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February 25, 2022

Justice Charles Johnson
Justice Mary Yu
Washington Supreme Court Rules Committee
P.O. Box 40929
Olympia, WA 98504-0929
Sent via email to: supreme@courts.wa.gov

Re: Comments on Proposed GR 31 Amendments by Allied Daily Newspapers of Washington, Washington Newspaper Publishers Association and Washington State Association of Broadcasters

Dear Justices Johnson and Yu,

I write on behalf of Allied Daily Newspapers of Washington, a trade association representing 25 daily newspapers across the state, Washington Newspaper Publishers Association, a trade association of 70 community newspapers, and Washington State Association of Broadcasters, which represents over 250 commercial and public radio and television stations statewide (collectively "News Associations"). The News Associations act as a voice for the general public in advocating for open administration of justice. Proposed amendments to GR 31 would impede scrutiny of the juvenile justice system, inhibit public understanding of courts and (perhaps unintentionally) violate speech rights. The News Associations respectfully submit these comments in opposition to the proposed changes.

1. GR 31(d)

The Washington State Office of Public Defense urges the following broad restriction on public access to court records:

> Information from an official juvenile offender court record shall not be displayed on a publicly accessible website. The only exception to this rule is if the website is accessed from a physical county clerk's office location.

This proposal appears to be aimed at a policy of the King County Superior Court which is already being addressed through local rulemaking. Since last July, King County Superior Court Judges J. Michael Diaz and James E. Rogers have led a thoughtful discussion among stakeholders regarding online access to limited juvenile case information through KC Script (KC Script Portal - King County). The discussion was spawned by public defenders' objections to the indexing of unsealed juvenile offender cases on KC Script. Please see the

attached local rule proposal, which was recently published for public comment, and letters reflecting the Superior Court's reasoning.

As it is, case documents cannot be viewed on KC Script and only unsealed cases are listed there. A member of the public can search by a juvenile's name and if that juvenile was involved in a case not already sealed under the Legislature's automatic sealing law, KC Script will show the case number, filing date, criminal charge and whether the case is active or completed. The index is not accessible through a name search on Google. Access to the court file is available only by visiting the Courthouse.

The online index serves the public interest in overseeing the juvenile offender system by making it possible to find cases remotely. It is consistent with article I, section 10 of the Washington Constitution, requiring open administration of justice. As noted in *State v. S.J.C.*, 183 Wn. 2d 408, 432-434 (2015), there is no "broad categorical mandate" for secrecy in juvenile courts, and rehabilitation and accountability interests must be balanced.

The News Associations would prefer to continue the current online access, particularly during the pandemic when in-person Courthouse visits are discouraged. However, they believe the rule proposed by King County Superior Court is a reasonable compromise. If that local rule is adopted, remote online access through KC Script would be limited to victims, their immediate family members and the news media. Access to records at the Courthouse would remain the same.

The proposed statewide rule change would be an end run around King County's local rulemaking process. The Washington Supreme Court should avoid such interference.

More importantly, the overly broad language should be rejected. The proposal is written so expansively as to prohibit online publication by *anyone* – not just courts – of "information from an official juvenile offender court record." Such a prior restraint would violate the First Amendment and this State's stronger protections for speech. *See State v. Coe,* 101 Wn.2d 365, 375 (1984) (the Washington Constitution absolutely forbids prior restraints against the publication or broadcast of lawfully obtained, true information from courts). Taken literally, the language would expose newspapers to contempt orders if they displayed or quoted an important juvenile record involving a matter of public interest.

Even if proposed GR 31(d)(2) prohibited display only on courts' web sites, as the proponents may have intended, it is bad policy. The News Associations agree with the comments of the Washington State Association of County Clerks that it is discriminatory to limit juvenile offender information to those people who can physically travel to courthouses during business hours. This is especially true during the COVID era when in-person visits are riskier for elderly and immune-compromised citizens.

