



April 30, 2021

Justices of the Washington Supreme Court
P.O. Box 40929
Olympia, Washington 98504-0929
VIA E-MAIL: supreme@courts.wa.gov

RE: Proposed Changes to CrR 3.2 and CrRLJ 3.2

Dear Justices:

Proposed changes to CrR 3.2 and CrRLJ 3.2 (CrR/LJ 3.2) would require pretrial release of some people charged with non-violent crimes. The Washington Defender Association (WDA) favors the proposal but asks this Court to remove some of its restrictions on who must be released.

Proposed CrR/LJ 3.2(a) would allow some people who are charged with non-violent crimes and too poor to pay bail the advantages of pretrial release that the wealthier accused already enjoy. Unfortunately, many Washington courts do not follow current CrR/LJ 3.2, which requires them to presume release, and instead default to setting bail in most or all cases. Altering CrR/LJ 3.2 to mandate release in some cases would relieve more people who cannot pay bail of the pressure to plead guilty to get out of jail. It would also give those who might ultimately plead guilty the chance to ameliorate problems that led to their charges, resulting in sentences that would take those efforts into account. For example, a person charged with third degree driving while license suspended¹ might be able to pay off traffic tickets and get relicensed, or a person charged with a crime related to substance abuse could start treatment.

We ask you to adopt proposed CrR/LJ 3.2(a)(1), which would mandate release unless a person charged with a non-violent crime fails to appear, but not adopt proposed CrR/LJ 3.2(a)(2) and (a)(3). Proposed CrR/LJ 3.2(a)(2) would allow courts to continue to detain people charged with non-violent crimes if they are already on probation or community custody. Proposed CrR/LJ 3.2(a)(3) would do the same for people on pretrial release for separate crimes. One concern we have is that because a disparate number of people of color are ensnared in Washington's criminal legal system,² allowing courts to hold people because they are on pretrial release or post-conviction supervision could exacerbate implicit racism. A second concern is that the factors in proposed CrR/LJ 3.2(a)(2) and (a)(3) do not correlate with an accused's likely future failure to appear. Because proposed CrR/LJ 3.2(a)(2) and (a)(3) are unnecessary at best, we encourage adoption of proposed CrR/LJ 3.2(a)(1) by itself.

If this Court adopts proposed CrR/LJ 3.2(a)(3), we ask that you specify that it applies only to people who are *currently* released on a separate offense. As it reads now, that proposed section could be interpreted to allow pretrial detention of any person ever released pretrial on nearly any charge.

¹ RCW 46.20.342(1)(c)

² *Preliminary Report on Race and Washington's Criminal Justice System*, 35 SEATTLE U. L. REV. 623 (2012)

Our final request is that you allow courts to set nominal bail if the defense asks. If an accused is held on a second charge for which a court has set bail they are unable to pay, they may wish to also be held on the current charge so that they can seek credit for time served on both charges.³

Please adopt proposed CrR/LJ 3.2(a)(1). Thank you for your consideration.

Sincerely,

/s/Magda Baker

Magda Baker

Misdemeanor Resource Attorney

³ See CrRLJ 7.2(a) and CrR 7.2(a) (sentencing court must grant credit for time served); *Reanier v. Smith*, 83 Wn.2d 342 (1974).

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Attached is WDA's comment on proposed changes to CrR 3.2 and CrRLJ 3.2.

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