

April 27, 2023

Chief Justice Steven González
P.O. Box 40929
Olympia, WA 98504-0929

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Washington State
Supreme Court

Re: Letter in Support of Maintaining JuCR 7.16

Dear Chief Justice González,

JuCR 7.16 has been in place for over two years and must be maintained to ensure that youth subject to juvenile offense proceedings are not incarcerated for behaviors like missing court or violating probation unless the individual circumstances pose a serious threat to public safety. Incarcerating youth exposes them to risks that negatively impact their health, mental health, educational success, and meaningful community and family connections.

JuCR 7.16 promotes public health, advances racial justice, and reduces the harm of the juvenile legal system.

- Detention and incarceration do not promote and, in fact, undermine physical and mental health for youth.
- Detention and incarceration remove young people from their families and their communities and disrupts their schooling.
- Our current educational system inside detention and carceral settings is a failure, prompting multiple pieces of structural legislation over the past two years. HB 1701¹, pending this session, anticipates a 4-year process for overhauling the carceral education systems.
- Youth who are incarcerated are more likely to disengage from school.²
- Our state legislature found that “a stay in detention is a predictive factor for future criminal justice involvement.”³
- JuCR 7.16 has been in place for over two years and there is no demonstrable data illustrating an increase in failure to return to court or direct impact to community safety.

¹ HB 1701, 68th Leg., Reg. Sess. (Wash. 2023). <https://lawfilesexternal.leg.wa.gov/biennium/2023-24/Pdf/Bills/House%20Bills/1701-S.pdf>.

² The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities, A Justice Policy Institute Report, by Barry Holman and Jason Ziedenberg, page 8. https://justicepolicy.org/wp-content/uploads/2022/02/06-11_rep_dangersofdetention_jj.pdf.

³ ESSB 5290, 66th Leg., Reg. Sess. (Wash. 2019), New Section 1, lines 14-15. [https://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session Laws/Senate/5290-S2.SL.pdf](https://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5290-S2.SL.pdf).

- Maintaining JuCR 7.16 will advance racial justice by reducing the harms of incarceration and the long-term consequences that follow periods of incarceration, which disproportionately impact Black youth, Indigenous youth, and Youth of Color.⁴
- The adoption of JuCR 7.16 ensured that youth will not be jailed for a warrant unless a judge finds that incarceration is needed to protect against a serious threat to public safety. Maintaining this rule has been an essential step towards safeguarding the well-being of our youth, their loved ones, and our community.

In March 2012, a statewide multi-disciplinary task force examined racial disproportionality in Washington State's Juvenile Justice System. The task force recommended limiting "the use of secure confinement on failure to appear warrants by creating policies and funding strategies that address the underlying reasons for failures to appear in juvenile court matters."⁵ This task force came together again in 2021 to update the report and recommendations. Again, the task force recommended limiting the use of detention by adopting statewide practices like JuCR 7.16.⁶

Because the harms of the juvenile legal system, including the issuance of warrants, disproportionately fall on Black youth, Indigenous youth and youth of color, this Court must maintain clear limitations for when an arrest warrant can be issued for a youth. Implicit bias can be found at every stage of proceedings, including when probation counselors and prosecuting attorneys seek warrants and when judges issue warrants. Maintaining JuCR 7.16 advances the health and safety of all youth and especially BIPOC youth.

Maintaining JuCR 7.16 is a critical component of shifting how the juvenile legal system responds to youth who face incarceration, providing community supports and services rather than youth jails and police officers.

Statewide data shows that more than half of youth are detained for non-felony matters. Warrants are frequently issued because of violations of court orders and low-level misdemeanors.⁷ A 2018 study by Washington's Juvenile Justice System Improvement Planning Grant found that more than half of all

⁴ "In spite of drastic reductions in the use of detention, the representation of youth of color in detention admissions has increased by 6%." Washington State Department of Children, Youth, and Families. Washington State Juvenile Justice Report to the Governor and State Legislature, page 44.

⁵ See Juvenile Justice and Racial Disproportionality: A Presentation to the Washington State Supreme Court, the Task Force on Race and the Criminal Justice System, March 28, 2012, at page 2.

⁶ Report and Recommendations to Address Race in Washington's Juvenile Legal System: 2021 Report to the Washington Supreme Court, at page 50.

https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1118&context=korematsu_center.

⁷ Washington State Juvenile Detention 2020 Annual Report (2021). Washington State Center for Court Research, Administrative Office of the Courts.