The real purpose of the proposal is to make it too difficult for most people to learn about the existence of juvenile offender cases. While it is important to protect former juvenile offenders from unfair denial of housing and employment, such protection cannot come at the expense of accountability in the entire juvenile justice system (including public defenders). The case index tells the public if a case exists. If the index is hidden, so are the injustices and inefficiencies that case records can reveal. A public index of unsealed cases promotes the important policy of article I, Section 10 that "justice in all cases shall be administered openly" so that faith in the courts may be maintained. Existing laws and rules already provide the necessary balance between public accountability and juvenile rehabilitation interests.

2. GR 31(e) and CrR 2.1(a)(2)

Even graver concerns arise from the proposal to eliminate juveniles' names entirely from all criminal cases in Washington, so that only the initials of juvenile defendants appear in captions, briefs and pleadings. This would dehumanize each case, making the defendant's identity abstract and virtually indistinguishable from other juveniles.[1]

More importantly, the proposal would expand the already considerable secrecy around the juvenile justice system to the point where public oversight is nearly impossible. The very purpose is to prevent the public from finding a juvenile offender case through a name search. While the stated intent is to protect juveniles from unfair housing and job discrimination as adults, the effect would be to protect judges, public defenders, prosecutors and police from scrutiny of their actions. Simply stated, the public cannot oversee a juvenile offender case if it cannot find that case. Shielding cases from oversight is dangerous not only to public safety but to innocent juvenile defendants whose unfair prosecutions or convictions would escape the broader awareness that can bring about reforms.

The Legislature has declined to close off all meaningful access to juvenile cases in this way, recognizing that public safety and accountability require presumptively open hearings and open records at least until offenders have straightened out. Under RCW Chapter 13.50, records are not sealed immediately upon disposition; the former juvenile offender first must demonstrate rehabilitation and restitution. Records of serious offenses are presumed open for a much longer period, and some can never be sealed. Any subsequent adjudication in juvenile court or conviction in adult court automatically nullifies the sealing order. Public notice is required before sealing and the State has a chance to argue that the sealing criteria are unmet. *S.J.C.* held that these protections balanced accountability and confidentiality interests sufficiently so that, if statutory sealing criteria are met, a separate analysis under article I, section 10 is not required. The proposed rule would wipe out the balance struck by

[1] People are more likely to care what happens to "Johnny" or "Juan" or "Joanna" than an impersonal "J."

the Legislature and indiscriminately treat all juvenile offender files as if they should not be seen. This goes too far and should be rejected.[2]

3. GR 31(g)

Another proposal would prevent courts from including juvenile court records of any kind in dissemination contracts of any kind. This, too, is overly broad and ill-advised. The proposal does not distinguish between criminal records and other juvenile court matters such as dependency and parental termination. It does not distinguish between serious criminal offenses and minor ones. Nor does the proposal make any exception for a "public purpose agency" to obtain otherwise protected juvenile court records under GR 31(f), which authorizes dissemination contracts for scholarly, government or research purposes. GR 31(f) recognizes that the fairness and effectiveness of courts, including juvenile courts, may be enhanced by allowing scholarly or governmental study of trends across cases. To bar such study for juvenile courts would heighten the risk of systemic bias and disproportionality affecting youths of color, low-income youths and youths with mental illness or other disabilities. Removing all juvenile court records from all dissemination contracts, including those with the news media and other researchers, would diminish opportunities to discover injustice and risks to public safety. If the intent is to prevent landlords and employers from using minor youthful transgressions to deny housing or jobs, the proposal should be narrowly tailored to that end.

Thank you for considering these comments.

Very truly yours,

Katherine A. George, WSBA #36288
Attorney for News Associations

[2] Other appellate courts have recognized the danger of broad-brush secrecy in all juvenile cases. *See, e.g.*, *Hartford Courant Co. LLC v. Carroll*, 986 F.3d 211 (2nd Cir. 2021) (striking down a Connecticut law closing all hearings and records in juvenile cases transferred to adult court because it violated the First Amendment right of access to judicial records and proceedings); *In re Edward S.*, 173 Cal. App. 4th 387, 392, 92 Cal. Rptr. 3d 725, 729 (2009) (stating that the use of juvenile initials only, without including common first names, would make it increasingly difficult for legal researchers to track and differentiate among the growing number of delinquency, dependency and family law opinions, create confusion, and impair the readability of many such opinions).

