of treatment for those who want it. However, the proposed changes to GR 22 are premature at best. They would harm many

people who have not yet been consulted, including those who volunteer to participate in therapeutic courts to get treatment that is often not available to them elsewhere. Therapeutic courts are a more humane and practical response to substance dependence and mental illness, which often result from trauma, than is punishment. In order for treatment courts to remain viable and just at this time, this Court must protect the confidentiality of participants' records.

Thank you for your time and attention.

Sincerely,

Washington Defender Association

Public Defender Association

King County Department of Public Defense

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: comment opposing changes to GR 22
Date: Monday, May 2, 2022 9:57:08 AM
Attachments: [04.29.22 Comment opposing changes to GR 22 WDA PDA KCDPD.pdf](#)

From: Magda Baker [mailto:Magda@defensenet.org]
Sent: Friday, April 29, 2022 5:15 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: comment opposing changes to GR 22

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The following organizations submit the attached comment opposing proposed changes to GR 22:

Washington Defender Association
Public Defender Association
King County Department of Public Defense

Thank you for your time and attention.

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