The Washington Association
Of Prosecuting Attorneys

The Honorable Debra Stephens
Washington Supreme Court
By e-mail to: supreme@courts.wa.gov

Dear Chief Justice Stephens:

This letter is written in response to the proposed Order presented by Christie Hedman, Executive Director of WDA on March 26, 2020. After multiple conversations with a very collaborative tone, it was agreed that the 4th proposal referenced in the submission would be withdrawn given the likelihood that such sentences have already been modified or served. While no one can reasonably disagree that the present circumstances are extraordinary, WAPA is unable to support Proposals #1, #2, and #3, as they go well beyond a reasonable response to the health crisis and beyond the court's authority to order or mandate action on the part of the Juvenile Division of the Superior Court.

The parties are in receipt of the Superior Court Judge's Association letter to this court, wherein it is stated that Proposals #1 and #2 have been addressed by the Superior Court. A process has been created to review both probationary and FTA (pre disposition) warrants and new warrants are not being issued without a finding that there is a serious risk to public safety. With these assurances there is no reason to move forward as proposed by the defense coalition, and it is contrary to the intent of the Juvenile Justice Act that these matters be handled at the local level. It is the "intent of the legislature that youth, in turn, be held accountable for their offenses and that *communities, families, and the juvenile courts carry out their functions* consistent with this intent." RCW 13.40.010(2). WAPA believes that public confidence in government is heightened when every actor practices restraint. In times of emergency, it is exceedingly important that elected officials not exceed the authority vested in their offices. In light of this Court's long-standing rule that it may order an inferior court to act but may not control judicial discretion, *see, e.g., State ex rel. Murphy v. Chapman*, 179 Wash. 237, 240 (1934), WAPA's position supports the superior court's assurance that review of juvenile bench warrants are being addressed in the manner that is appropriate for that community. WAPA further supports the position that the manner in which the superior court judges should exercise their discretion while performing the review should not be directed by this court.

Proposal #3 addresses the possible resentencing of youth regarding valid and unchallenged adjudications. WAPA cannot support this request for several reasons, including the lack of authority to issue such an order. The proposed order mandates numerous immediate hearings without consideration of the consequences of such action, the science underlying conclusions offered, or

whether there are alternative options available that adequately address concerns that may exist in any particular case. What is also clear is that the proposal does not consider, for lack of inquiry, the effect on Rehabilitation Administration (RA) or the ability of RA to reasonably comply with the terms of such an order as written.

WAPA is given to understand that RA is acutely aware of the nature of this crisis and has taken steps to protect the health and safety of the youth assigned to their care, as well as their staff and providers. RA has consulted closely with the Department of Health and have fully implemented appropriate protocols and procedures to address the concerns presented by the COVID 19 virus. Point of entry evaluations are conducted as to staff, providers and youth referred to RA. In person visitation has been suspended. Proper posting and enforcement of "best practices" are in practice. Treatment programs have been modified to reduce the number of youth and risks involved in a particular activity. Online learning has been initiated and activities are geared toward the safety of the youth. RA is in the process of evaluating youth for purposes of appropriate release within the established guidelines. (*See forthcoming declaration of Marybeth Queral, Assistant Secretary Rehabilitation Administration).* The release suggested by the proposed order would result in youth who have been confined under these controlled circumstances being released to an unknown environment, with the hope that he/she will properly follow the Governor's mandate, the law, and any family instructions to avoid congregating with friends and acquaintances, most of which are not in school at this time. This is the congregate environment that is of greater concern than the controlled environment that exists in the RA setting for youth who have been adjudicated under the law.

It also must be noted that youth under the age of 20 face minimal risk from this virus. (CDC Weekly Article, March26, 2020) The greater risk is created when youth are released from this controlled environment to congregate in the community. Youth understand they are at very low risk. This is an age group known for taking risks, not always appreciating the consequences of such risk-taking behavior, and who are subject to peer pressure. These are youth who do not understand that they pose a risk to others who are in a more vulnerable position due to circumstances such as age and underlying conditions. This risk to the community is exacerbated when youth who have not had the benefit of a completed treatment program and transition period through a community facility are released as contemplated by this proposal. Further, these youth arguably pose a greater risk of re-offense and reintroduction into the juvenile justice system.

The proposal suggests that within 10 days RA would be required to identify each youth who has fewer than 6 months left in their sentence be identified, jurisdictions notified, victims notified, and hearings be held, either by video or phone. The term "6 months" is not defined and is not a simple determination to make. While youth are sentenced to a range of weeks, the determination as to release to a community facility and eventual transitioning to the community is more complicated than simply looking at a date 6 months down the road. Further, RA staff and managing personnel currently face the same crisis as other agencies, struggling to address the everyday rehabilitation treatment/regimen requirements for their youth, as well as their own health and staffing capabilities. Adding such a monumental task, especially when there is a reasonable alternative that is currently permissible and available, is to put staff and youth at even greater risk. This proposal simply overreaches under the law and does more harm than good.

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The adjudications and dispositions affected by this proposal are legally sound and final. Any re sentencing must be authorized by statute. The defense does not offer any statutory authority, instead invoking the very broad provision of CrR 7.8(b)(5). This court rule provides for relief from judgment for "any other reason justifying relief from the operation of the judgment." This rule applies when extraordinary circumstances exist justifying relief. (*State v. Brand, 120 Wn.2d 365*) However, simply noting that the current health crisis is "extraordinary" and offering an extreme remedy without full consideration of the actual circumstances and alternatives is inappropriate. CrR 7.8(b)(5) is not properly invoked when there is no legal or statutory basis to resentence a respondent. This is especially true when an adequate and appropriate remedy is available for any currently incarcerated youth, whether in a local detention facility serving a local sanction sentence or in any RA facility. As opposed to mandating an onerous process that is legally supportable, not feasible for RA staff, and likely not necessary for the vast majority of the youth currently incarcerated in a protected environment, any youth who has increased risk due to underlying conditions or other identified circumstance has the ability , through counsel, to seek an emergency hearing before the sentencing court. RA staff would more readily be able to identify such youth, as it would involve something about which they are already aware. In fact, such youth are being identified by RA as part of their response to this crisis. (*See forthcoming declaration of Marybeth Queral).* The trial court is best able to consider the circumstances of the youth who have such risk factors beyond their incarcerated status, or their age, which are not risk factors for this current health crisis. Facilitating video/phone hearings for these youth is appropriate and would not require an emergency order from this court. Trial courts are dealing with the effects of this crisis as well, including their own health, staffing and personnel issues, and do not need "urging" from anyone to understand the nature of the situation. Trial judges are able to consider the circumstances of individual youth with particular risks and consider whether or not the circumstances warrant relief. There is no legal support for Proposal #3, and the process suggested is cumbersome, unworkable, and will cause more harm that the proposed good.

Thank you for considering our position and for your service to our community.

Sincerely,

The Honorable Adam Cornell

Snohomish County Prosecuting Attorney and
Chair of the WAPA ad hoc Committee on COVID-19

Kevin Benton

Pierce County Senior Deputy Prosecutor