LGR 31. Access to Court Records

Local General Rule

(d) Access.

(2) Public online document review through the Clerk's electronic records system shall be restricted to cases filed on or after November 1, 2004 and limited to the case types listed in (i) through (v). These restrictions do not apply to onsite access in the clerk's office, to King County agencies, to government agencies approved by the clerk, to parties to a case, and to attorneys of record.

(i) All criminal cases, defined as those categorized with a number 1 as the third digit of the case number;

(ii) All civil cases, defined as those categorized with a number 2 as the third digit of the case number, with the exceptions of petitions for domestic violence protection orders and petitions for antiharassment protection orders;

(iii) All family law cases, defined as those categorized with a number 3 as the third digit of the case number and the unsealed portions of those cases categorized with a number 5 as a third digit.

(iv) All probate and guardianship cases, defined as those cases categorized with a number 4 as the third digit of the case number.

(v) Miscellaneous public records kept by the clerk and categorized with a 0 as the third digit of the case number.

(3) Remote online access to juvenile offender case data (including but not limited to documents, the index, and other summary information) shall be available only to the victims of the alleged or adjudicated offenses, their immediate family members, and members of the press as defined in RCW 5.68.010(5).

(f) Distribution of Court Records Not Publicly Accessible

(2) Investigations by the Judicial Conduct Commission: Access to Sealed Files and Documents

(A) Confidential Use: Upon request, the clerk of the court shall provide copies of or otherwise describe the contents of sealed files to a representative of the State Commission on Judicial Conduct, who is conducting a confidential investigation pursuant to Wa Const. Art. IV sec.31.

(B) Public Use: No materials in a sealed file may be made public, unless the Commission has first obtained an order pursuant to GR 15 and LCR 79(d)(5). Motions to obtain such an order shall be made to the Presiding Judge.

Official Comment

1. *Green v. Pierce County*, 197 Wn.2d 841, 487 P.3d 499 (2021).

2. Procedures, terms and conditions for on-line access are available in the clerk's office and online at www.kingcounty.gov/courts/clerk.

October 15, 2021

Via Email

Anita Khandelwal
Director
Department of Public Defense
Anita.Khandelwal@kingcounty.gov

Re: Availability of Juvenile Offender Summaries and Indices on KC Script

Dear Ms. Khandelwal,

Thank you for meeting with us and various other stakeholders on July 30, 2021 to discuss the important issues raised in your letter of May 11, 2021. We thought it was a productive discussion, in which diverse stakeholders were able to bring forward the substantive concerns, arguments, and evidence in support of the various positions. Since that time, we have received, carefully reviewed, and considered several letters and other statements, summarizing or further elaborating on those positions. As we announced at the King County Council hearing of September 29, 2021 on this issue, we are now in a position to seek to modify the internal policy of the King County Superior Court on availability of Juvenile Offender Summaries and Indices on KC Script.

Preliminary Matters

First off, we do want to emphasize that we believe all stakeholders participating in this dialogue are largely on the same page: none wish to unnecessarily negatively impact the housing, employment, educational or other opportunities of the youth who enter the juvenile legal system. Similarly, none wish to make our courts less accessible or accountable to the public that judges and attorneys are privileged to serve. On the contrary, as the law demands, it has been the long-standing mission of the Court both to balance rehabilitation and accountability in equal measure on the one hand, and to maintain an open and transparent court, on the other. Sometimes those missions seem to conflict, but, after hearing from interested parties, the Court normally is able to resolve those tensions and find accommodations which are effective. We believe that is true here, too.

Second, it appears that we reached consensus in the meeting that individually filed King County juvenile offender **documents** are not broadly or easily accessible online to the public. At this time, King County's Script System makes electronically accessible only basic information (a summary of the case, the charges, the participants, the events, and judgments, together "**summary information**") and an **index** of those juvenile cases that are not sealed or expunged. Again, to access the underlying documents, a person has always been required to go in person to the Clerk's Office. That will continue to be the case.

