From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment re: proposed amendment to CrR 3.2/CrRLJ 3.2
Date: Friday, April 30, 2021 1:35:23 PM

From: Maryman, Bridgette [mailto:Bridgette.Maryman@kingcounty.gov]
Sent: Friday, April 30, 2021 1:30 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment re: proposed amendment to CrR 3.2/CrRLJ 3.2

We write to raise concerns about the proposed amendments to CrR 3.2 and CrRLJ 3.2, with particular attention to how the amendments will affect domestic violence offenders and survivors. We are Senior Deputy Prosecutors in King County, and leaders in our office's Domestic Violence Unit.

We share Ret. Judge Kessler's concern about reforming the use of pretrial confinement and agree that many defendants charged with non-violent offenses should be released on their personal recognizance. Such a presumption of release is codified in our Constitution and the existing court rules. However, whereas trial courts could previously consider both the facts of the crime charged and a defendant's criminal history, under the proposed amendments, a trial court would now be prohibited from establishing any conditions of release for defendants charged with non-violent offenses, unless they meet a few limited exceptions. This mandatory release provision not only prevents prosecutors from seeking bail or less-restrictive conditions of release; for felony offenses, it also prevents victims from exercising their Constitutional right to speak at a hearing where release is considered. Additionally, as it relates to domestic violence offenses, the proposed amendments conflict with RCW 10.99.045, which directs the trial court to determine the need for any pretrial release conditions, including EHD under RCW 10.99.040, and further directs the prosecutor to provide the trial court with specific information to aid in such a determination.

Several other commenters have raised concerns that the mandatory release provision for "non-violent offenses" may encompass a number of concerning crimes that are not defined as violent under RCW 9.94A.030. The issue of defining violent crime continues to be a problem, and the proposed amendments likely enhances that confusion instead of reducing it. Although trial courts have always had the discretion to determine what constitutes a violent offense under the rule, the undefined phrase is problematic when tied to mandatory release provisions. In the field of domestic violence, crimes such as Felony Harassment, Stalking, Cyberstalking, Violation of a Court Order, Residential Burglary, Rape in the Third Degree, and Unlawful Possession of a Firearm often do not involve clear acts of violence. However, these crimes create significant safety concerns for the victims and the broader community. Under the proposed amendments, a trial court could believe that it has no discretion to set conditions of release in such cases because a defendant is not charged with a "violent offense." As a result, a victim would receive no opportunity to speak regarding release, and no meaningful conditions could be set.

Additionally, unless the case falls within the narrow exceptions, the proposed amendments prohibit trial courts from considering concerns about violence or the administration of justice in cases where no violence is alleged. In the case of an unwanted—but non-violent—VNCO, the trial court would be prohibited from considering history of stalking or violence. Likewise, the court would be required to release a defendant who tampers with a witness in between the original crime and arraignment—simply because the tampering was not a violation of conditions of release. Finally, the proposed amendments would prohibit a court from setting bail or conditions when a defendant has documented access to a firearm, but the firearms have not been surrendered. Such results are not required by the Constitution and not consistent with the purpose of the court rules.

As other commenters have stated, the list of exceptions for "non-violent" offenses is also too narrow. Under the proposed list, a Court cannot consider criminal or protection order history unless a defendant is on probation or community custody. Again, such a rule conflicts with RCW 10.99.045. Moreover, it ignores the reality of DOC supervision. Due to statutory changes requiring risk assessment or qualifying history, DOC is not required to supervise most low to moderate-risk offenders sentenced to under 12 months, even if the trial court imposes community custody. See RCW 9.94A.501, 702. Therefore, a number of defendants with recent convictions for violent offenses or crimes against persons may not be on community custody and therefore subject to the mandatory release provisions of the proposed amendments.

Domestic violence offenses present significant concerns for violent recidivism—regardless of the charge a defendant is currently facing. The Legislature has repeatedly recognized the lethality issues involved in domestic violence—most recently in passing the Tiffany Hill Act. Likewise, the E2SHB 1517 Report to the Washington State Legislature and Governor Jay Inslee led by the Supreme Court's Gender and Justice Commission recently recommended several changes to CrR 3.2 and CrRLJ 3.2, to give trial courts more information in such cases. These recommendations include incorporating DV-specific factors in subsection (e), . (full report available at https://www.courts.wa.gov/content/publicUpload/GJCOM/FINAL_DV_Risk_Assessment_Work_Group_Report_2020.pdf). Judge Kessler's proposed amendments appear inconsistent with statewide efforts to better inform pretrial decisions on cases involving domestic violence.

The proposed amendments are well-intentioned and address concerns that we all must face head-on. Indeed, over the last year, King County has made great strides to release non-violent offenders who do not present risks to commit a violent offense or interfere with the administration of justice, cutting the jail population by almost one third. This has involved nuance review of cases and defendant's history and that work should continue. However, the work to reform bail practices should be taken up in concert with efforts to build more robust alternatives to secure detention, including GPS monitoring, work release, home detention, and day reporting. Release decisions should also include, not exclude, the victims' voice from pretrial decisions. A better-informed approach would encourage trial judges to use confinement sparingly, while ensuring victim and community safety.

Thank you again for the opportunity to comment on the proposed amendments to CrR 3.2 and CrRLJ 3.2.

Sincerely,

Bridgette Maryman, Domestic Violence Unit Vice Chair, Seattle
Angela Kaake, Domestic Violence Unit Vice Chair, Kent
Kimberly Wyatt, Regional Domestic Violence Firearms Enforcement Unit
David Martin, Domestic Violence Unit Chair