

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED)
AMENDMENTS TO GR 31—ACCESS TO COURT)
RECORDS AND CrR 2.1—THE INDICTMENT)
AND THE INFORMATION)
)
)
_____)

ORDER

NO. 25700-A-1381

The Washington State Office of Public Defense and the Minority and Justice Commission, having recommended the suggested amendments to GR 31—Access to Court Records and CrR 2.1—The Indictment and the Information, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in November 2021.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than February 28, 2022. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

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ORDER

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO GR 31—ACCESS TO
COURT RECORDS AND CrR 2.1—THE INDICTMENT AND THE INFORMATION

DATED at Olympia, Washington this 5th day of October, 2021.

For the Court


González, C.J.

GR9 COVER SHEET

- A. Name of Proponent: The Washington State Office of Public Defense and the Minority and Justice Commission....
- B. Spokesperson: George Yeannakis, Office of Public Defense
- C. Purpose: Amendments to GR 31 and CrR 2.1

Introduction

These proposed amendments to GR 31, Access to Court Records, and CrR 3.2, The Indictment and the Information, aim to ensure that courts across Washington State treat juvenile records consistently, comply with the Washington State Constitution and recognize the severe and long-lasting impact of that result from prosecuting youth in juvenile court. This is critical for all youth and particularly youth of color since we know that:

“[o]ne of the most consistent findings in the research on the juvenile justice system is that race matters. Race matters in Washington State just as it matters across the United States. Studies conducted in numerous states have demonstrated that race shapes decisions at various stages in the juvenile justice process, independent of the severity of the offense and of the individual’s criminal history” Heather D. Evans & Steven Herbert, *Juveniles Sentenced as Adults in Washington State, 2009-2019* (2021) available at https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf.

The Administrative Office of the Courts adopted a policy, after careful consideration, to not display juvenile court records on a publicly-accessible website and to exclude juvenile offender court records from bulk distribution.

The Washington State Administrative Office of the Courts (AOC) tracks statewide case information and records through its Judicial Information System (JIS), ACORDS and Odyssey. To respond to the numerous issues and policy implications of the electronic distribution of court information, the Judicial Information System Committee (JISC) established the JIS Data Dissemination Committee which makes policies regarding AOC’s dissemination of computer-based court records.¹ AOC, through its JISDDC, responded to the demonstrated harms of displaying juvenile offender records publicly online and distributing juvenile offender records to large private data aggregators by imposing limits through Section V of its Data Dissemination Policy:

A. Juvenile offender court records shall be excluded from any bulk distribution of JIS records by the AOC otherwise authorized by GR 31(g), except for research purposes as permitted by statute or court rule.

B. The AOC shall not display any information from an official juvenile offender court record on a publicly-accessible website that is a statewide index of court cases.

AOC’s limits were adopted after extensive discussion and consideration. These limits have been in place since 2008. However, rather than following AOC’s policy limiting the display of juvenile court records on a publicly accessible website, some counties (e.g. King County through its new

¹ The JISC was established by the Washington Supreme Court and authorized by the Washington State Legislature to provide direction and oversight to the statewide Judicial Information System. JISCR 1 (1976); RCW 2.68.050. Through its Bylaws, the JISC created the Data Dissemination Committee to address issues with respect to access to and dissemination from the JIS. Article Seven, [JISC Bylaws, amended 6/25/21](#). Through the JISC’s delegation of authority, the Data Dissemination Committee adopted the Washington State Court’s Data [Dissemination](#) Policy.

electronic records portal) now provide broad, online public access to “juvenile offender cases” though a publicly accessible website. See King County Script public access search site, available at <https://dja-prd-ecexap1.kingcounty.gov/?q=Home>.

Immediate action is needed because the harms of available juvenile court records are acute and are intensified by displaying the youth’s full name in the case caption.

“A publicly available juvenile court record has very real and objectively observable negative consequences, including denial of ‘housing, employment, and education opportunities.’” (*State v. S.J.C.*, 183 Wash. 2d 408, 432, 352 P.3d 749, 761, 2015). In public housing, a single juvenile offense might result in the entire family’s eviction. (See Ashley Nellis, “Addressing the Collateral Consequences of Convictions for Young Offenders,” 35 THE CHAMPION 20, 23, 2011.) In addition, a juvenile court record can foreclose employment possibilities and make it harder it to obtain even a high school diploma, much less post-secondary education. (See Ashley Nellis.)

In 2014, the Legislature declared that “it is the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records.” Laws of 2014, ch. 175, § 1. The Legislature has also provided a pathway to seal juvenile court records. RCW 13.50.260.

Washington State is one of seven states in the country that “categorically make all juvenile records public though there are exceptions even within these states. Juvenile Law Center, *JUVENILE RECORDS A National Review of State Laws on Confidentiality, Sealing and Expungement*, pg. 15 (2014) available at [national-review.pdf \(jlc.org\)](#). By providing online, public access to juvenile records, the harms of publicly available juvenile records are intensified and are more far-reaching. That’s because:

the emergence of the internet has enabled instant access to many digital records, and services like Intelius.com or beenverified.com make searching names cheap, quick, and easy. Moreover, some jurisdictions have cut out the middleman and have created databases to allow online searches of court records. McMullen, Judith, *Invisible Stripes: The Problem of Youth Criminal Records*, 27 SOUTHERN CALIFORNIA REVIEW OF LAW & SOCIAL JUSTICE 1 (2018) available at [Invisible Stripes: The Problem of Youth Criminal Records by Judith G. McMullen :: SSRN](#) (citations omitted).