The question before us then is: should the summary information and indices of non-sealed juvenile offender matters be available in an online format? To simplify the reasons given: on the one hand, the advocates of juvenile offenders argue that the prospects of juvenile rehabilitation are

threatened by keeping that data available online. On the other hand, advocates of freedom of the press and governmental accountability argue that obscuring that data from public view undermines principles of open government, trust in legal systems, and potentially public safety.

We believe a path exists to balance these competing, laudable goals.

The Law

Without prejudicing any decision that may come before the judicial officers signing below, it does not appear that there is controlling law directly on point as to the specific question before us. In *State v. S.J.C.*, 183 Wash.2d 408 (2015), cited by both sides at the July meeting, the Washington State Supreme Court answered a very narrow question: "When sealing juvenile court records pursuant to former RCW 13.50.050, does article I, section 10 require the juvenile court to conduct an *Ishikawa* analysis in addition to finding the statutory requirements are met?" *Id.* at 412. The simple answer was no. The remainder of the opinion is informative but does not resolve the question before us, and the substance of the opinion may be read to support both sides' positions. For example:

- On the one hand, there is a "constitutional wall around juvenile justice" in that "the legislature has always made some provision to limit public access to juvenile court records in recognition of the unique purpose of juvenile courts to rehabilitate and reintegrate youth into society." *Id.* at 417-419. This legislative action suggests then that information related to juvenile matters has not been categorically and "historically open to the press and public" and thus presumably access may be restricted. *Id.* (detailing century-old legislation limiting access as "significant information" for the "experience" prong of the two-part test).

- On the other hand, the legislature "is in the unique and best position to publicly weigh the competing policy interests raised in the juvenile court setting, particularly as it pertains to the openness of juvenile court records" and has not acted to limit these indices from online view, despite "a continuance process of refinement." *Id.* at 421-422. Thus, presumably, access should not be restricted.

Similarly, on the logic prong of the two-part test:

- On the one hand, "there is a valid distinction between court proceedings and court records" and there is a statutory presumption that all juvenile court hearings are, and shall remain, open to the public," while there is no such presumption for records. *Id.* at 431. Thus, access may be restricted.

- On the other hand, for purposes of public safety and oversight, some "juvenile court records are not sealed immediately upon disposition" and some are not sealed at all. *Id.* at 434. Instead, in the former, "the former juvenile offender must demonstrate rehabilitation and restitution" and his records still could be unsealed

for various purposes. *Id.* In other words, even the sealing of statutorily eligible records is not absolute and access is granted sometimes.

Likewise, neither subsequent case law nor state court rule expressly *requires* a court to make juvenile summary information and indices electronically accessible, nor does any case law or rule expressly *prohibit* a court from making such data available online.[1] As both sides have stated, the Washington State legislature could have asserted its authority in this area and has thus far chosen not to. The various stakeholders simply have different interpretations over this lack of action.

This Court's "Experience and Logic"

Stakeholder Input and Other Courts' Practices

Advocates for juveniles argue that access to the indices "will hinder the success of King County's youth and impede their ability to reach their full potential," specifically housing, employment, and educational opportunities, and especially those of racial and ethnic minorities. Director Khandelwal Letter of May 11, 2021 at 2. Those advocates further explain that, while there is "no way … to know who has obtained information in this way nor what they have done with it," the "harms from public access accumulate throughout this period-and even beyond, as there is no way to purge the information from the databases and memories where it is stored during the period it is readily available." Professor Holland Letter of August 9, 2021 at 2. In other words, the harm is untraceable and irreparable. Further, these advocates argue that the Court should impose the "burden of proof" on those seeking to expand access because there can be no advantage to the youth of this information being public, *i.e.*, there can be no rehabilitative virtue to keeping the indices easily accessible. *Id.* Finally, those advocates argue that the information on the indices do not support transparency or governmental accountability because such indices are at times misleading or even inaccurate. *Id.* at 1.

