April 28, 2021

Clerk of the Supreme Court
P.O. Box 40929, Olympia, WA
98504-0929

Aladdin Bail Bonds is pleased to submit this comment on the proposed changes to Rule 3.2 of the Washington Superior Criminal Rules and Rule 3.2 of the Washington Criminal Rules for Courts of Limited Jurisdiction (collectively, "Rule 3.2"). Aladdin operates in King, Tacoma, and Pierce Counties in Washington State. Additionally, we were also a member of the Minority and Justice Commission's task force on pretrial release in 2018. Aladdin and its surety Seaview operate across 9 additional states as well. The move for pretrial reform has been a popular topic across the nation the last several years. We are supportive of reform that helps the pretrial process accomplish the important goals of releasing people under the least restrictive conditions possible while also reasonably ensuring the integrity of the judiciary and public safety. We have always supported such efforts.

There was hard and important work done by the pretrial task force commissioned by the Washington State Minority and Justice Commission. The task force convened in June 2017 and spent 18 months covering all the aspects of the pretrial process. Recommendations were vetted by important stakeholders representing judges, ACLU, law enforcement, prosecutors, defense counsel, indigent defense, bail bonds, bail funds, the state auditor and the office of the governor.

The attached report and recommendations provide a tremendous amount of detail about all the conclusions reached. It is in light of the proposed changes to Rule 3.2 that I would like to direct the Court's attention to an important finding in the work of the task force. The overarching conclusion quickly reached by the task force was that current Rule 3.2, if correctly followed by the judiciary, works extremely well at advancing the goals of pretrial stated earlier. To that end, the task force created a bench card to aid judges in implementing Rule 3.2.

One of the things we shared with the task force was that, based on our multi-state experience working under other court rules, Rule 3.2 is effective for giving judges the tools to release individuals under the least restrictive conditions. It also allows for maximum judicial discretion in determining what the least restrictive option may be on an individual basis.

One of the important realities we endeavor to bring to discussions on pretrial reform is that for a lot of individuals, accessing their freedom through a bail bond will be the least restrictive means of securing their freedom. It also comes with the assurance to the court that it can count on a bail company as an ally to help the individual return to the court's calendar if they have trouble making their court appearances. For people who do not have the ability to access a bail bond, the instruction currently included in Rule 3.2 allows the judge to fashion another release option for them that is the least restrictive option of securing their freedom. These considerations support maintaining the current Rule.

The proposed changes to Rule 3.2 would also create significant Washington State constitutional concerns. Article I, Section 20, of the Constitution provides that criminal defendants "shall be bailable by sufficient sureties." In *State v. Barton*, 181 Wash. 2d 148, 162, 331 P.3d 50 (2014), the Washington

Supreme Court confirmed this important right that facilitates pretrial release and held 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." The proposed change to Rule 3.2 would empower courts to "[r]equire the execution of a bond with sufficient solvent sureties, or the deposit of cash, *which need not be the same amount as the bond*, in lieu thereof." (emphasis in original). The concept appears to be to encourage courts to set bond in such a way to create a disincentive for a defendant to obtain release on a surety bond.

To the extent that a given bond order under the new rule led to a cash deposit being a more favorable option for a particular defendant, presumably that defendant would choose that option. While that is fine as far as it goes, there are other scenarios in which the bond order under the proposed rule would more likely result in pretrial detention. For example, a court could set the surety bond amount at $30,000 and the cash bond amount at $2000. The defendant in this case might well be unable to secure release if he or she lacked $2,000 in cash or sufficient funds for a premium. This would obviously make it more likely that the defendant would stay in jail awaiting trial. The constitutional right to bail upon sufficient sureties would be thus be undermined and rendered a disfavored right, contravening at least the spirit of the *Barton* decision.

Moreover, *Barton* held that a defendant must have "the option of seeking to make bail via a surety, which involves a third-party promise and not merely the deposit of cash or equivalent property with the court." 181 Wash. 2d at 162. Thus, at a bare minimum, any change in the rule must make clear that the defendant always has the option of using a third-party surety to obtain release. And that option cannot be made more onerous than a cash option so that defendants are denied the ability to use a surety, which can often include favorable terms like the ability to pay the premium over time instead of in a lump sum.

In conclusion, the current iteration of Rule 3.2 is, in our multi-state experience, the gold standard at achieving the goals of pretrial release. The current rule maximizes the ability to release defendants on the least restrictive conditions while giving judges the ability to protect public safety. We urge the Court to not modify Rule 3.2. Aladdin would be pleased to engage further with this process if the Court wishes.

Thank you for your time and consideration on these important matters.

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Cc: Charlie Brown <charlie@cascadegovt.com>; Dylan Doty <dylandoty@gmail.com>
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Clerk of the Supreme Court,

Please accept this comment letter for the proposed changes to Crim Rule 3.2.

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