

## Washington Bail Law

Washington is a right to bail state. Article I, section 20: criminal defendants “shall be bailable by sufficient sureties.” Except if:

- charge is a capital crime (“when the proof is evident or the presumption great”) OR:
- crime punishable by possibility of life (if “clear and convincing evidence of a propensity for violence”)

Criminal Rule (CrR) 3.2 and Criminal Rule for Limited Jurisdictions (CrRLJ) 3.2 were amended in 2002, due to concerns that the prior court rule had disparate racial and economic impacts.

**PRESUMPTION OF RELEASE** under CrR 3.2(a) and CrRLJ 3.2(a) unless:

- Likelihood of court nonappearance(FTA); OR
- Likely interference with witnesses, administration of justice; OR
- Likely commission of a violent crime
  - “violent crime” not limited to SRA definition, RCW 9.94A.030
  - but see Blomstrom v. Tripp, 189 Wn.2d 379 (2017) – DUI is not a “violent crime”

### Showing of likely failure to appear (FTA)

Relevant factors under CrR 3.2(c) and CrRLJ 3.2(c) for assessing likely FTA:

- Prior bench warrants
- NOTE: The number could include warrants unrelated to court FTA, i.e., DOC warrants for noncompliance, warrants issued to ensure transport from another jurisdiction, arrest warrants for new charge when defendant is already in custody
- Employment, family/community ties
  - Enrollment in school, counseling, treatment, or volunteer activities
  - Reputation, character, mental condition
  - Length of residency
  - Criminal record
  - Willingness of responsible community member to vouch for reliability and assist in compliance with release conditions
  - Nature of the charge if relevant to risk of nonappearance

-----  
If FTA risk found, CrR 3.2(b) and CrRLJ 3.2(b) require least restrictive conditions:

- Placement with designated person or organization agreeing to supervise accused
  - No contact orders with persons, places, geographical areas
  - Restrictions on travel or place of abode
  - Pretrial supervision- e.g., day reporting, work release, electronic monitoring, etc.
  - Any condition other than detention to reasonably assure appearance
  - Bond with sufficient solvent sureties or cash in lieu thereof
    - But no “cash only” bail – State v. Barton, 181 Wn.2d 148 (2014)
    - NOTE: Bond can be forfeited only for FTA - State v. Darwin, 70 Wn. App. 875 (1993)
    - Bonding company keeps fee
  - Appearance bond - bond in specified amount, and deposit in the court registry in cash or other security. Deposit:
    - not to exceed 10% of bond amount
    - can be forfeited for noncompliance with any condition, i.e., a new crime
    - returned upon performance of conditions
  - Unsecured bond - basically a written promise to appear, without any security
- NOTE ON MONEY BAIL: Court must consider accused’s financial resources in setting a bond that will reasonably assure appearance. CrR 3.2(b)(6), CrRLJ 3.2(b)(6)

### Showing of substantial danger

Relevant factors under CrR 3.2(e), CrRLJ 3.2(e) for assessing substantial risk of violent reoffense or interference with administration of justice:

- Nature of charge
- Criminal record
- Past or present threats or interference with witnesses, victims, administration of justice
- Past or present use or threatened use of deadly weapon, firearms
- Record of committing offenses while on pre-trial release, probation or parole
- Reputation, character and mental condition
- Willingness of responsible community member to vouch for reliability and will assist in compliance with conditions

**Accord RCW 10.21.050**

-----  
If court finds substantial risk of violent re-offense or interference with justice, CrR 3.2(d), CrRLJ 3.2(d) allow:

- Placement with designated person or organization agreeing to supervise accused
- No contact order with persons, places, geographical areas
- Restrictions on travel or place of abode
- No weapons or firearms, abstain from alcohol or non-prescribed drugs
- Pretrial supervision- e.g., day reporting work release, electronic monitoring, etc.
- No criminal law violations
- Any condition other than detention that will assure justice noninterference, reduce danger
- Unsecured bond – basically a written promise to appear, without security
- Bond with sufficient solvent sureties or cash in lieu thereof
  - No “cash only” bail – State v. Barton, supra
  - NOTE: Bond be forfeited only for FTA - State v. Darwin, supra
  - Bonding company keeps fee
- Appearance bond – bond in a specified amount, and deposit in court registry cash or other security. Deposit:
  - not to exceed 10% of bond amount
  - can be forfeited for noncompliance with any condition, i.e., a new crime
  - returned upon performance of conditions

NOTE ON MONEY BAIL: Court must consider accused’s financial resources in setting bond that will reasonably assure community safety, prevent justice interference. CrR 3.2(d)(6), CrRLJ 3.2(d)(6); accord RCW 10.21.050(3)(a)

-----  
The court must find no less restrictive condition(s) than money bail will assure public safety and/or noninterference with justice. CrR 3.2(d)(6), CrRLJ 3.2(d)(6).

**Delay of release authorized when:**

- Person is intoxicated and release will jeopardize safety or public safety.

- Person has mental condition warranting possible commitment. CrR 3.2(f), CrRLJ 3.2(f)

**Review of Conditions**

Right to reconsideration after preliminary appearance if unable to post bail. CrR 3.2(j)  
NOTE: There is no parallel CrRLJ to CrR 3.2(j).

**Revoking or Amending Release Order**

Change of circumstances or new information or good cause. CrR 3.2(j)(k), CrRLJ 3.2(j)(k); accord RCW 10.21.030

- Revocation requires clear and convincing evidence. CrR 3.2(k)(2), CrRLJ 3.2(k)(2)

**Cases and Statutes**

- Individualized determination; no blanket conditions - State v. Rose, 146 Wn. App. 439 (2008); accord RCW 10.19.055 (individualized basis for class A, B felonies)
- Condition must relate to CrR 3.2, CrRLJ 3.2 goals, preventing FTA or violent crime or justice interference - State v. Rose, supra (random UAs not causally connected to court appearance); cf., “Blomstrom “fix” below
- Condition must not authorize unlawful search - Blomstrom v. Tripp, 189 Wn.2d 379 (2017)-random UAs as a first-time DUI condition is unlawful search; not authorized by CrRLJ 3.2 or statute. But see “Blomstrom “fix”- RCW 10.21.030 authorizes UAs as pretrial condition for misdemeanors, gross misdemeanors (DUI), felonies.
- Condition must be least restrictive condition - Butler v. Kato, 137 Wn. App. 515 (2007) (alcohol treatment and sobriety meetings not least restrictive condition to assure court appearance and hence violate CrRLJ 3.2; also unconstitutional search and violated Fifth Amendment)
- RCW 10.21.015 – no work release, electronic monitoring, day monitoring or other pretrial supervision program if violent or sex offense and violent or sex offense in last 10 years, unless person has posted bail
- RCW 10.21.055 – ignition interlock or SCRAM required where charge is DUI, physical control, vehicular homicide or vehicular assault and prior conviction that involved alcohol