Advocates of freedom of the press and governmental accountability argue that limiting access to the indices weakens transparency, accountability and thus "faith in justice … by the governed," who "shouldn't be told that they have to take time off work to come to the courthouse to stand at a counter to submit a request to find out what is happening in," an offender matter, whether those people are victims or not. Email of Keith Shipman of August 6, 2021. In short, as one advocate stated, "Effective input is the product of accountability and it is right of every citizen. Effective input cannot be accomplished without an index of information on what information to ask for." Email of Rowland Thompson of August 9, 2021.

Advocates for open government also ask us to consider the interests of "those who are victims of the actions of these youthful offenders," and who "like the juvenile offenders, tend to

[1] The closest such a rule comes is General Rule 31(d)(1), which states, "The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law." However, General Rule 31(d)(2) states that courts like the King County Superior Court may "amend local rules governing access to court records not inconsistent with this rule." In other words, General Rule 31 expressly contemplates courts exercising this discretion when, as here, there is no federal, state or case law to the contrary. Indeed, the King County Superior Court has exercised this discretion in sweeping ways over the years. *See, e.g.,* Local General Rule 31 (limiting public online review to cases filed after November 1, 2004 in various types of cases).

be poor and people of color, and also tend to be powerless." Email of Keith Shipman of August 6, 2021. They urge the Court to consider that "victims' need for justice is equally strong or stronger than the youth offenders' in order that they can go on with their lives in hopes that they will not be further victimized, nor will they seek revenge or retribution," and that this type of access allows them to view in real time that justice is proceeding. *Id.*

Victims' advocates themselves focus not on the need for access to court information but on "their own need for privacy." Email from KCSARC of September 13, 2021. Specifically, "victims risk the potential invasions of privacy and loss of control over very personal and traumatic experiences" by going through the court process, and the Court should consider the protection and privacy "needs of victims, many of whom are minors," as we balance competing interests. *Id.* Access to the indices does support victims' needs to feel heard and to see a response from the judicial system.

Finally, we have considered the practices of other courts, including the Washington State Administrative Office of the Courts ("AOC"), which staffs the Judicial Information System ("JIS") Committee, which in turn establishes the JIS Committee's Data Dissemination Policy ("Policy"). This Policy establishes the rules for the release of JIS data for AOC technology systems, which are used by 37 of the 39 superior courts statewide and many limited jurisdiction courts. While this policy is not controlling, it is important guidance. *See also* Email of Professor Ambrose of August 12, 2021 (agreeing King County "is not bound by the JIS policy").

In 2013, after spirited discussion, Section V.B of this Policy was amended to prohibit the JIS from displaying "any information from an official juvenile offender court record on a publicly-accessible website that is a statewide index of court cases." Under the Policy, juvenile offender indexed data would still be available via a JIS subscription and at a county clerk's office.[2] Again, the general non-paying public does not have access to data such as indices unless they physically go into a courthouse, but those paying for subscriptions do have such access.

There are two immediate concerns with the AOC's Policy. First, as stated above, those who have the financial means, including data aggregators, still to this day have access to all the data described above. Second, when one searches a known juvenile offender matter by a valid name or case number, the JIS system displays "No cases match your search." This is misleading; it makes it appear that affirmatively there is no offender matter extant.

As a threshold matter, this Court will not allow a two-tiered system based simply upon the financial means of the requestor. Moreover, this Court will provide accurate information about the information in the Clerk's possession.

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[2] Among the primary opponents to the rule change were the Rental Housing Association ("RHA") of Washington and Consumer Data Industry Association, which indicated they "rely on bulk dissemination of records, and [the JIS] service provides them background information that includes these records amongst other information on potential tenants." Notes of the JIS Committee Meeting of September 6, 2013 at 4 (RHA further noting that it "has a responsibility under the Residential Landlord Tenant Act, and under common law court cases to protect the health, safety, and welfare of their tenants and members"). In other words, landlords are in fact gathering such data and in fact using such data in housing decisions. The 2013 rule change still permits those with JIS subscriptions such as RHA to access juvenile offender indices, but not those without.

