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**From:** Houston, Kyle [mailto:Kyle.Houston@kingcounty.gov]  
**Sent:** Friday, April 23, 2021 2:08 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment on Proposed Rule 3.2

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To Whom it May Concern:

I have been a Deputy Prosecuting Attorney with King County for nine years. During my tenure with the office, I have handled over a hundred first appearance investigation calendars. The number of cases on each calendar can range from 1 to 40, occasionally more.

The proposed Rule 3.2 fails to take in account a number of considerations when it comes to offenses labeled as non-violent. First, there are multiple non-violent offenses that poses a significant danger to the community or could easily have escalated to a violent offense. For example, while residential burglary is not considered a violent offense, it is still an incredibly dangerous offense because of the high potential for violence if the burglar is confronted by an occupant of the residence. The result could very well be the occupant having to act to defend their own person or property, or the burglar harming the occupant which would escalate the offense to Burglary in the First Degree, a violent offense. The proposed rule would not adequately address the community safety concerns because a repeat burglar who doesn't have a pending case, is not on probation, or in community custody would be released. Other non-violent offenses that could have easily escalated to a violent offense or poses a real threat to the safety of other people would include: Felony Eluding (where all it would take to escalate to a vehicular homicide or assault charge is the driver crashing into another vehicle which is often a real danger when they drive recklessly at excessive speeds); Driving Under the Influence (which poses a significant danger to other drivers, and like Felony Eluding, could easily escalate to a vehicular homicide or assault charge if a crash occurs); or Organized Retail Theft (which can escalate to robbery if the defendant is confronted while the theft is in progress).

Second, the proposed Rule 3.2 significantly minimizes the impact of property offenses on the victims. The financial and emotional toll to victims of property offenses can be quite considerable. This is even more true when the victim is already struggling to make ends meet and cannot afford to

repair or replace the property. I have seen dozens of cases involving repeat theft of a motor vehicle or possession of a stolen vehicle offenders, and in many of those cases, the vehicle has been significantly damaged to the point where it's inoperable and would cost too much to repair and the victim must either replace the vehicle or go without. Mandating the release of repeat property offenders who do not meet the criteria could result in additional victims being significantly impacted by those offenders.

Third, the proposed rule does not take into account cases where the defendant has a demonstrated pattern of violent or threatening behavior towards a victim, particularly in domestic violence cases. Because violating a non-contact order is considered a non-violent offense, this rule could very well mandate release for defendants who have a long history of violent behavior towards the protected party even when it is clear to the Court that the defendant is likely to commit a violent offense.

Fourth, proposed 3.2(a)(3) as written is ambiguous – “an offense alleged to pre-date the current charge.” Does that mean the defendant has to have been charged with the prior offense, or would this include prior uncharged offenses where the defendant had been released on first appearance? I have observed multiple instances where a defendant was released on his or her personal recognizance at first appearance and within hours of being released from custody, immediately commit a new offense, then end up back on the first appearance calendar again the next day. The State has 72 hours to file charges from the time of booking, and if the State hasn't filed the charges in the earlier case by the time of the first appearance in the latter case, is the Court barred from considering the earlier case?

The current Rule 3.2 allows for Judges to be able to exercise discretion in all cases including non-violent cases in a manner that is fact-specific, which is necessary since each case and defendant is different. Reducing the ability of Judges to exercise this discretion could have potentially significant impacts on the safety of the community.

For the foregoing reasons, I respectfully request that the Court decline to adopt the proposed Rule 3.2 as written.

Sincerely,

Kyle Houston

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