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Subject: FW: Proposed changes to CrR 3.2/CrRLJ 3.2
Date: Wednesday, April 28, 2021 4:23:07 PM
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From: Vitalich, Andrea [mailto:Andrea.Vitalich@kingcounty.gov]
Sent: Wednesday, April 28, 2021 4:16 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed changes to CrR 3.2/CrRLJ 3.2

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Dear Sir or Madam,

I have been a deputy prosecuting attorney for King County for over 25 years. I am writing because I am concerned about the proposed changes to CrR 3.2 and CrRLJ 3.2.

In addition to the concerns already expressed by several other commenters (*i.e.*, that the rule requires release without conditions even for defendants with egregious histories of FTAs in previous cases and for defendants with previous convictions for violent offenses, so long as the current offense is deemed “non-violent”), I wanted to express my more overarching concern about diminishing trial judges’ discretion.

I am an experienced appellate practitioner as well as a trial attorney. It is an axiomatic principle that an appellate court should not substitute its judgment for that of a trial judge in matters where the trial judge’s decision is discretionary. With respect to matters concerning pretrial release and setting bail, trial court judges currently have broad discretion—which is as it should be. There are numerous factors that should weigh into the calculus of whether release on PR is appropriate or not in an individual case, and every case—and every defendant—is different. A one-size-fits-all approach that essentially abolishes the exercise of discretion in all but limited circumstances is a poor policy choice, both legally and factually.

Moreover, without solid data demonstrating that trial court judges in Washington State are

routinely holding non-violent offenders in jail or setting inappropriately high bail, this appears to be a solution in search of a problem. At the very least, diminishing the trial courts' discretion in this fashion is too important an issue to legislate via the Court's rulemaking authority without undertaking further inquiry into the need for such a rule change.

Thank you for your attention to this matter.

Sincerely,
Andrea Vitalich



Andrea Vitalich

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