Path Forward

The Court is often in the position to balance between the best of "bad options." A bad option, as here, can include an option which does unintentionally impinge on an important right or value. When weighing such bad options, we sometimes seek (1) to distinguish between harms known and those that are unknown, and further (2) to distinguish between those harms we are able to mitigate and those harms that are not remediable.

Although no juvenile advocate has brought forward a specific instance of a specific juvenile being harmed in a specific way, we do know that data is collected by commercial or other interests that can impact the housing, employment or educational prospects of a young person involved in the juvenile offender system. *See infra* n. 2 (housing); *see also generally* Tim Wadsworth*, The Meaning of Work: Conceptualizing the Deterrent Effect of Employment on Crime Among Young Adults,* 49 Soc. Persp. 343, 345–46 (2006) (employment); Stephanie Saul, *Colleges That Ask Applicants About Brushes With the Law Draw Scrutiny*, N.Y. Times, Jan. 28, 2016, found at https://www.nytimes.com/2016/01/29/us/colleges-that-ask-applicants-about-brushes-with-the-law-draw-scrutiny.html (noting a 2010 study that found that "66 percent of colleges ask for criminal history information in admissions, and that some of them look unfavorably even on misdemeanor arrests). Further, given the ubiquity of digital information and social media, there is always the risk of stigmatization or bullying by a Respondent's peers. The reputational harms from vindictive "web surfing" are real. Regardless, we do not need to wait for a documented instance of actual harm before we act to minimize these significant risks. Indeed, among the most persuasive concerns adduced is that the harms to a youth may never be known.

Likewise, although no advocate for open government has identified, *e.g.*, a specific instance where a member of the media has been unable to develop a story regarding a juvenile offender matter, or a victim tracking a matter via KC Script, we do not need to wait to accommodate those interests either. "Open justice … is the bedrock foundation upon which rest all the people's rights and obligations," and accordingly the public including through its watchdogs should be able to "monitor[] the fairness of the proceedings and the appropriateness of the result." *In re Det. of D.F.F.*, 172 Wash.2d 37, 40 (Wash.2d 2011) (lead opinion) (internal citations omitted). Indeed, victims have unique interests and rights under the law even in juvenile matters. RCW 13.50.050(9) states that "[u]pon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family." Accommodations for such vital interests should be found, if possible.

It is important, however, that we have not been presented with any probative information that public safety is imperiled by data available in the KC Script public portal. Law enforcement always has had and will continue to have access to ongoing cases at a minimum through the Prosecutor's office. Further the King County Prosecuting Attorney's Office has indicated that it would take no position on this issue, as it does not "feel strongly" and, thus, defers "to the good judgment of those already involved in the discussion."

Conclusion and Next Steps

In summary, on the one hand, our current practices create known harms and unknown harms against juveniles that we are, in part, obligated by law to seek to rehabilitate. Further, the known harms are not always remediable: once data has been swept up and mined, it may live in databases for significant periods of time. Similarly, it is well known that reputational harm is difficult to rehabilitate. On the other hand, the complete restriction of this data would cause known harms to the media. We believe we can address and greatly mitigate the harms to the media and advocates for open government, as well as victims.

Namely, we will initiate the process to amend King County Superior Court Local General Rule 31(d)(2) and attempt to limit online access by the general public to all juvenile matters, while permitting only members of the media and victims and their immediate families to receive the information currently obtainable: the summary information and the indices. We will seek to do so through our rule-making process, which will ensure that it is codified and durable, as well as permit input from all possible stakeholders. We will also seek to expedite the rule change, so that the Court can fund the technical solution and work toward implementation in the most efficient way possible. This two-track approach (currently being used in LCr 2.2) is often used by Superior Court to put a rule change in effect. Again, the technical solution for this new arrangement is not in place, but must be investigated and developed by the Clerk's IT staff. We will seek your input collaboratively as this solution is developed.

