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December 9, 2013

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BY RONALD R. CARPENTER
CLERK

Camilla Faulk
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed changes to CrR 3.2 and CrRLJ 3.2

Dear Ms. Faulk:

As they are presently written, CrR 3.2 and CrRLJ 3.2 require that a defendant be released on personal recognizance unless the court specifically finds that such recognizance will not reasonably assure his appearance, or there is a *substantial danger* that the accused will commit a violent crime, or seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

I should like to point out two concerns:

1. A significant inconsistency within the rules:

   a. CrR 3.2(a)(2) requires a threshold showing of "likely danger,"but CrR 3.2(d) requires a threshold showing of "substantial danger," before the court may deny release solely on personal recognizance.

2. Under a strict reading of the rules: When a court releases a defendant on personal recognizance, it appears that the court may only require the defendant to (a) appear for all future proceedings, and (b) notify the court of his physical and mailing address. The court is not authorized to require a defendant to have law-abiding behavior.

Unless the court first makes a threshold finding that there is a *substantial danger* that the accused will commit a violent crime, or seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice:

- where a defendant has been charged with criminal trespass, the court cannot order him to refrain from going to the premises or from having contact with the property owner;
- where a defendant is charged with his first DUI, the court probably cannot require the person to drive with a valid license and insurance, or refrain from possessing or using alcohol or drugs;
- where a person, because of his drug/alcohol addiction, repeatedly commits nonviolent crimes, including drug trafficking, the court cannot order the defendant to refrain from possessing or using alcohol or drugs;
- if a person is charged with multiple acts of shoplifting at a store, the court cannot order him to refrain from going to the store;
- if a person repeatedly commits nonviolent crimes, even while on conditions of release pending trial, the court cannot require him to have law-abiding behavior.

It is disturbing that the court, even after making a threshold finding that probable cause exists to believe that a defendant has committed a crime, cannot order the defendant to comply with conditions that are reasonably necessary to assure the safety of victims and the community, and preserve the integrity of the criminal proceedings.

I question whether such a high threshold as "substantial danger" is appropriate before no-contact provisions may be ordered, especially when we consider, for example, that the court need only make a threshold finding of "reasonable proof" of harassment to issue a civil anti-harassment order, under RCW 10.14.080.

I am asking the rules committee to examine the scope and procedural requirements of CrR 3.2 and CrRLJ 3.2 and:

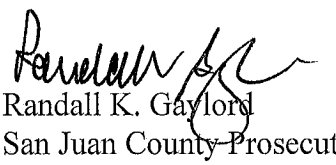
(1) address the apparent inconsistency in threshold requirements;

(2) reduce the threshold standard from "substantial danger" to a "likely danger" that the accused will commit a crime [not just a violent crime], intimidate witnesses, or otherwise unlawfully interfere with the administration of justice; and

(3) authorize courts to require a defendant who is released on personal recognizance to have law-abiding behavior and not commit any criminal law violations, and to refrain from contacting victims and going to their residences, property, workplaces and schools.

Thank you for the consideration of this request.

Very truly yours,



Randall K. Gaylord
San Juan County Prosecutor

cc: Tom McBride, Washington Association of Prosecuting Attorneys