

KING COUNTY PROSECUTING ATTORNEY'S OFFICE



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PROSECUTING ATTORNEY

JUSTICE
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VIA EMAIL

April 29, 2021

Clerk of the Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Amendments to CrR/CrRLJ 3.2

Dear Justices of the Supreme Court,

Thank you for seeking comments to the proposed amendments to the Superior Court Criminal Rules (CrR) 3.2 Release of Accused and Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 3.2 Release of Accused.¹ After carefully reviewing the proposed changes and the comments filed in support and opposition to them, I urge you to reject the changes mandating the release of any person charged with a non-violent crime who has not previously failed to appear on the current offense, is not on probation or community custody, or on pretrial release for an older crime. While I fully support, and our office is actively engaged in pursuing equitable bail reform,² the proposed changes fall far short of achieving that laudable goal by failing to define critical terms and eliminating judicial discretion in situations where community safety and public trust require bail or other conditions of release.

As currently drafted, the proposed changes do not explain what qualifies as a “non-violent” or “violent” crime other than to suggest that a violent crime is not limited to the definition of a violent offense under RCW 9.94A.030. Although I wholeheartedly agree that the definition of a violent crime should not be so limited, the proposal’s failure to clearly define critical terms will lead to confusion, inconsistent application, and disparate outcomes. To better ensure the presumption of release and reflect the abolishment of the death penalty, the rule should be amended to provide simply “Any person charged with an offense . . .”³ and not utilize undefined or ambiguous terms.

¹ Although my comments focus on the proposed changes to CrR 3.2, they apply with equal force to the proposed changes to CrRLJ 3.2, which are nearly identical, and should be considered accordingly.

² We have an active bail reform committee that meets regularly and is studying bail practices and reforms in other jurisdictions. That committee is carefully examining our own bail practice for areas of improvement.

³ Using the strikethrough font for deletions and underline font for additions to the current rule in effect, the suggested changes would appear as follows, “Any person, ~~other than a person~~ charged with an capital offense . . .”

There are multiple scenarios involving “non-violent” offenses where bail or other conditions should be imposed to protect community safety and maintain public trust that are not contemplated by the proposed changes. As currently drafted, the proposed rule would mandate the release of the following:

- An offender with prior violent criminal history
- An offender charged with a property offense facing a lengthy prison sentence
- A prolific, repeat property offender wreaking havoc in the community
- A domestic violence offender charged with violating a no-contact order with prior domestic violence convictions
- An offender taking advantage of vulnerable victims
- An offender with extensive failure to appear history

Proposing a bright line rule to dictate judicial determinations of highly-fact specific situations is shortsighted and contrary to the letter and spirit of the rule providing for nuanced and multi-factored decision making. See e.g., CrR 3.2(c)(1)-(9) (setting forth nine relevant facts the court shall consider when determining which conditions of release will reasonably assure the accused’s appearance “including but not limited to . . .”) (no proposed changes); CrR 3.2(e)(1)(-8) (setting forth eight relevant facts the court shall consider when determining which conditions of release will reasonably assure the accused’s noninterference with the administration of justice and reduce danger to others or the community “including but not limited to . . .”) (no proposed changes).

A judge’s pretrial release decision has an enormous impact on victims, public safety, the accused, and their loved ones. While most individuals charged with a non-violent offense should be released on their personal recognizance, that is not true for certain individuals whose prior criminal history, nonstop offending, or chronic failure to appear warrant setting bail or other conditions. I respectfully urge you to reject the proposed amendments requiring the release of any person charged with a non-violent offense who has not previously failed to appear on the matter, is not currently on probation or community custody, or is not on pretrial release for an older crime.

Sincerely,



DAN SATTERBERG
King County Prosecuting Attorney

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Subject: FW: Letter from King County Prosecutor Dan Satterberg
Date: Wednesday, May 12, 2021 9:45:28 AM
Attachments: [DTS Letter re CrR 3.2.pdf](#)

From: Colasurdo, Mary [mailto:Mary.Colasurdo@kingcounty.gov] **On Behalf Of** Satterberg, Dan
Sent: Thursday, April 29, 2021 10:03 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Letter from King County Prosecutor Dan Satterberg

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Good morning, Justice of the Supreme Court.

Please find the attached letter from King County Prosecutor Dan Satterberg. Thank you!

Best,
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