From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment re: proposed CrR 3.2/CrRLJ 3.2 amendment
Date: Monday, April 19, 2021 4:14:51 PM

From: Kuper, Marlana [mailto:Marlana.Kuper@kingcounty.gov]
Sent: Monday, April 19, 2021 4:06 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment re: proposed CrR 3.2/CrRLJ 3.2 amendment

Hello,

I am a WSBA member in practice for less than 5 years. I am familiar with CrR 3.2 and regularly argue the standard.

I do not support Ret. Judge Kessler's well-meaning proposed amendment to CrR 3.2. First, the proposal calls for a bright line rule of release turning on whether an offense is violent or nonviolent - but leaves the key term on which the decision turns undefined. Thus, while the proposal laudably purports to remove judicial discretion to improve parity amongst bail determinations, ambiguity in the rule will instead lead to increased disparity. Second, in certain cases public safety will be affected by a proposal that removes individualized review of the offender for whom bail is being requested. For example, consider a suspect high on methamphetamines who commits a hit and run while armed with a stolen firearm and driving a stolen vehicle. He leads police on a high speed chase for 2 miles and nearly crashes into several other drivers while reaching speeds of 100mph until police terminate the pursuit. Assume he is charged with Possession of Stolen Vehicle, Possession of Stolen Firearm, Attempt to Elude a Pursuing Police Vehicle, and Hit & Run at warrant and appears at arraignment. Because each charge is non-violent and a crime against property, the proposed rule may well require a judge to release this suspect as a matter of right. Even if not, many courts are likely to interpret the proposed rule in this manner, and the ones that do not will contribute to the increased disparities mentioned above. Courts have long-recognized that bright line rules are ill-suited to highly fact-specific situations, and they have applied that principle to criminal cases in many areas. In my view this Court should similarly decline to adopt the proposed amendment to CrR 3.2. It fails to define a key term, violent crime, it is contrary to longstanding principles of individualized judicial review, and it is likely to increase disparity in bail determinations.

I do think the proposal does well, however, in recognizing that offenders previously released on

personal recognizance or bail for an offense alleged to pre-date the current charge make up a substantial portion of the cases in which judges make bail decisions. I support recognition of this common scenario as an additional factor in any future proposed change to CrR 3.2.

Thank you for your consideration.

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