From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: CrR 3.2 and CrRLJ 3.2 Comment on proposed amendments
Date: Thursday, April 29, 2021 3:35:34 PM

From: April King [mailto:April_King@co.columbia.wa.us]
Sent: Thursday, April 29, 2021 3:34 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: CrR 3.2 and CrRLJ 3.2 Comment on proposed amendments

Good afternoon:

I write to respectfully express deep concerns about retired Judge Kessler's proposed rule changes. These amendments fail to consider the integrity of the judicial system, community safety, victim and witness safety. These amendments will erode public confidence in the justice system and will deter the reporting of certain offenses, especially domestic violence, (DV), offenses and "nonviolent" sex offenses.

Firstly, under the current rules the vast majority of arrestees and charged defendants in this county are already released on conditions without posting any bail money. Secondly, the classification of an offense as "nonviolent" does not mean that victim, witness and community safety are not affected. Common examples are DV related offenses such as harassment, stalking and violation of no contact orders. Mandatory release without bail in these cases would not give domestic violence victims any protection and will discourage reporting of offenses which are already underreported. Attempting to elude law enforcement is another "nonviolent" offense although high speed vehicle chases are clearly extremely dangerous. Felony level DUI is also not a violent offense but clearly implicates public safety. Assault of a child 3rd degree is also not violent. There are even certain sex offenses that are not classified as violent and under the proposed rules would result in mandatory release without bail. These include rape of a child in the 3rd degree, voyeurism, sexual misconduct with a minor, sexual exploitation of a minor, possessing depictions of minors engaged in sexually explicit conduct, (child pornography).

It is alarming that Interference with the administration of justice, and the likelihood of victim/witness pressure or intimidation cannot under the proposed new rules be considered on a case by case basis. We frequently see individuals arrested for DV offenses who then make phone calls to the victim/witness from jail. Repeated violations of no contact orders are common but are

also not classified as "violent" and would result in mandatory release orders. Offenses committed against children within a family system inevitably divide family loyalties and make it harder for witnesses to report offenses and make it easier for them to be pressured or persuaded into not providing a statement or changing their statement. And yet the court and parties cannot take these factors into consideration under Judge Kessler's proposed amendments. Even the crimes of witness intimidation, juror intimidation, and tampering with a witness would be subject to mandatory release under the new rules without an opportunity to consider interference in the administration of justice.

The trial court is in a much better position to assess these factors and make an informed decision based upon the specifics of each case and the situation of each defendant. A rule that completely removes the trial court's discretion is counterproductive, overbroad, and disregards the professional judgement and experience of other judicial officers. A trial court should have the discretion to set bail based on a defendant's criminal history and the facts of a case– if the court rule limits that discretion, the rule needs to delineate crimes that are included or excluded in this consideration. By removing the trial court's discretion entirely, the Supreme Court is in effect is signaling to the rest of the judiciary and the public at large that the Supreme Court does not trust the judgement of any trial court.
Mandatory release without any consideration of an individual's previous criminal history or failures to appear will inevitably result in more failures to appear and more bench warrants that law enforcement will have to serve which can be dangerous for both law enforcement and the accused.

Failing to appear for hearings creates additional court delay which is a source of great frustration with witnesses and victims. Even under the current release rules, victims and witnesses in our community have expressed great frustration with the criminal justice system due to delays that are unavoidable if we are to properly investigate and litigate the merits of a case.

In 2019 New York state enacted similar court rule amendments only to "dial them back" in 2020 after New York City observed a crime rate increase of 22%. For example, based on an NYPD report, 482 people who had been arrested and released went on to commit 846 new crimes. I am concerned Washington state may make a similar mistake.

To see examples of how the law backfired, you need look no further than the subsequent news articles:
https://www.wsj.com/articles/the-no-bail-fiasco-in-new-yorkthe-no-bail-fiasco-in-new-york-11583534248
https://nypost.com/2021/02/05/new-yorks-deadly-revolving-door-for-gun-criminals/

Thank you for providing the opportunity to review the proposed amendments and provide these comments.

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