

Jaime Hawk
Legal Strategy Director
Washington Campaign for
Smart Justice



April 30, 2021

Clerk, Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

Re: Proposed Amendment to CrR 3.2 and CrRLJ 3.2
Comment Deadline 4/30/21

Dear Justices of the Supreme Court:

American Civil Liberties
Union of Washington

P.O. Box 2728
Seattle, WA 98111-2728
(206) 624-2184
aclu-wa.org

Michele Storms
Executive Director

The American Civil Liberties Union of Washington (ACLU) respectfully submits this comment in support of the proposed amendments to CrR 3.2 and CrRLJ 3.2 (CrR/LJ 3.2), with some limitations. The proposed amendments to CrR/LJ 3.2 aim to increase pretrial release, specifically of individuals accused of most misdemeanors and non-violent felony offenses. We support the comments and concerns submitted by the Washington Defender Association and King County Department of Public Defense. The ACLU joins in urging the court to adopt proposed 3.2(a) and 3.2(a)(1), but not to adopt proposed 3.2(a)(2) and 3.2(a)(3) that consider whether the accused is on pretrial release or is on probation or community custody because of the harmful and disproportionate impact against individuals of color. Also, the ACLU urges the Court to retain 3.2(b)(4) and the cash appearance bond available to judges in its current form, and not accept the proposed deletion of this section and edits to 3.2(b)(5).

Over the past few years, the ACLU has worked closely with several trial judges and system stakeholders, as well as with many legal and community partners, to advance pretrial and bail reform in Washington and push for consistent implementation of CrR/LJ 3.2 that will increase release and improve case outcomes. CrR/LJ 3.2 is a model court rule in many respects that other states and jurisdictions have sought to adopt as they work to advance pretrial reform and maximize release. The Minority and Justice Commission led important work to improve and strengthen CrR/LJ 3.2 several years ago.

Despite recent statewide efforts to advance pretrial justice, additional progress is needed. Even though the current CrR/LJ 3.2 clearly provides a presumption of release that requires release on personal recognizance and

without financial conditions unless specific factors are found, there remains wide disparity in the statewide implementation of the rule by county and judge. CrR/LJ 3.2 requires that money bail is the last resort after a determination that no combination of least restrictive conditions of release can assure the appearance of the accused, but in practice it is often the first and only option imposed. The rule also requires the court to consider the financial resources of the accused to set a bond that will reasonably assure the accused's appearance. In practice, there is often no meaningful consideration of the accused's ability to pay and bail amounts imposed routinely result in pretrial detention of indigent defendants and coerced pleas to get out of jail, especially in misdemeanor cases.

There is continuing focus statewide and nationally on the inequities and disparities inherent in the current money bail system. Recent data indicates that those detained pretrial constitute approximately 70% of the total jail population in Washington. This number has been even higher throughout the pandemic this past year. In many counties, a portion of those detained in jail are held on relatively small bail amounts of \$5,000 or less. They are jailed on bail awaiting trial, many for non-violent misdemeanors, because they are too poor to pay. Select county data also indicates significant racial disparities and that those held on bail are disproportionately people of color. Money bail practices can unfairly impact the poor, communities of color, and people with certain disabilities. The proposed amendment to 3.2(a) will address these disparities and strengthen the presumption of release in practice.

As we work to reduce the harmful and consequential impacts of pretrial detention, it is important to ensure that CrRLJ 3.2 and CrR 3.2 provide judges with the maximum number of options to construct the least restrictive conditions and form of bail necessary for an individual defendant's future appearance in court. The cash appearance bond option in CrRLJ(b)(4) allows the court discretion to order an amount not to exceed 10% of the bond value without use of a commercial surety or the requirement of collateral. This option should be available and more routinely imposed 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 end of the case also avoids significant financial hardship for indigent individuals and their families and is consistent with the purpose of bail. The proposed amendment to delete 3.2(b)(4) is a step in the wrong direction, and the edits to 3.2(b)(5) are unnecessary and may create confusion.

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For all of the above reasons, we urge you to adopt the proposed amendment to CrR/LJ 3.2(a) and 3.2(a)(1), and retain 3.2(b)(4) in its current form.

We look forward to continued engagement with stakeholders around these important pretrial issues.

Sincerely,

A handwritten signature in black ink that reads "Jaime M. Hawk". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Jaime M. Hawk

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Subject: FW: Comment in support of proposed amendment to CrR 3.2 and CrRLJ 3.2
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[ACLU-WA comment on Proposed Amendment to CrR\(LJ\) 3.2, FINAL.pdf](#)

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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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Dear Supreme Court Rules Committee,

Thank you for the opportunity to comment on the proposed amendments to CrR 3.2 and CrRLJ 3.2. The ACLU of Washington's comment is attached.

Warm regards,

Jaime

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