To Whom It May Concern,

This comment is based on the clarified proposal by Judge Kessler (retired) dated February 24, 2021. Though we appreciate that the definition of "violent" crime for the purposes of the rule remains broader than the SRA's definition, we also believe the proposed rule will be unwieldy and perhaps capricious in practice. The proposed rule attempts to create a distinction between "non-violent" crimes, for which there is mandatory release unless one of three exceptions apply, and "violent" crimes for which the court retains discretion to set a bail amount.

However, this distinction is not nearly so clear, as the trial court retains the ability to, and must under the proposed rule, make a threshold decision whether a given offense is "violent" or "non-violent" without any firm definition or guidance. We believe this will likely produce time consuming arguments and litigation over this threshold issue and will also lead to highly disparate outcomes for the same offenses. For example, one judge may decide that Residential Burglary against an intimate partner is absolutely a "violent "crime for which bail may be set, while another judge may find this offense is obviously "non-violent" and that release is mandated. Or, one judge may conclude that Delivery of a Controlled Substance and Unlawful Possession of a Firearm are "non-violent" offenses as general crimes against the peace and dignity of the State as a whole. Another judge may conclude these very same crimes are indisputably "violent" and pose a grave risk to community safety. Such disparate outcomes will be exceedingly difficult to explain to the public and cannot improve confidence in the courts. Furthermore, given the broad discretion vested in the trial court to make this threshold decision, we question whether the rule is likely to achieve the author's goal or whether it will simply arrive at the same destination as the current rule but via a more laborious and confusing path. For these reasons, we respectfully suggest the rule not be adopted.

To be clear, we support bail reform and decreased reliance on pretrial incarceration where appropriate. Our concern is that the proposed rule is likely to produce wildly inconsistent outcomes and will create needlessly layered and complex bail hearings. Rather than limiting the discretion of the trial court, the proposed rule is likely to only complicate, or perhaps obfuscate, the exercise of essentially the same level of discretion. The proposed rule also seems likely to maintain reliance on money bail, but via a more elaborate processes. We believe that more holistic reform is needed to focus pretrial release decisions on community safety. To be successful, this may require taking into account local resources and practices as noted in the 2019 report from the Washington Pretrial Reform Task Force.

Respectfully submitted,

Clark County Prosecuting Attorney's Office
Action and Reform Committee - External Policy Subcommittee

Amanda Migchelbrink
Subcommittee Chair/Deputy Prosecutor

Leslie Lopez
Senior Deputy Prosecutor

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From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Comment to Proposed CrR 3.2 and CrRLJ 3.2
Date: Thursday, April 29, 2021 4:43:06 PM
Attachments: ARC CrR 3.2 and CrRJL comment.pdf

From: James Smith [mailto:James.Smith2@clark.wa.gov]
Sent: Thursday, April 29, 2021 4:39 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Amanda Migchelbrink <Amanda.Migchelbrink@clark.wa.gov>; Deb Wechselblatt <Deb.Wechselblatt@clark.wa.gov>
Subject: Comment to Proposed CrR 3.2 and CrRLJ 3.2

Hello,

Please find attached a comment to each of these proposed rules from the members of the Clark County Prosecuting Attorney's Office Action and Reform Committee- External Policy Subcommittee.

Respectfully,

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Team Leader/Senior Deputy Prosecuting Attorney
Children's Justice Center
Clark County Prosecuting Attorney
Pronouns used: he, him, his
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