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Subject: FW: Proposed amendments to CrR 3.2 and CrRLJ 3.2
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From: Fine, Seth [mailto:sfine@co.snohomish.wa.us]
Sent: Friday, April 30, 2021 2:38 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed amendments to CrR 3.2 and CrRLJ 3.2

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The court should not adopt the proposed amendments.

The existing rule allows a court to consider all relevant circumstances in deciding whether to release someone on personal recognizance (PR). The proposed amendment appears to eliminate much of that discretion. It substitutes an arbitrary rule that a person must be released unless he or she has already failed to appear, is on probation or community custody, or was released for an earlier charge. In many cases, this means that a person must be released even if there is no reason to believe that the person will appear as required.

“Non-violent offenses” can nonetheless cause great harm. Consider, for example, a person is charged with being the leader of a large identity theft ring. Suppose that this person has numerous prior convictions for bail jumping. Suppose that the person told police that he or she plans to move to another state as soon as he or she gets out of jail. Nonetheless, under the proposed rule, the court would be required to release the person on his or her promise to appear. Such release would neither allow the judicial process to proceed nor protect the public. What is the value of this person’s promises?

It should be noted that there is a significant ambiguity in the rule. It says that the requirement of PR does not apply if “the accused has been released on personal recognizance or bail for an offense alleged to pre-date the current charge.” On the surface, this seems to mean that it does not apply if the person has **ever** been released — in other words, it only applies to first-time offenders. If this is what the rule means, it would do comparatively little harm.

The accompanying comment, however, indicates that the PR requirement applies if the person “is not **on** pretrial release for an older crime.” That would make it cover a much larger group of accused persons. That expansion is not justifiable.

Seth Fine