From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comments on proposed amendment to CrR 3.2
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From: Adams, Danika [mailto:Danika.Adams@kingcounty.gov]
Sent: Friday, April 30, 2021 3:04 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on proposed amendment to CrR 3.2

I am writing to provide comments to the members of the Supreme Court regarding the proposed amendments to CrR 3.2. I have been a criminal prosecutor for 14 years and been practicing in the Economic Crimes Unit for the past 5 years, where many of our cases fall have the potential to be classified as "non-violent," and many of the defendants are out-of-custody while the cases are pending.

My starting point is that I absolutely agree with Judge Kessler: we need to reform our pretrial release system. We also need to fully acknowledge the legacy of the systems of racist oppression that brought us to this point. However, the specific changes proposed in this rule would instead create a significant gap the court's ability to protect community safety. My overarching concern is creation of the new ill-defined category of "non-violent crime," and using it as a basis to cut off the discretion of the Judge sitting on the bench.

Under the current CrR 3.2, "violent crime" is used only in reference to the potential for future dangerousness in the community, and it is specifically "not limited to crimes defined as violent offenses in RCW 9.94A.030." See CrR 3.2(a)(2)(a), (a)(2), (d). This permits the Judge the discretion to consider whether releasing a defendant could pose a danger to the community, even if the risk is that the defendant will commit a crime that does not fall under the traditional definition of "violent crime."

The proposed rule turns this discretion on its head. Instead of allowing the Judge to consider more information, it prevents the Judge from considering highly relevant information.

The newly created category of "non-violent" crime has no definition. (The non-limitation on the definition of "violent" crime may suggest some limit on the definition of "non-violent" crime, but this is far from clear.) It would be entirely in the discretion of the Judge to decide if the charged crime (not a risk of future crime) is "non-violent" or "violent." If the Judge finds that the charged crime is "non-violent," and absent any of the specific enumerated factors, release on personal recognizance would be mandatory, foreclosing the Judge from considering not only the risk of future dangerousness, but a host of other relevant information.

This is of particular concern on a caseload like mine, because it is rare for crimes like felony Theft, Identity Theft, Securities Fraud, Burglary, and Money Laundering to meet any casual definition of "violent." Nevertheless, I have prosecuted defendants who have committed atrocious crimes out of greed, for the thrill, or out of perceived need; defendants who have access to significant assets coupled with a

strong disincentive to remain in the jurisdiction; and defendants who have demonstrated through their behavior a remarkable intention to continue victimizing the community.

Under this proposed rule change, unless I could point to a prior FTA in the charged case, current probation/community custody, or another pre-dated pending case, the Judge would be prevented from considering any other information. A defendant who was known to be planning to flee the jurisdiction would be released. A defendant who had already made threats toward witnesses would be released. A defendant who was actively involved in additional criminal schemes would be released. The "violence" of the charged offense is simply too narrow a basis on which to determine something as significant as whether release should be mandatory.

For these reasons, I urge the members of the Supreme Court to reject this proposed amendment, however I look forward to being involved in further efforts to reform the pretrial release system.

Regards,

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