<https://www.dcyf.wa.gov/sites/default/files/pdf/DetentionReport2020.pdf>.

incarcerated youth received either a technical violation/contempt or a misdemeanor as their highest charge.⁸

Prior to the adoption of JuCR 7.16, warrants were frequently issued because of violations of court orders and low-level misdemeanors, resulting in higher numbers of youth incarcerated, because judges were not required to make a finding that the youth posed a serious risk to public safety before issuing an arrest warrant. Warrants were issued without analysis of whether the warrant is needed to address public safety. They were issued without an opportunity to contest and with no evidentiary standard. JuCR 7.16 inserts an analysis that allows for consideration of whether other responses will be successful without incarceration.

This rule should be maintained because a youth's family and community supports—rather than incarceration-- are best positioned to provide youth with safe and stable housing, access to education, access to medical and behavioral health services, mentorship, and job and vocational training. Practitioners have provided positive examples of how this rule has supported youth without disrupting the court process or community safety:

- One practitioner found that when juveniles do not respond to a summons, the court will appoint a defender and ask the defender to send the youth a letter to come to court. This is usually effective and requires no detention time.
- Another defender notes that the current court rule has stopped probation and prosecutors from immediately seeking warrants. Instead, they now attempt to bring the youth back on a summons, which is often successful and avoids detention.
- Another notes that youth are no longer booked on a warrant after having an ITA/mental health hold.
- Another notes that if a youth leaves home, probation makes an attempt to locate the youth before resorting to a warrant, with success in finding the youth.

Concerns some judges have expressed regarding the limits on warrants do not justify abandoning JuCR 7.16.

There is no evidence that the adoption of JuCR 7.16 has increased safety risks for the community – in fact, reduced incarceration for youth enhances community safety given the known harms of detention. Regarding the needs of youth facing warrants, we suggest that the Court focus on strategies that will address, rather than exacerbate, a youth's needs.

- When youth face a risk of losing the option to have juvenile court jurisdiction, the parties can agree to extend jurisdiction. If needed long-term, we all should be working together to amend the law

⁸ Washington's Juvenile Justice System Improvement Planning Grant: Key Findings from System Analysis (2018). The Council of State Governments Justice Center. Page 41. https://www.opd.wa.gov/documents/01183-2018_OJJDPReport.pdf.

regarding jurisdiction to assure that the age at the time of the offense drives jurisdiction, not the age at the time of prosecution.

- For youth in need of safe housing, much investment has been made in housing alternatives, including the vast expansion of the H-SYNC program⁹. We can work together to advocate for increased funding and expansion of successful housing models.
- All parties should work to connect youth to mental health treatment and substance use disorder treatment instead of incarcerating them.

Justice González recognized in *State v. B.O.J.* that “[i]ncarceration harms children.” 194 Wn.2d 314, 332, 449 P.3d 1006 (2019) (concurring opinion). While progress has been made, critical work remains as the juvenile legal system continues to disproportionately incarcerate – and harm – Black youth, Indigenous youth and youth of color. The U.S. Office of Juvenile Justice and Delinquency Prevention Administrator, Liz Ryan, reiterated the harms of incarceration recently, saying “[y]oung people who break the law must be held accountable for their wrongs, but incarceration is seldom the answer. Too often, youth confinement succeeds only in damaging young people and diminishing their chances for a healthy, productive future. Serving justice-involved youth in their communities is far more effective than locking them up—and it’s the right thing to do.”¹⁰

Because the juvenile legal system is entangled with many other institutions that have perpetuated racist practices like policing, housing, education, and employment discrimination, limiting the circumstances under which a youth can be incarcerated due to a warrant in a juvenile offense proceeding protects our youth and enables a more racially just future. As a result, the undersigned stakeholders strongly urge the Washington Supreme Court to maintain JuCR 7.16 – Governing Warrant Quashes – and protect youth from incarceration for non-criminal behaviors that do not seriously threaten public safety.

Sincerely,

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⁹ H-SYNC is currently available or expanding to King, Snohomish, Kitsap, Okanogan, Pierce, and Spokane counties. See the H-SYNC webpage (part of the University of Washington Psychiatry & Behavioral Sciences’ Community & Behavioral Health Policy website) at <https://uwcolab.org/hsync>.

¹⁰ Serving Justice-Involved Youth at Home, with Community Support. Liz Ryan, Office of Juvenile Justice and Delinquency Prevention Administrator, October 18, 2022. <https://ojjdp.ojp.gov/blog/serving-justice-involved-youth-home-community-support>.

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