Respectfully,

Jim Rogers/jmd

James ("Jim") E. Rogers
Presiding Judge
King County Superior Court

J. Michael Diaz

J. Michael ("Mike") Diaz
Chief
Clark Children and Family Justice Center
King County Superior Court

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Superior Court of the State of Washington
for the County of King

JAMES E. ROGERS
Presiding Judge

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June 3, 2021

Anita Khandelwal
Department of Public Defense

Re: Your letter of May 11, 2021

Dear Ms. Khandelwal,

We would be happy to meet with you and other stakeholders to discuss the important issues raised in your letter.

For the meeting, I wanted to clarify a couple matters in your letter and give you a sense of some of our Court's considerations.

First, King County juvenile offender records are not "broadly and easily accessible online to the public" nor does King County's portal ("Script") allow "broad, online public access to King County juvenile offender records," as you state in your letter. King County has only an *index* of cases available online through the Script system. The index of records is not the same as records. In King County, just as in every other court in the State, in order to access the records that are not sealed, a person must go in person to the Clerk's Office. This is not "easy" access to records.

Second, our Court is not aware of any actual documented harm or any instance of anyone actually searching the Script index, let alone coming to the courthouse to review records, and then causing any harm to "youth, their families [or] our community," as again you state in your letter. We would be interested to hear about any examples of this if and when we meet.

Third, our greatest consideration is that Washington State has a very strong presumption of open justice, in its constitution, statutes and case law. As you know, the legislature has sealed categories of records such as dependency and those related to civil commitments, and protected the indices of these records yet chosen not to do so, despite several attempts to change the law along the lines that you request, for juvenile offender records. We view the AOC's JIS *policy* as just that-a policy decision that was done in good faith but may go further than the law envisions. Without debating the legislative or policy reasons, I hope we can agree that it is important for the Court to hear from those stakeholders invested in free and open courts, such as the news media, the Washington Coalition for Open Government and other open government advocates, just as we are hearing from you and your letter's other signators.

As to the AOC's JIS policy, one might ask, why does it apply to just juvenile records? In our court, we have other areas where one might reasonably question having open court records-cases of child sexual abuse and sexual assault generally, cases involving highly personal medical issues, criminal cases involving competency evaluations and associated medical reports, contested divorce cases involving domestic violence, child abuse. I have wondered about the fairness of all of these kind of cases being open. This issue is being raised again with some courts now livestreaming court cases. But we are constitutionally required to have these courtrooms open, and case indexes and case files accessible. As you know, if a courtroom is closed or files are sealed contrary to law, the verdict is automatically reversed, even if there was no other error in the case.

Finally, I believe that substantively, we are largely on the same page: we do not wish to unnecessarily negatively impact the housing, employment, educational or other opportunities of the youth who enter the legal system. On the contrary, it has been the mission of the Court, for over two decades, to collaborate with our justice system partners and diverse, non-governmental stakeholders to improve outcomes for youth and families, while striving to eliminate racial and ethnic disparities and to address gaps in services meant to achieve rehabilitation and accountability in equal measure as the law demands.

In closing, we would be happy to meet. It would be best to contact Judge Diaz, Chief of the Clark Children and Family Justice Center, to set up a meeting.

Respectfully,

James (Jim) E. Rogers
Presiding Judge
King County Superior Court

cc: Judge Michael Diaz
Linda Ridge

From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Rulemaking Comments Re: GR 31
Date: Friday, February 25, 2022 4:16:27 PM
Attachments: Allied-WNPA-WSBA Rulemaking Comments with attachments 2 25 22.pdf

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From: Katherine A. George [mailto:kathy@johnstongeorge.com]
Sent: Friday, February 25, 2022 4:14 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: anewspaper@aol.com; 'Keith Shipman' <kshipman@wsab.org>; 'Washington Newspaper Publishers Association' <fredobee@wnpa.com>
Subject: Rulemaking Comments Re: GR 31

Good afternoon. Please find attached a rulemaking comment letter from Allied Daily Newspapers of Washington, Washington Newspaper Publishers Association and Washington State Association of Broadcasters.

Thank you.

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