



WSBA

OFFICE OF THE EXECUTIVE DIRECTOR

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April 25, 2016

Hon. Barbara A. Madsen
Chief Justice
Washington Supreme Court
PO Box 40929
Olympia, WA 98504

RE: WSBA Council on Public Defense Comment on Proposed Amendment to CrRLJ 3.2

Dear Chief Justice Madsen,

I am writing to share with you the enclosed comment from the Washington State Bar Association's Council on Public Defense regarding proposed amendments to CrRLJ 3.2. These comments have been approved through the WSBA's legislative and court rule comment policy and the comments are solely those of the Council on Public Defense.

The WSBA Council on Public Defense unites prosecutors, members of the public and private defense bar, the bench, elected officials and the public to address new and recurring issues impacting the public defense system and the public that depends upon it.

The Council appreciates the Court's consideration of this comment.

Sincerely,

A handwritten signature in cursive script that reads "Paula Littlewood".

Paula Littlewood

Encl.

cc: President William Hyslop, WSBA Board of Governors
Brooks Holland, Chair, Council on Public Defense

Working Together to Champion Justice



Council on Public Defense Comment on Proposed Amendment to CrRLJ 3.2

The Washington State Bar Association Council on Public Defense (“Council”) respectfully submits this comment to the proposed amendment to CrRLJ 3.2. The Council is comprised of representatives of the public and private defense bar, current and former prosecutors, judicial officers, public officials, and at-large members, and has the charge of addressing issues affecting the quality of and access to indigent defense services.

The money bail system has generated significant national debate and calls for reform, including in Washington State. The Council is actively exploring these issues as they relate to indigent defense services. The proposed amendment to CrRLJ 3.2 would directly impact bail practices statewide by eliminating CrRLJ 3.2 (b)(4). This provision permits a cash appearance bond to be submitted directly with the court in an amount not to exceed 10% of the bond value without use of a commercial surety.

The Council understands that the proposed amendment is an effort to address concerns with the holding raised in *State v. Barton*, 181 Wn.2d 148, 331 P.3d 50 (2014), that a court may not require only a cash bail and instead a defendant may always use a commercial surety. This Court recently approved an identical amendment that struck (b)(4) from CrR 3.2. The proposed amendment to CrRLJ 3.2 eliminates the 10% cash appearance bond option altogether instead of prohibiting courts from setting cash-only bail.

In the Council’s view, the proposed amendment goes further than necessary to comply with *Barton*. Further, this amendment would unduly limit judicial discretion to fashion the least restrictive form of bail necessary to ensure an individual defendant’s future appearance. The cash appearance bond option needs to be available for poor and low-income individuals who are unable to secure a bond with property or a commercial surety. The option of having the money returned at the conclusion of the case also avoids unnecessary financial hardship for indigent defendants and their families, and is consistent with the purpose of bail.

The Council concurs with the comment submitted by Superior Court Judge Ronald Kessler recommending that the Court reject the proposed amendment to CrRLJ 3.2 and reconsider the recent amendment made to CrR 3.2. The Council recommends that the Court instead modify both rules with language that addresses the concerns raised in *Barton* but preserves the express option for courts to set a cash appearance bond up to 10% as an alternative to a secured bond. The following language, as an illustration, could accomplish this goal:

[text]

4) Require, but only if requested or agreed by the defendant, the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security allowed by the court as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;

The Council appreciates the Court’s consideration of this comment.

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, April 28, 2016 9:47 AM
To: Tracy, Mary
Subject: FW: Comment to proposed amendment to CrRLJ 3.2
Attachments: 2016.4.28.CrRLJ 3.2 Comments.Council on Public Defense.pdf

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Bonnie Sterken [mailto:bonnies@wsba.org]
Sent: Thursday, April 28, 2016 9:46 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Terra Nevitt <terran@wsba.org>
Subject: Comment to proposed amendment to CrRLJ 3.2

Good morning,

Attached, please find comments from the WSBA Council on Public Defense regarding proposed changes to CrRLJ 3.2. Please confirm receipt.

Thank you,

Bonnie M. Sterken, MPA | Justice Programs Coordinator
Washington State Bar Association | 206.727.8293 | bonnies@wsba.org
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