As a result, “[a]ny potential school, landlord, or employer can easily access information about a subject’s contacts with the law-- indeed, any curious citizen can mine this information at will.” *Id.* In addition, the sealing of juvenile court records is undermined if not rendered useless if a youth’s name is routinely published online. “Once information becomes publicly accessible, it cannot be made confidential again.” Jacobs, James, *THE ETERNAL CRIMINAL RECORD*, at 22 (2015).

Action must be taken to help ensure that youth can truly have their case sealed and treated as though it never occurred so they can reach their full potential. To meet this goal, we made the following recommendations for proposed rule changes:

- Caption juvenile court cases with a youth’s initials at the trial court level (as is done at the appellate level—pursuant to RAP 3.4f² --and in other states in order to limit broad dissemination of a youth’s involvement in juvenile court thereby enabling

² In a juvenile offender case, the parties shall caption the case using the juvenile’s initials. The parties shall refer to the juvenile by his or her initials throughout all briefing and pleadings filed in the appellate court, and shall refer to any related individuals in such a way as to not disclose the juvenile’s identity. However, the trial court record need not be redacted to eliminate references to the juvenile’s identity.

The proposed amendments to GR 31

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

(2) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.

(3) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records.

(1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court. (A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used. (B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document. (C) Driver's License Numbers. (D) In a juvenile offender case, the parties shall caption the case using the juvenile's initials. The parties shall refer to the juvenile by their initials throughout all briefing and pleadings.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

(g) Bulk Distribution of Court Records. (1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records. (2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request. (3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

The proposed amendments to CrR 2.1 (additions in bold)

(2) Contents. The indictment or the information shall contain or have attached to it the following information when filed with the court:

- (i) the name, or in the case of a juvenile respondent the initials, address, date of birth, and sex of the defendant
- (ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.

Conclusion and request for expedited consideration

The proposed amendments to GR 31 and CrR 2.1 address the severe, long-lasting impact that access to juvenile court records causes to youth, who are disproportionately youth of color. In addition, the proposal is consistent with the appellate court rules and we submit these proposed rule changes for expedited consideration pursuant to GR 9(e)(2)(E).

GR 31
ACCESS TO COURT RECORDS

(a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by Article I, Section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, Section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.

(b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record. Administrative records are not within the scope of this rule. Court records are further governed by GR 22.

(c) Definitions.

(1) “Access” means the ability to view or obtain a copy of a court record.

(2) “Administrative record” means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.

(3) “Bulk distribution” means distribution of all, or a significant subset, of the information in court records, as is and without modification.

(4) “Court record” includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

(5) “Criminal justice agencies” are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

(6) “Dissemination contract” means an agreement between a court record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided court records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.

(7) “Judicial Information System (JIS) Committee” is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.

(8) “Judge” means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(9) “Public” includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(10) “Public purpose agency” means governmental agencies included in the definition of “agency” in RCW 42.17.020 and other non-profit organizations whose principal function is to provide services to the public.

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

(2) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.

(3) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records.

(1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

(A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.

(B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

(C) Driver’s License Numbers.

(D) In a juvenile offender case, the parties shall caption the case using the juvenile's initials. The parties shall refer to the juvenile by their initials throughout all briefing and pleadings.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

Comment

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court record that was filed prior to the adoption of this rule.

(f) Distribution of Court Records Not Publicly Accessible.

(1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:

(A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which

access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.

(B) Determine, in its discretion, that filling the request will not violate this rule.

(C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.

(D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.

(2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.

(3) Criminal justice agencies may request court records not publicly accessible.

(A) The provider of court records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a class may request access.

(B) Agencies requesting access under this section of the rule shall identify the court records requested and the proposed use for the court records.

(C) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted, (ii) specify the uses which the agency will make of the data, and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

(g) Bulk Distribution of Court Records.

(1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.

(2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

(3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

(h) Appeals. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.

(i) Notice. The Administrator for the Courts shall develop a method to notify the public of access to court records and the restrictions on access.

(j) Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

(k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

[Adopted effective October 26, 2004; Amended effective January 3, 2006.]

SUGGESTED AMENDMENT:

CrR 2.1
THE INDICTMENT AND THE
INFORMATION

(a) Use of Indictment or Information. The initial pleading by the State shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(1) *Nature.* The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(2) *Contents.* The indictment or the information shall contain or have attached to it the following information when filed with the court:

(i) the name, or in the case of a juvenile respondent the initials, address, date of birth, and sex of the defendant;

(ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.

(b) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.

(c) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit.

(d) Amendment. The court may permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

(e) Defendant's Criminal History. Upon the filing of an indictment or information charging a felony, the prosecuting attorney shall request a copy of the defendant's criminal history, as defined in RCW 9.94A.030, from the Washington State

Patrol Identification and Criminal History Section.

Comment

Supersedes RCW 10.37.020, .025, .026, .035, .180; RCW 10.40.080; RCW 10.46.170.
The purpose of section (f) is to ensure that the defendant's criminal history is available when and if the court is required to determine the validity of a plea agreement.

[Adopted effective July 1, 1973; Amended effective September 1, 1986; July 1, 1984; March 18, 1994.]