From:	OFFICE RECEPTIONIST, CLERK
To:	Linford, Tera
Subject:	FW: comments on proposed amendment to CrR/CrRLJ 3.2
Date:	Friday, April 30, 2021 1:05:29 PM

From: Hinds, Patrick [mailto:Patrick.Hinds@kingcounty.gov]
Sent: Friday, April 30, 2021 1:05 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: comments on proposed amendment to CrR/CrRLJ 3.2

Dear Clerk of the Supreme Court,

I am a senior deputy prosecuting attorney with the King County Prosecuting Attorney's Office and am currently assigned to the office's Economic Crimes Unit. The vast majority of the cases that I prosecute are classified as non-violent and most of the defendants are out-of-custody pending trial. I am writing to add my voice in strong opposition to the adoption of the proposed amendments to CrR 3.2 and CrRLJ 3.2.

As an initial matter, I would note that I actually agree with what appears to be the motivating principle behind the proposed amendment—most defendants charged with non-violent offenses should be released on personal recognizance with other conditions imposed as necessary. That core premise is codified in our Constitution and is the presumption under the existing rule. It is important, however, that this presumption can be overcome in certain circumstances. In this context, the problem with the proposed amendment is in its attempt to create an effectively mandatory release provision that would override the discretion of the trial court if the charge is a "non-violent crime." This creates at least three significant issues.

First, under the proposed amendment, a defendant charged with a non-violent crime ***must*** be unconditionally released on his or her own personal recognizance unless he or she: 1) has already failed to appear in the current case, 2) is currently on probation or supervision, or 3) is on pretrial release for an older crime. But this fails to take into account the fact that even a defendant charged with a non-violent crime might still pose a risk of committing a violent offense or interfering with the administration of justice if released. Take, for example, a hypothetical case in which a defendant with no prior criminal history is arrested, booked into jail, and charged with Theft in the First Degree for embezzling money from an employer. This is clearly a non-violent crime. Under the existing rule,

if there was persuasive evidence showing that if released the defendant was likely to commit a violent offense (e.g. assaulting the victim for reporting the crime) or to interfere in the administration of justice (e.g. destroying evidence), the trial court would be able to require bail/bond and/or impose common-sense conditions of release. Under the proposed amendment, however, that would not be an option and the trial court would be required to unconditionally release that defendant on his or her own personal recognizance despite the clear likelihood that the defendant would commit a violent offense and interfere in the administration of justice.

Second, the proposed amendment requires the court to unconditionally release defendants even in the face of overwhelming evidence that the defendant will not voluntarily reappear in court absent the imposition of bail and/or other conditions. The proposed amendment would preclude a trial court from considering such factors as the defendant's history of failing to appear in non-pending cases, the likely length of sentence the defendant faces, the strength of the defendant's connection to the community, and even the defendant's stated intention. Take, for example, a hypothetical case in which a defendant is charged with a non-violent crime, but has no pending cases and is not on probation or supervision. He does, however, have 15 prior resolved felonies including convictions for escape and bail jumping, has failed to appear more than 50 times in the last 10 years, is facing a standard range sentence of 63-84 months in prison, has no ties to the community, and outright tells the judge at first appearance that if released he intends to flee the state and never voluntarily return. Despite all of that, under the proposed amendment, the trial court would appear to be required to unconditionally release that defendant on his personal recognizance.

Third, the new mandatory release provision effectively created by the proposed amendment applies if the charge is "non-violent," but the proposed amended rule fails to explain what constitutes a "non-violent" versus "violent" crime for these purposes. There are a significant number of crimes that do not involve clear or obvious acts of violence, but create a very real concern for the safety of the victim(s) and the broader community. This includes, inter alia, Assault in the Third Degree, Felony Harassment, Stalking, Violation of a Court Order, Residential Burglary, Attempting to Elude, Rape in the Third Degree, and Unlawful Possession of a Firearm. While the amended rule would continue to recognize that "violent crimes" are not limited to the definition of a violent offense under RCW 9.94A.030, the combination of mandatory release for a class of crimes with the lack of definition of that class will—at best—lead to confusion and substantial litigation. At worst, a trial court could believe that it has no discretion to set conditions of release in such cases because the defendant is not charged with a "violent offense."

In sum, a judge's pretrial release decision is, in many ways, one of the most important decision that can be made during the course of a given case. While most defendants charged with non-violent offenses are and should be released on their personal recognizance, that is not always the case. In virtually all situations, however, the trial court judge is the person in the best position to weigh all of the factors at issue and to make the decision about a certain defendant in a certain case. Ultimately, the problems with the proposed amendment are that it removes discretion from trial courts, requires trial court judges to ignore probative evidence, and creates confusion by making the analysis turn on the application of a phrase that is left entirely undefined. For all of these reasons, I respectfully urge the court to reject the proposed amendment.

Sincerely,
Patrick Hinds

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