

SENT VIA ELECTRONIC MAIL

April 28, 2023

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**Re: Support for JuCR 7.16
Comment Deadline 4/30/23**

Dear Justices of the Supreme Court:

We urge you to keep Juvenile Court Rule 7.16—Quashing and Issuing Warrants (JuCR 7.16) and to not rescind the rule. The benefits of the rule greatly outweigh any purported downsides. Pretrial incarceration is harmful to all accused persons and particularly harmful to juveniles. JuCR 7.16 strikes the exact right balance—it allows for certain warrants to be issued should a child pose a serious risk to safety while also outlining that most warrants relating to violating court orders and failing to appear should never be issued to children involved in the juvenile system. JuCR 7.16 is a step in protecting children, particularly children of color, involved in the juvenile criminal system.

I. JuCR 7.16 does not conflict with RCW 13.40.040.

Proponents of rescinding JuCR 7.16 argue that it violates RCW 13.40.040, but these arguments are unavailing.

JuCR 7.16 outlines that no new warrants shall be issued for juveniles due to an alleged “Violation of a Court Order” or “Failure to Appear for a Court Hearing.” *See* JuCR 7.16, https://www.courts.wa.gov/court_rules/pdf/JuCR/SUP_JuCR_7_16_00.pdf. The rule allows for a carve out, though, so that juveniles who “pose a serious threat to public safety” may still be issued a warrant for these two types of offenses. *Id.* As the rule allows for discretion for those issuing warrants, it does not abrogate any substantive authority granted by the legislature and does not violate RCW 13.40.040.

II. The juvenile criminal system disproportionately targets and penalizes children of color.

More importantly, JuCR 7.16 prevents juveniles from being incarcerated for two types of offenses pre-adjudication, which is a step in the right direction of addressing the over-involvement of youth in the

criminal justice system, a system plagued by implicit bias and one that disproportionately impacts communities of color. *See, e.g.,* Washington State Majority and Justice Commission, *Girls of Color in Juvenile Detention in Washington State*, <https://www.courts.wa.gov/subsite/mjc/docs/MJC%20Special%20Detention%20Report%202020.pdf>. Common-sense court rules that limit a child's time incarcerated before adjudication, like JuCR 7.16, are necessary to make the juvenile criminal system more equitable.

It is no mystery that the adult and juvenile criminal systems in this country disproportionately impact communities of color. “[G]ender, race and class discrimination are entrenched, in varying degrees, and at all levels of the youth justice system.” Jessica Elizabeth Pulis, *Set Up for Failure? Understanding Probation Orders and Breaches of Probation for Youth in Conflict with the Law*, UWSPACE 45 (2014), <https://uwspace.uwaterloo.ca/handle/10012/8475>. Washington courts have consistently acknowledged the impact of implicit bias in legal proceedings.¹ Even when prosecuted in juvenile court, which is ostensibly designed to account for children's diminished culpability and capacity for change, not all children are extended the same privileges of youth. Instead, a young person's race influences how harshly a young person is punished. *See, e.g., State v. Anderson*, 200 Wn.2d 266, 303, 516 P.3d 1213, 1232 (2022) (Gonzalez, C.J., dissenting) (acknowledging that a young Black man's sentence, and resentencing, “during an era rife with racialized media attention to violent crime,” was impacted by racial bias).

In Washington, young people of color are disproportionately in contact with the criminal system. Black and Indigenous children are disproportionately referred to courts and are detained for longer periods of time than their white, non-Hispanic peers. *See* Washington State Partnership Council on Juvenile Justice, *Report to the Governor & State Legislature*, August 2020, <https://www.dcyf.wa.gov/sites/default/files/pdf/2020WA-PCJJgov.pdf>.

Washington data demonstrates that race and ethnicity influence decisions at multiple points in Washington's juvenile criminal system. The disparate outcomes between young people of color and white people

¹ *State v. Saintcalle*, 178 Wn.2d 34, 46, 309 P.3d 326 (2013) (noting that “we all live our lives with stereotypes that are ingrained and often unconscious, implicit biases that endure despite our best efforts to eliminate them”); *State v. Berhe*, 193 Wn.2d 647, 657, 444 P.3d 1172 (2019) (“[I]mplicit racial bias ... influence[s] our decisions without our awareness.”); *See also* General Rule 37 (an objective observer is “aware that implicit, institutional, and unconscious bias... contributed to the unfair exclusion of jurors.”).

become amplified with each successive decision point, from initial contact to their eventual incarceration. *See Race and the Criminal Justice System, Task Force 2.0, Report and Recommendations to Address Race in Washington's Juvenile Legal System: 2021 Report to the Washington Supreme Court*, https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1118&context=korematsu_center.

