From: OFFICE RECEPTIONIST, CLERK
To: Linford, Tera
Subject: FW: Proposed rule amendment: CrR/CrRLJ 3.2
Date: Wednesday, April 28, 2021 10:32:11 AM

From: Gary Hersey [mailto:Gary.Hersey@ci.bremerton.wa.us]
Sent: Wednesday, April 28, 2021 10:30 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed rule amendment: CrR/CrRLJ 3.2

Good Morning,

I am writing in opposition to the proposed amendments to CrR 3.2 and CrRLJ 3.2.

If enacted, the rule would pose a serious risk to the safety of victims and the community at large. This rule deprives the Courts of the ability to exercise discretion to determine the least restrictive conditions of release to ensure the defendant's appearance and the safety of the community. If enacted, this rule will result in significantly more pretrial cases with active warrants that never resolve or return years later, only to be dismissed due to stale evidence and missing/uncooperative witnesses. Justice would be delayed or denied entirely for victims of crime and defendants may never have the incentive to get the treatment they need.

If this rule is enacted, it will lead to absurd and at times dangerous results. For example:

- A defendant from out-of-state could tell the Court on the record at their first appearance they plan to leave the State and never return. As long as the charge is non-violent, the Court would be mandated to release the defendant.
- A defendant charged with violating a civil domestic violence no-contact order could tell the arresting officer they plan to go back to the victim's house no matter what the order says. They could continue to violate the order and call the victim from the jail over the weekend before their first appearance. As long as that defendant is not on probation or pending another charge, the Court's hands would be tied.
- A repetitive DUI driver charged with felony DUI who has a history of ignition interlock violations, dozens of lifetime warrants, multiple bail jumping convictions and a documented history of not following court orders would be released automatically.
- A defendant charged with tampering with a witness, intimidating a witness, tampering with physical evidence, and rendering criminal assistance related to a pending murder

investigation would be released without any argument or consideration of the risks.

I have practiced in multiple counties and jurisdictions throughout my career as both a defense attorney and a prosecutor. In my experience, Judges across the State are sensible, cautious and do not have any issue following CrR/CrRLJ 3.2 in its current form. The vast majority of defendants are already released under the least restrictive conditions for non-violent offenses (oftentimes over objection of the prosecutor). In my experience, it is only a small percentage of defendants who pose a serious and documented risk of flight, danger to the community or likelihood to interfere with the administration of justice that actually have bail set. If there are Judges who are not honoring the current rule, the solution should not be to deprive all other Courts of their discretion, but to investigate those Judges. An overcorrection of this nature is not appropriate.

Respectfully,

Gary Hersey
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