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April 30, 2021

VIA EMAIL

Honorable Charles W. Johnson
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: Comment on Proposed CrRLJ 3.2 Amendment

Dear Justice Johnson and Members of the Rules Committee:

On behalf of the District and Municipal Court Judges' Association (DMCJA), I am writing to oppose in part and support in part the adoption of Judge Ronald Kessler's (Ret.) proposed amendments to CrRLJ 3.2.

The first set of amendments address CrRLJ 3.2(a), dealing with recognizance. The amendments to subsection (a) of CrRLJ 3.2 would preclude recognizance (bail / bond) as a pretrial release condition for non-violent offenses unless the accused has failed to appear on the current charge, is on probation for another charge, or has a pending charge pre-dating the current offense. Unless one of the above-noted factors is present, recognizance could not be ordered for a non-violent offense, even if evidence before the court supports a finding of a likely failure to appear (FTA). The judge would also be precluded from requiring recognizance for non-violent offenses even if evidence supported a finding of substantial danger that the accused will commit a violent crime, intimidate witnesses, or interfere with the administration of justice.

CrRLJ 3.2 already contains a presumption of release without recognizance. In order to require recognizance, the court must make specific findings of a likely failure to appear or a substantial danger that the accused will commit a violent crime, intimidate witnesses, or interfere with the administration of justice. The current rule also requires the court to consider the defendant's financial

circumstances and set recognizance adequate to assure the defendant's appearance. Correctly applied, the current version of CrRLJ 3.2 protects defendants from unnecessary and burdensome release conditions and provides the court the discretion to protect individuals and the public when release conditions are supported by evidence.

The basis for this proposal, according to the GR 9 cover sheet, is a belief, without any supporting facts, that the existing requirements of CrRLJ 3.2 are often not honored. If judicial officers are not scrupulously honoring the requirements of the rule, the better remedy is education, not the stripping away of discretion exercised by trial court judges properly applying the rule. For the above-stated reasons, the DMCJA opposes the amendments proposed for CrRLJ 3.2(a).

The second set of amendments impact CrRLJ 3.2(b). The amendments proposed for subsection (b) of CrRLJ 3.2 only address posting bail. If adopted, this amendment would eliminate the ability to post 10% on a bond and would permit cash bail. The DMCJA supports this change in the current rule as it would provide the court with additional discretion in setting recognizance. Additionally, while a forfeited bond cannot be reinstated by the trial court, forfeited cash bail could be reinstated. For these reasons, the DMCJA supports the amendments proposed for CrRLJ 3.2(b) pertaining to cash bail.

In sum, the DMCJA requests that the Court reject the proposed amendments to CrRLJ 3.2(a) and approve the proposed amendments to CrRLJ 3.2(b).

Thank you for your consideration.

Sincerely,



Judge Michelle K. Gehlsen
DMCJA President

cc: Judge Jeffrey Goodwin, DMCJA Rules Chair
Ms. J Benway, DMCJA Rules Staff

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: Draft Rule Comment Letters re GR 39 and CrRLJ 3.2
Date: Friday, April 30, 2021 4:19:30 PM
Attachments: [DMCJA Cmt Ltr re GR 39 \[LFO\] proposal.pdf](#)
[DMCJA Cmt Ltr re CrRLJ 3.2 proposed amendment.pdf](#)

From: Dugas, Tracy
Sent: Friday, April 30, 2021 4:16 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'Gehlsen, Michelle' <mgehlsen@kingcounty.gov>; 'jeffrey.goodwin@snoco.org' <jeffrey.goodwin@snoco.org>; Benway, Jennifer <Jennifer.Benway@courts.wa.gov>; Oyler, Stephanie <Stephanie.oyler@courts.wa.gov>
Subject: Draft Rule Comment Letters re GR 39 and CrRLJ 3.2

Greetings,

Please see the attached draft rule comment letters, sent on behalf of Judge Michelle Gehlsen, DMCJA President.

Thank you,

Tracy Dugas | Court Program Specialist
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In response to COVID-19 I am working from home and available by phone, Skype & email.