Statewide data shows that Black children are nearly three times as likely as their white peers to be arrested, with that number jumping to 7 times as likely in King County alone. *Id.* at 12. The data also shows young people of color's increased involvement at later critical points, such as the decision to offer the child a diversion (rather than prosecution) and the decision to incarcerate the child. *Id.* Black children are less likely than young white people to receive a diversion or deferred disposition.² *Id.* at 13. Disproportionality increases throughout the stages of the criminal system because each decision made by police, prosecutors, probation officers, and judges are based on decisions from the preceding decision point, creating a cumulative discriminatory effect. *Id.* A limit in the types of warrants that can be issued pre-adjudication for juveniles helps ameliorate this cumulative effect.

III. Unhoused children are also likely to be disproportionately impacted by rescinding JuCR 7.16.

As outlined in the ACLU-WA's letter to the Court before JuCR 7.16 was adopted, children experiencing homelessness will be disproportionately impacted should JuCR 7.16 be rescinded.

By being unhoused, children experiencing homelessness come into contact with the juvenile system more often than children with stable housing.³ The threat of arrest and incarceration for failing to appear in

² In fact, in response to these staggering statistics, the Washington Supreme Court has recognized "racialized policing and the overrepresentation of Black Americans in every stage of our criminal and juvenile justice systems. Our institutions remain affected by the vestiges of slavery: Jim Crow laws that were never dismantled and racist court decisions that were never disavowed." *See The Washington State Supreme Court Letter* (June 4, 2020), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>.

³ Bernstein, N., & Foster, L., *Voices from the street: A survey of homeless youth by their peers*, March 2008, at 9, <https://library.ca.gov/wp-content/uploads/2021/08/08-004.pdf>. This study found that 60 percent of

court and abiding by a court order punishes young people experiencing homelessness for their housing status and makes them less likely to move beyond their homeless situation. Youth experiencing homelessness report a high level of involvement with the juvenile system and youth involved with the juvenile system are more likely to report unstable housing.⁴

Should JuCR 7.16 be rescinded, it would lead to more outstanding warrants for youth involved in the juvenile system. For unhoused youth, outstanding warrants could preclude them from accessing services and benefits that might support their ability to emerge from homelessness. Warrants can impede young people from getting stable shelter⁵, housing, gaining employment, accessing public and federally assisted housing and food stamps, and/or getting a driver's license.⁶ Outstanding warrants can contribute to the cycle of arrest, detention, default, and rearrest for young people. This cycle can cause and worsen trauma for unhoused children and other children involved in the juvenile system.

IV. Conclusion

Children are a vulnerable group recognized by our legal system, requiring particular systems and treatment to meet the needs of their unique legal status and developmental progression. JuCR 7.16 does just that—it is responsive to the needs of youth involved in the juvenile system while still

homeless youth had been fined for “quality-of-life offenses”, such as panhandling, sleeping or camping in public, and loitering.

⁴ Feldman, D., & Patterson, D., *Characteristics and program experiences of youthful offenders within Seattle-King County Workforce Investment Act (WIA) Programs*, Seattle, WA: Workforce Development Council of Seattle-King County Research & Development Committee (2003). Feldman and Patterson compared 209 court-involved youth who participated in Workforce Investment Act (WIA) programs in Seattle-King County to 419 non-involved youth who participated in the same programs between 2000 and 2002 and found that court-involved youth were more likely to have no permanent address and that research on homeless adults consistently found high rates of prior incarceration, including when they were juveniles.

⁵ “A CRC or approved youth shelter will not accept a child with outstanding warrants or a child in need of medical attention or in need of an emotional or behavioral crisis evaluation, in accordance with RCW 71.05.153.” Seattle Police Department Manual, 15.220 Child Welfare, <https://public.powerdms.com/Sea4550/tree/documents/2042784> .

⁶ The DMV may check to see if there are outstanding warrants and can at times arrest on site.

allowing for discretion for the safety of the community. Proponents of rescinding JuCR 7.16 have failed to show that there have been negative side effects from the imposition of this rule more than two years ago. We implore you to not rescind JuCR 7.16.

Sincerely,

La Rond Baker, ACLU-WA Legal Director
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From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Proposed Rules of Court - ACLU-WA Comments on JuCR
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Sent: Friday, April 28, 2023 1:16 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: La Rond Baker <baker@aclu-wa.org>; Nancy Talner <TALNER@aclu-wa.org>
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Good afternoon:

Please see attached comments from the American Civil Liberties Union of Washington on the referenced proposed court rule.

Best regards,

Tracie Hooper Wells

Paralegal

Pronouns: she/her

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“It is our duty to fight for our freedom. It is our duty to win. We must love each other and support each other. We have nothing to lose but our chains.” *Assata Shakur*