Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, December 14, 2015 8:25 AM
To: Tracy, Mary
Subject: FW: Comment to proposed amendment to CrRLJ 3.2

Supreme Court Clerk's Office

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From: Kessler, Ronald [mailto:Ronald.Kessler@kingcounty.gov]
Sent: Monday, December 14, 2015 8:25 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to proposed amendment to CrRLJ 3.2

The Court proposes to eliminate CrRLJ 3.2(b)(4) which allows an option for judges, in setting bail, of what has been referred to as a 10% appearance bond: defendant posts 10% of the amount of bail, signs a bond with the court and gets the money back when all conditions are met and the case is over; if defendant fails to appear s/he loses the 10% and the court can execute on the bond for the remaining 90%. In *Barton* the Court, interpreting CONST., art. I § 20, held:

> the better view is that a defendant must be allowed the option of a surety arrangement in addition to the option of depositing cash or property in the registry of the court.

State v. Barton, 181 Wn.2d 148, 162 (2014).

By eliminating CrRLJ 3.2(b)(4) the Court proposes to remove the option of a 10% appearance bond. Since *Barton* judges have sometimes set bail at a surety bond <u>or</u> a 10% appearance bond, giving defendants the opportunity to post the 10% with the court rather than buy a bond from a bonding company. While bonding companies are not obliged to charge a 10% premium and sometimes do not, most do and this is costly to indigent defendants and families. In many cases judges impose only a surety bond because the bonding company will assist in apprehension should the defendant fail to appear; this, however, is not always necessary. We know that economic disparity impacts racial disparity; retaining a lesser cash option will provide some relief.

A workaround with the amended rule would be that a judge sets bail at, *e.g.*, $50,000 surety <u>or</u> $5000 cash (a Division III case, *Yakima v. Mollett,* 115 Wn.App. 604 (2003), cited in *Barton,*prohibits cash only bail). I expect that bonding companies would likely challenge this procedure, arguing that the language of proposed CrR 3.2(b)(4) contemplates the same amount.

I suggest that a better approach would be to amend CrRLJ 3.2(b)(5) to read:

> Require the execution of a bond with sufficient solvent sureties, or the deposit of cash, <u>in an amount set by the court</u>, in lieu thereof,

providing defendants with a less costly option for release pending trial.

The Court should also amend CrR 3.2 to reflect the same language.

Ronald Kessler
King County Superior Court